

Annual Report 2022

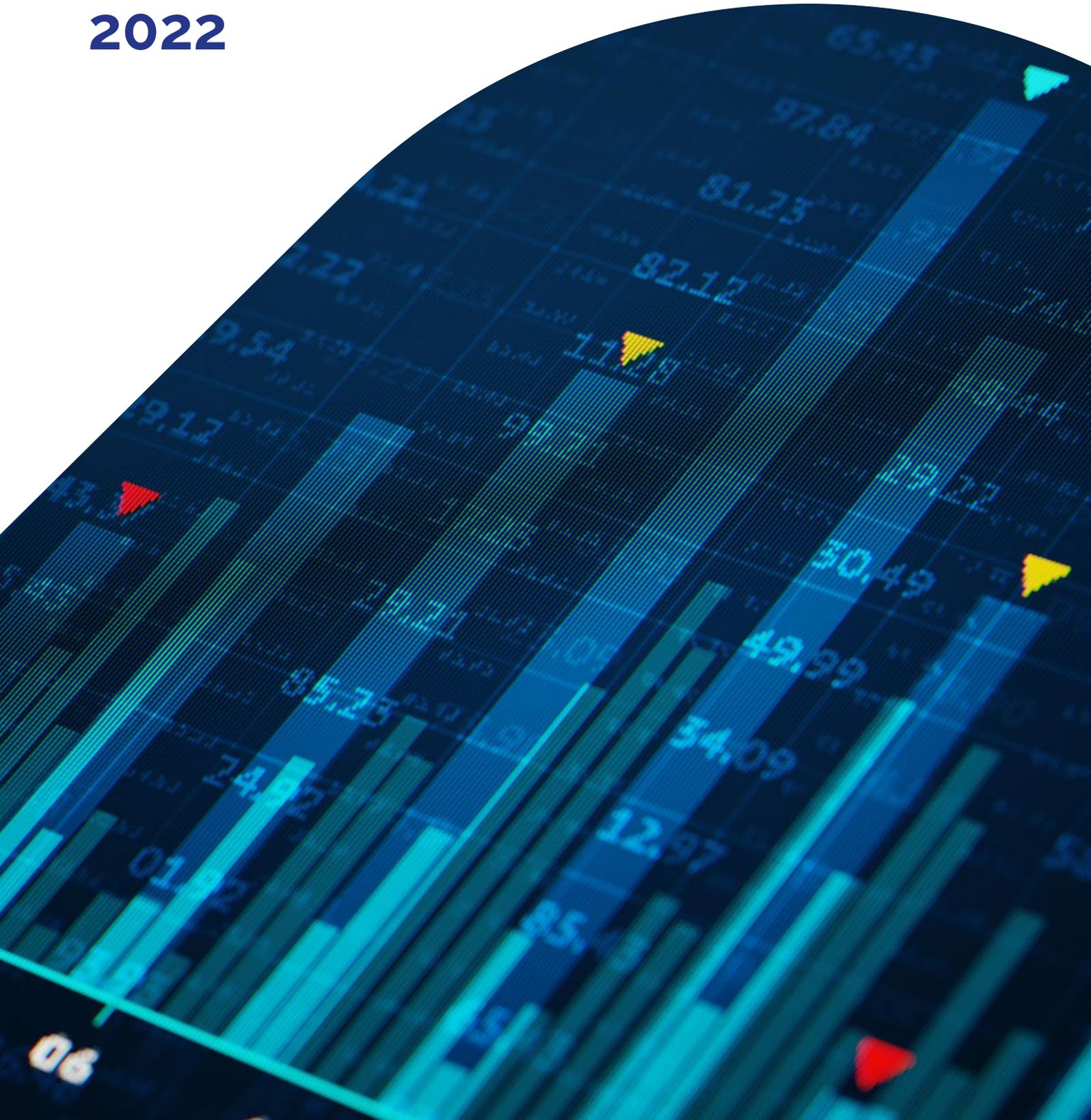


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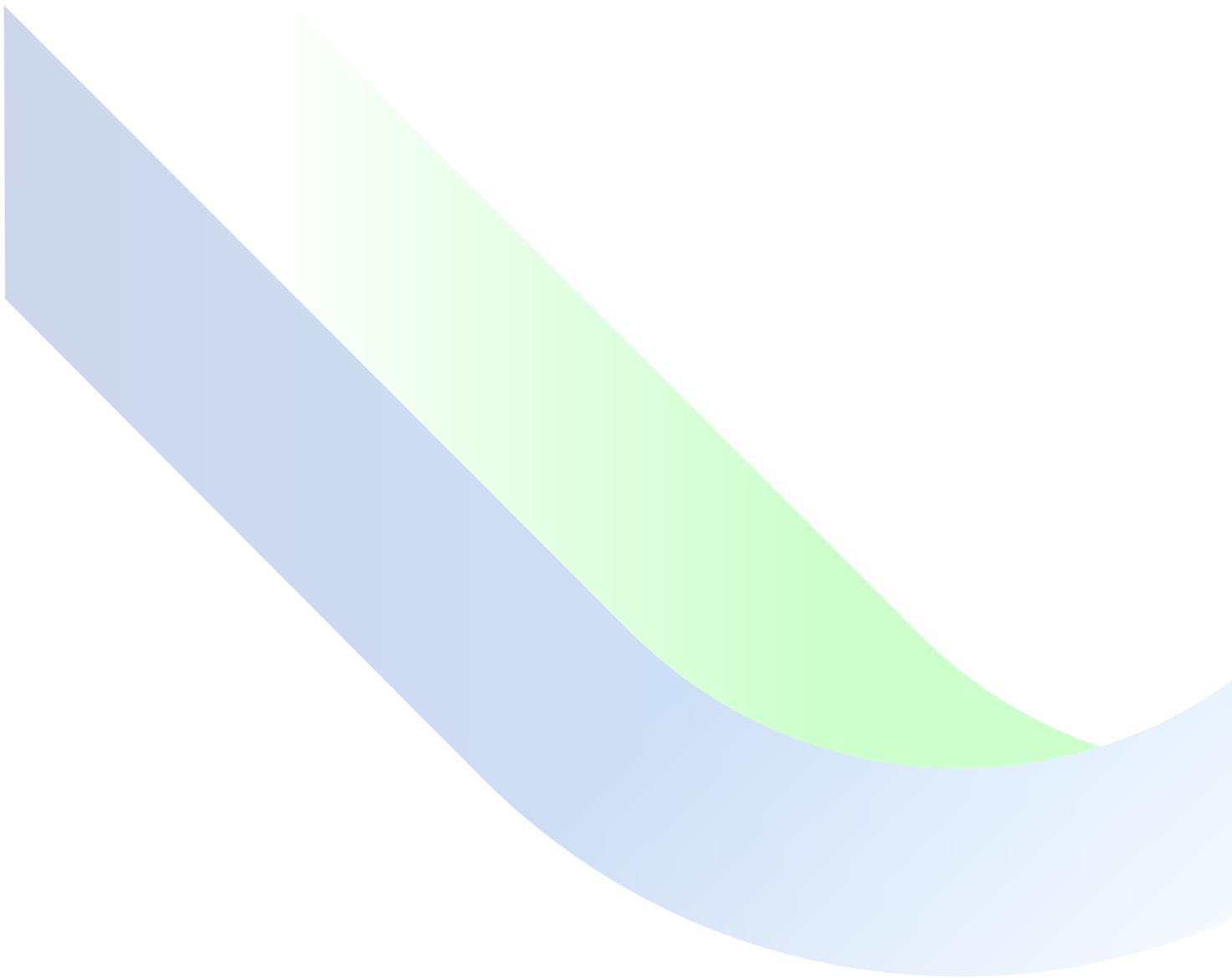
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Board of Supervisors' analysis and assessment of the annual report for 2022

The Board of Supervisors of the European Securities and Markets Authority (ESMA) takes note of the annual report for 2022 submitted by the Executive Director in accordance with Article 48(1) of ESMA's financial regulation.

Analysing and assessing the annual report, the Board makes the following observations.

- The report contains a comprehensive account of the activities carried out by ESMA in the implementation of its mandate and work programme in 2022. ESMA provides in the annual report a detailed account of the results achieved in relation to the objectives set in the work programme for 2022, as well as relevant financial and management information.

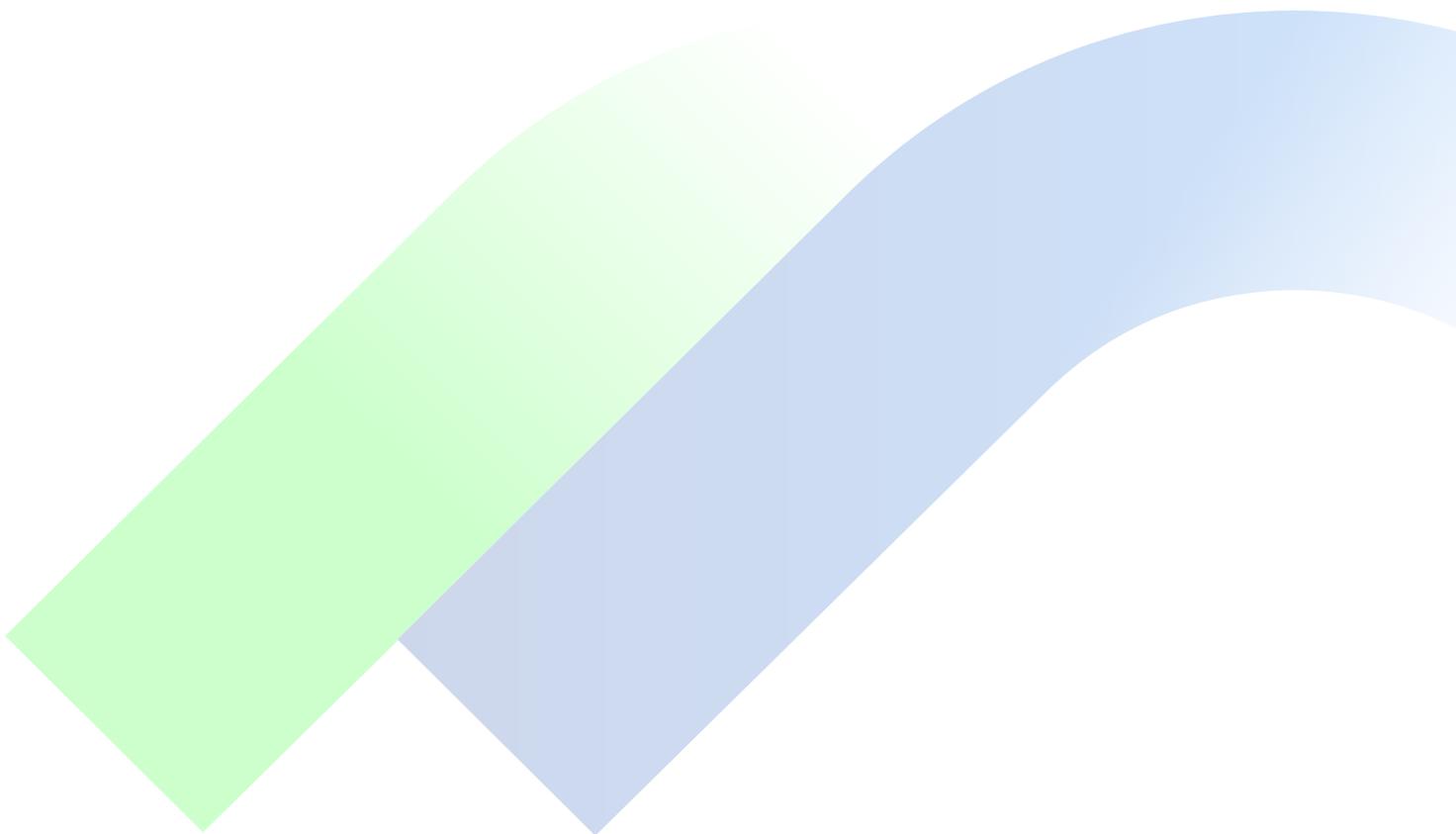
- The Board takes note of the reports of the European Court of Auditors and the European Commission's Internal Audit Service and ESMA's actions in response to these reports.
- The Board notes that the Executive Director has no reservations or critical issues to report that would affect the presentation of the annual accounts for the financial year 2022 to the discharge authority.

Paris, 31 May 2023

Verena Ross
ESMA Chair

For the Board of Supervisors







Verena Ross

CHAIR
EUROPEAN SECURITIES AND MARKETS
AUTHORITY

Chair's foreword

This year, the time came to assess where we stand as an organisation and to design a Strategy to guide ESMA through the next five years. We will remain focused on ESMA's mission of enhancing investor protection, promoting orderly financial markets and safeguarding financial stability. Our core priorities will be (i) fostering effective markets and financial stability, (ii) strengthening supervision of EU financial markets and (iii) enhancing protection of retail investors. At the same time, we will be intensifying our work in areas of topical importance across the whole ESMA remit, namely sustainable finance, technological innovation and the increased use of data.

We have seen in 2022 mounting investor interest in investments that promote non-financial characteristics, such as environmental, social and governance (ESG). This growing demand comes with a risk of its own: greenwashing. ESMA is committed to continue to develop and improve the regulatory framework around sustainability, so that it is increasingly clear and consistent. Together with enhanced and convergent supervision of these requirements, this has been and will remain a key priority across ESMA's mandate.

In parallel, the fall of FTX served as a tough reminder of the risks to investor protection associated with crypto investments and unregulated providers. The upcoming Markets in Crypto Assets Regulation (MiCA) is one policy response to these risks, and ESMA, alongside the European Banking Authority (EBA), will work on ensuring the framework being put into place improves transparency and increases the level of investor protection. In the meantime, ESMA continues its financial education and protection efforts by alerting investors to the risky and speculative nature of many crypto assets and on the lack of recourse in case of loss of funds. As digitalisation also increases our reliance on IT infrastructures, it was good to see the agreement reached this year on a regulatory framework on digital operational resilience. ESMA has been undertaking relevant policy work, with the other European Supervisory Authorities (ESAs).

Digitalisation presents particular investor protection issues, including both risks and opportunities, which need to be carefully considered. While there are inherent risks associated with innovative business models and products, it is also important to acknowledge the potential opportunities and efficiencies they can bring. Digitalisation also creates an increasingly borderless world, where supervisory coordination and cooperation is essential, whether that is within the EU or beyond its borders. With this in mind, ESMA participated actively in various global workstreams, including in the areas of innovation and sustainability, through the International Organisation of Securities Commission (IOSCO) and the Financial Stability Board (FSB).

2022 was also a significant year from the supervisory convergence perspective. First, there was the finalisation of three important peer reviews, (i) on the supervision of cross-border activities of investment firms, (ii) on the scrutiny and approval procedures of prospectuses and (iii) on the handling of relocation to the Union in the context of the UK's EU withdrawal. The former led ESMA to issuing its first recommendations to a national competent authority under article 16 of its Founding Regulation. Other convergence highlights were the completion of ESMA's very first mystery shopping exercise and the organisation of voluntary supervisory colleges on three large third-country firms that offer financial services across the EU.

Of course, ESMA's work in 2022 was marked once again by significant and unexpected external events, of which the Russian invasion of Ukraine was not the least. Besides the human suffering unleashed by the war in Ukraine, it also had some wide-ranging implications from a financial markets' perspective. As described in our semi-annual Trends Risks, and Vulnerabilities (TRV) Reports, the Russian invasion added to uncertainty and volatility in financial markets, with a particular impact on commodity markets, and especially on energy markets in Europe.

ESMA has kept a close eye on the developments in these markets as well as inflationary pressures since February 2022, producing regular market update analyses, publishing a report on the EU carbon

market and taking regulatory and supervisory action where necessary. In this context, we updated regulatory technical standards on Central Counterparties (CCP) collateral requirements to alleviate liquidity pressures on non-financial counterparties active on gas and electricity markets. The developments in energy derivatives markets led ESMA to intensify its cooperation with the Agency for the Cooperation of Energy Regulators (ACER), and to provide the European Commission with technical advice on the development of tools such as circuit breakers and to make preparations in case of the activation of the new Market Cap Mechanism.

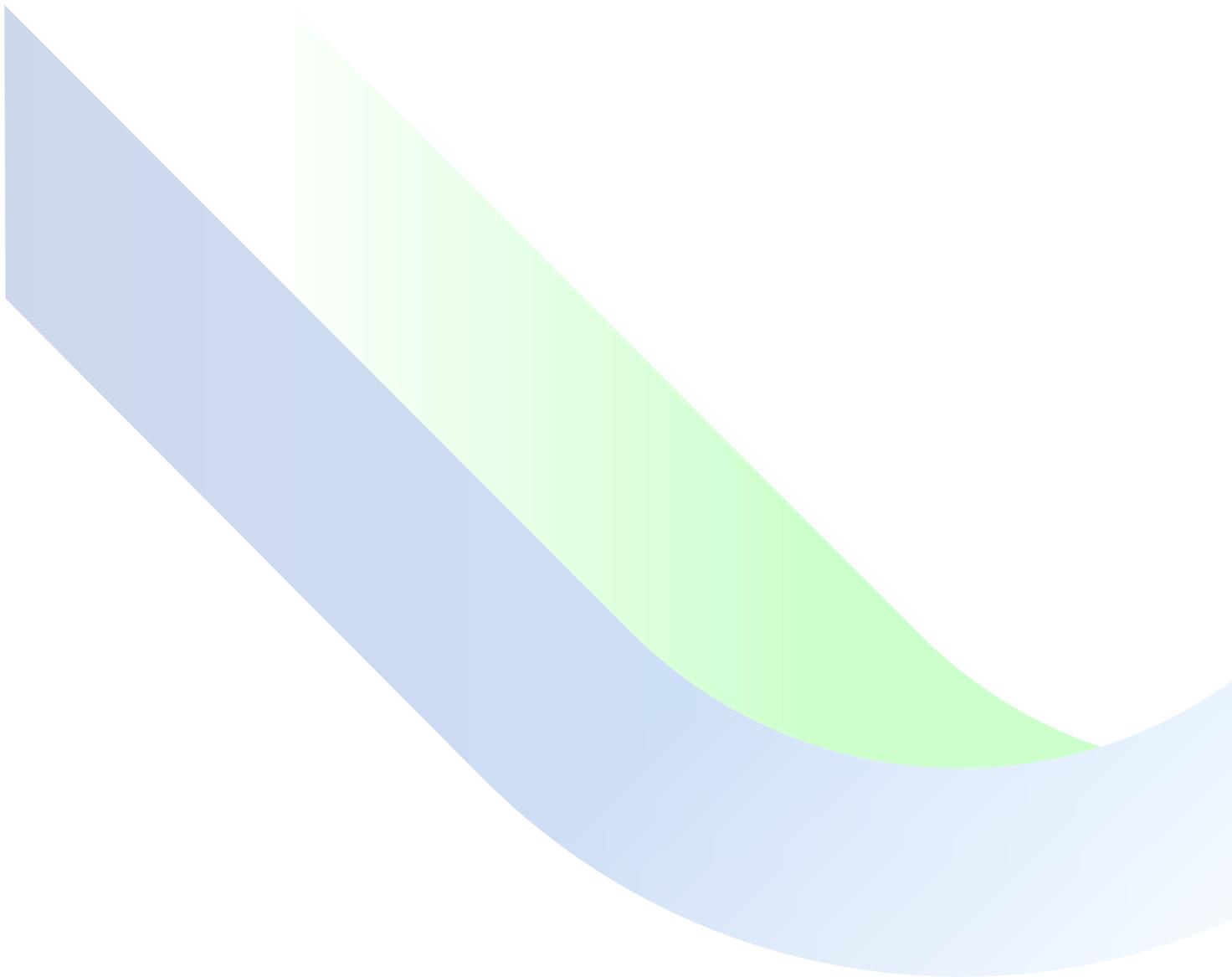
Towards the end of the year, the European Commission brought forward legislative proposals on the "Listing Package" and "EMIR 3" that (together with other ongoing legislative discussions) will be relevant to ESMA in the years to come. I would like to take this opportunity to thank the European Parliament, the Council of the European Union, and the European

Commission for their continued trust in ESMA. I would also like to acknowledge the excellent cooperation with our fellow ESAs, including through the expanding Joint Committee work. In addition, all our work is only possible thanks to the close interaction with stakeholders (including through the SMSG) and their valuable contributions to our work.

As we go into yet another packed year, I would not like to end before mentioning my appreciation of my colleagues in the ESMA Board of Supervisors and Management Board. In particular, a big thank you to Erik Thedéen, our outgoing Vice-Chair, and Vojtěch Belling, our new Vice-Chair, for their support. Finally, and by no means least, I would like to express my heartfelt thanks to ESMA colleagues for all their hard work and continued dedication.

Verena Ross

Chair





Natasha Cazenave

EXECUTIVE DIRECTOR

Executive Director's foreword

2022 was a year marked by a number of external challenges requiring ESMA's full attention as well as continuous reprioritisation to remain on top of this evolving environment.

This year, ESMA took on several new supervisory mandates, becoming responsible for authorising and supervising the administrator of Euribor, the EU critical benchmark, as well as for recognising and supervising recognised third-country benchmark administrators. In practice, ESMA has taken on the supervision of seven third-country benchmark administrators when it started its supervisory mandate in January 2022. ESMA recognised two further third-country administrators during 2022 and continues to receive expressions of interest from other third-country administrators seeking recognition. ESMA also started supervising the largest EU data reporting service providers (DRSPs). With this in mind, the early months of 2022 involved the completion of the transfer of supervisory responsibilities from NCAs to ESMA and the finalisation of the set-up of the necessary systems for receiving and monitoring large quantities of data.

At the same time, ESMA continued strengthening its risk-based, data-driven and outcome-focused approach to supervision. With the unprovoked war of aggression of Russia in Ukraine and the ensuing volatility in financial and energy markets, supervisory activities have been reprioritised to ensure effective monitoring of the impact of the war, particularly on credit rating activities as well as risk management at central counterparties (CCPs).

In addition, in the supervision of credit rating agencies (CRAs), ESMA maintained its focus on key priority areas such as methodologies and the quality of the rating process amongst others through thematic work related to errors, drivers behind changes in methodologies and the role and the empowerment of internal review functions.

ESMA also identified and addressed new risks posed by industry and capital market developments, such as those stemming from deteriorating economic conditions, developments in ESG products, the assessment of cyber risk and the impact of new

technologies. ESMA also closely monitored a number of acquisitions within the small and medium CRAs sector and deregistered two CRAs following their cessation of activities.

In the area of the supervision of third-country CCPs (TC CCPs), the CCP Directorate finalised the review of the recognition of twenty-six previously recognised TC-CCPs in line with the amended European market infrastructure regulation (EMIR), which led to the recognition of all CCPs but six Indian CCPs for which, despite extensive engagement with the relevant authorities, the conditions for recognition were no longer met, and a derecognition process had to be launched. Importantly in 2022, the CCP Directorate also conducted thorough reviews of the systemic importance of recognised CCPs and developed its supervisory approach for Tier 2 CCPs.

Finally, one key objective of ESMA's supervisory work is the enhancement of data quality. ESMA has dedicated a significant amount of time to interact with trade repositories (TRs) to identify and resolve data quality issues, to publish data quality reports and guidance with a view to enhance the harmonisation and standardisation of reporting, contributing to the high quality of data necessary for the effective monitoring of risk, and to contain the costs along the reporting chain.

In some cases, ESMA's supervisory activities also led to enforcement action, and in one case the imposition to a trade repository of a €186 000 fine following the identification of breaches of EMIR. Those were related to failures to ensure the integrity of data and providing direct and immediate access to regulators.

The development of our new ESMA Strategy 2023-2028 was an opportunity to review our organisational structure to ensure we are best equipped to deliver on the ambitious roadmap we have set for ourselves, are able to adapt to a rapidly changing environment and face the challenges that will inevitably come our way in the years to come. In particular, we have increased our focus on data, innovation and sustainability and enhanced our efforts to put the retail investor at the heart of our activities. This evolution is also symbolised by ESMA's new

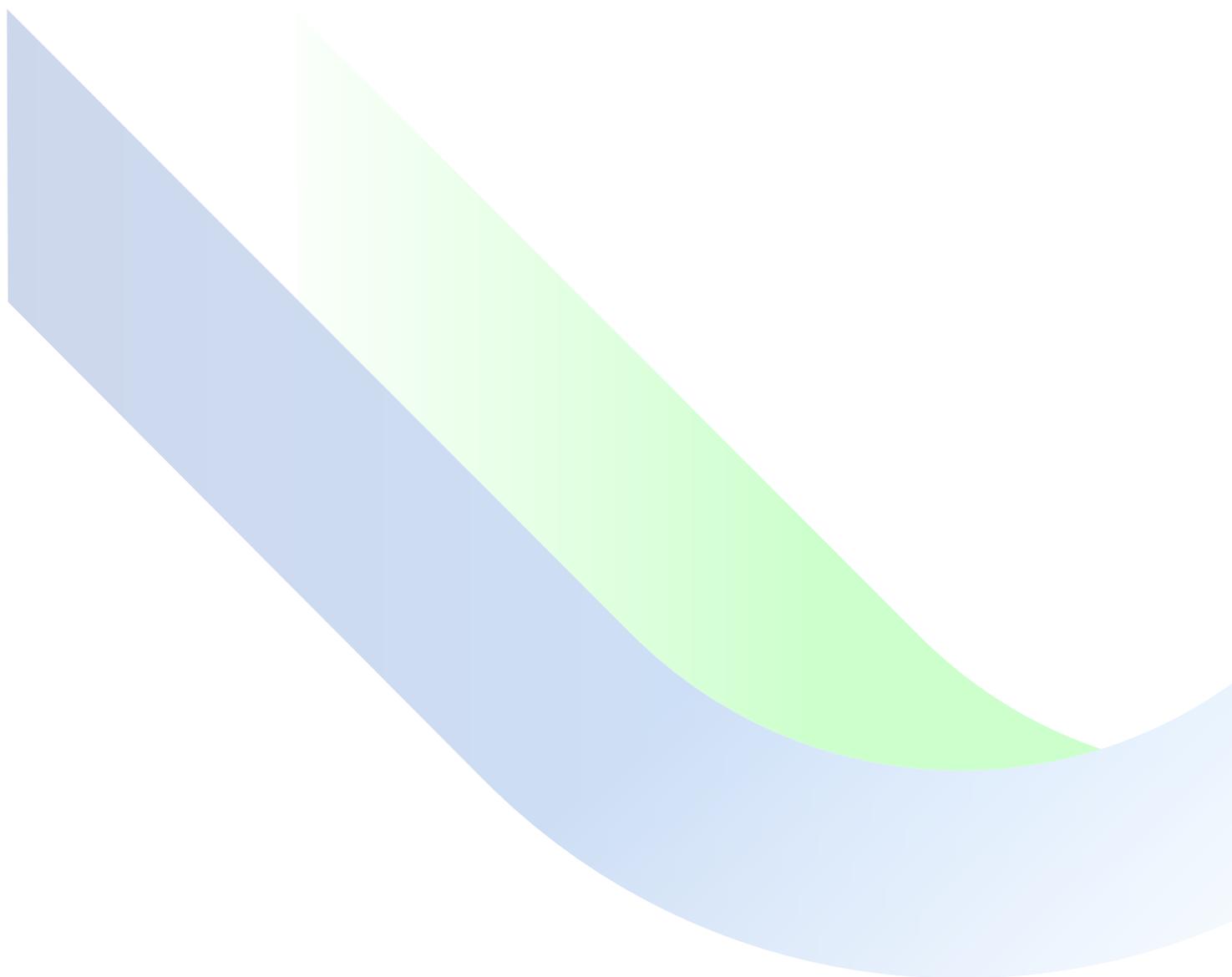
modernised visual identity and website, which should facilitate our stakeholders' interactions and ease access to the information we publish.

For the organisation, 2022 was a year of transition. With the COVID19 pandemic receding, colleagues gradually returned to the office, had the pleasure to interact with each other in person again, and were able to organise meetings with stakeholders, NCAs and our decision-making bodies in our premises. At the same time, mindful of our sustainability objectives and new ways of working, we have learnt to balance in person and virtual meetings and limit unnecessary travel, making the most of new technologies. I am pleased these efforts have led ESMA to be awarded

the European Eco-Management and Audit Scheme (EMAS) and ISO 14001 environmental certification.

With all that said, I would like to warmly thank all ESMA staff for their remarkable commitment and for bringing their expertise to the task day after day. I am immensely grateful to them all for their hard work, which has led ESMA through another successful year. I would also like to express my gratitude to ESMA's Board of Supervisors members for their continuous support and guidance.

Natasha Cazenave
Executive Director





1. ESMA's mission and 2022 objectives

1.1. Mission, objectives and activities

The European Securities and Markets Authority (ESMA) is the EU's financial markets regulator and supervisor.

ESMA's mission is to enhance investor protection, promote orderly financial markets and safeguard financial stability.

- **Investor protection.** To better serve financial consumers' needs and to reinforce their ability to make informed choices.
- **Orderly markets.** To foster the integrity, transparency, efficiency and functioning of financial markets and market infrastructures.
- **Financial stability.** To strengthen the financial system to be capable of withstanding shocks and the unravelling of financial imbalances.

ESMA achieves its mission in the European System of Financial Supervision (ESFS) through active cooperation with national and other EU authorities. While ESMA has a unique position within the ESFS – focusing on regulating and supervising securities and financial markets at the EU level – it works closely with NCAs to ensure the most effective regulation and supervision of EU financial markets as a whole. Considering the increasing interaction between different financial sectors, ESMA is enhancing its work with other EU authorities and institutions, in particular regarding the insurance and banking sectors with the European Banking Authority (EBA) and European Insurance and Occupational Pensions Authority (EIOPA), including through the Joint Committee of the European supervisory authorities (ESAs).

ESMA also acts as the voice of the European financial markets' supervisory community through its active participation in various international fora, which include the International Organization for Securities Commissions (IOSCO) and the Financial Stability Board (FSB).

In 2022, ESMA's strategic priorities focused on three cross-cutting priorities.

- **Sound EU capital markets.** Contributing to the regulatory and supervisory framework supporting the development of efficient and orderly European capital markets.

- **Sustainable finance.** Promoting investor protection and financial stability across the investment chain while contributing to the EU's transition towards a more sustainable financial system.
- **Innovation and digitalisation.** Understanding market trends, risks, new players business models, investor protection risks and engagement with the co-legislators in anticipation of upcoming new legislation.

1.2. Governance and organisation

Two decision-making bodies govern ESMA: the Board of Supervisors (the Board) and the Management Board.

The Chair represents the Authority. The Chair prepares the work of the Board of Supervisors and chairs the Board of Supervisors and Management Board meetings. A Vice-Chair is appointed among the members of the Board and participates in the MB meetings.

The Executive Director is responsible for the day-to-day operations of ESMA, including dealing with staff matters, developing and implementing the annual work programme (AWP), developing the draft budget and preparing the work of the Management Board.

On 21 November 2022, ESMA appointed Vojtěch Belling, Executive Director of the financial market regulation and International Cooperation Department of the Czech National Bank, as Vice-Chair for a 2.5-year term, succeeding Erik Thedéen, Director-General of the Swedish Financial Supervisory Authority.

1.2.1. Board of Supervisors

The Board is the ultimate decision-making body and guides the work of ESMA. In addition to ESMA's Chair, the Board is composed of the heads of the NCAs in the EU and the European Economic Area (EEA) which are responsible for securities regulation and supervision. A list of the Board of Supervisors' current members (voting and non-voting/observers) and

summaries of its 2022 meetings can be found in Annex VIII, as well as on ESMA's website¹.

1.2.2. Management Board

In addition to the Chair, the Management Board is composed of six members selected from the Board of Supervisors. The Executive Director and a representative of the European Commission attend as non-voting members (except on budget matters, where the Commission representative has a vote), and the Vice-Chair attends as an observer.

The main role of the Management Board is to ensure that ESMA carries out its mission and performs the tasks assigned to it in accordance with the authority's founding regulation (known as the ESMA Regulation). It focuses, in particular, on the management and supervisory activities of the authority, such as the development and implementation of its multiannual work programme, as well as budget and staff resource matters. Furthermore, the Management Board plays a significant role in supervisory convergence, which refers to the process of aligning supervisory practices and standards across member states to ensure consistent and effective supervision of financial markets.

A list of the Management Board's current members and summaries of its 2022 meetings are available on ESMA's website².

1.2.3. Central Counterparty Supervisory Committee

In line with EMIR, in 2020 ESMA established a Central Counterparty (CCP) Supervisory Committee. The Committee is dedicated to promoting convergence in the supervision of EU CCPs, recognising third-country (TC) CCPs and supervising systemically important TC CCPs. It is composed of a permanent Chair, Klaus Löber, and two independent members, Nicoletta Giusto and Froukelien Wendt, and representatives from the NCAs supervising CCPs established in the EU and from relevant central banks

of issue. A list of the current members can be found on ESMA's website³.

In 2022, ESMA's CCP Supervisory Committee (CCP SC) published its strategic objectives for 2023–2025, in line with ESMA's overall strategy for the 2023–2028 period⁴. These included three strategic objectives relating to CCPs:

- strengthening EU CCP resilience;
- addressing TC CCP cross-border risks; and
- deepening risk-based and data-driven supervision.

These objectives will contribute to achieving ESMA's strategic priorities of strengthening supervision and ensuring fair, orderly and effective markets, while promoting sustainability and technological and data innovation.

1.2.4. Securities and Markets Stakeholder Group

The Securities and Markets Stakeholder Group (SMSG) was established under the ESMA regulation to facilitate consultation with stakeholders in areas relevant to ESMA's tasks. The members represent financial market participants and their employees, consumers and other users of financial services, academics and small and medium-sized enterprises (SMEs). ESMA seeks input from stakeholders by consulting the SMSG on its draft technical standards and guidelines to ensure that they are informed by diverse perspectives.

Professor Veerle Colaert is the Chair of the SMSG, supported by Vice-Chairs Christiane Hölz and Rainer Riess. The full composition of the SMSG is detailed on ESMA's website⁵. The SMSG held seven meetings in 2022, two of which were held with the Board of Supervisors. A full list⁶ of the advice produced by the SMSG in 2022 is provided in Annex IX to this report and on ESMA's website⁷.

¹ Board of Supervisors (europa.eu).

² Management Board (europa.eu).

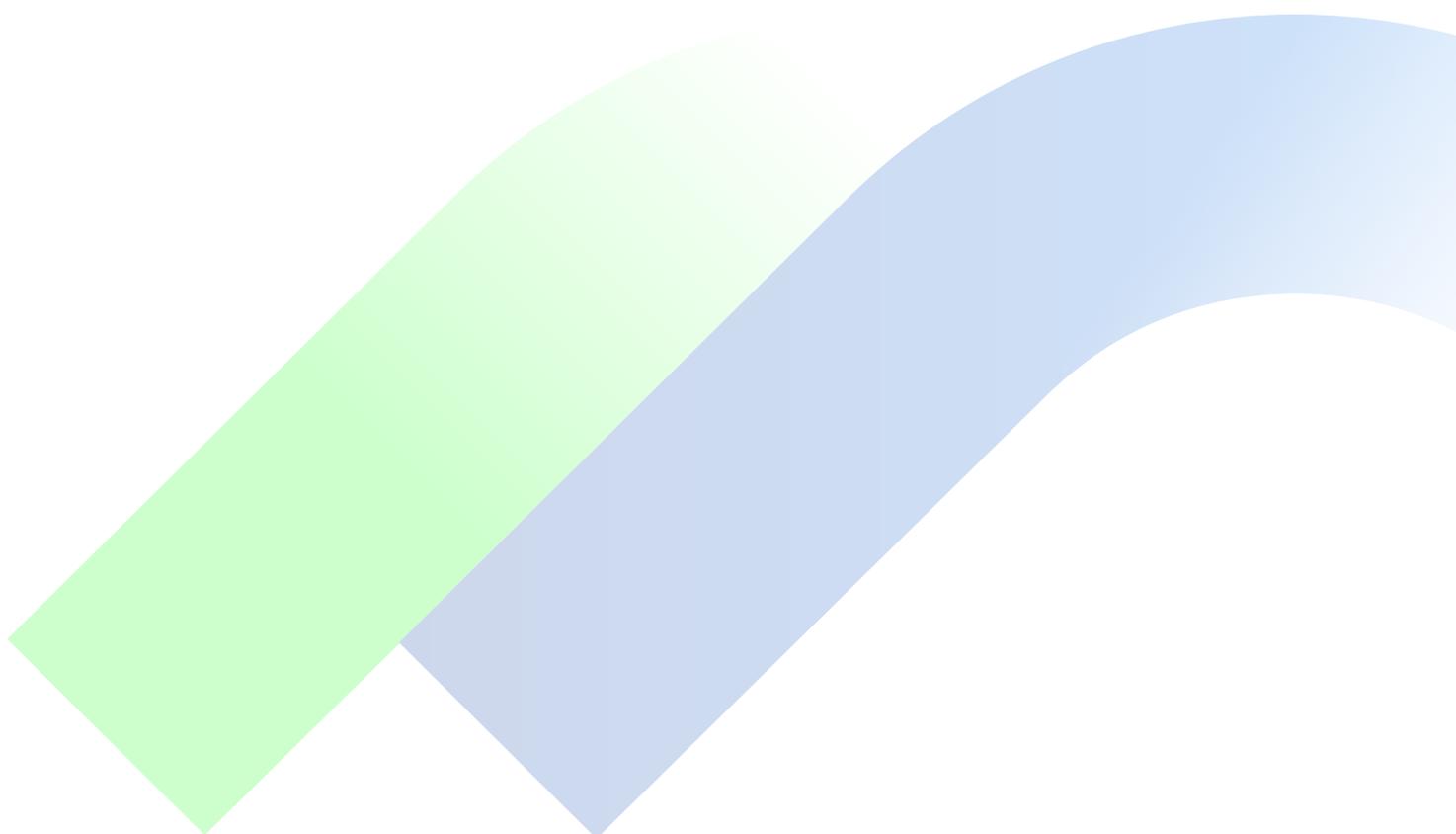
³ CCP Supervisory Committee (europa.eu).

⁴ esmag1-372-2391_ccp_strategic_objectives_2023-2025.pdf (europa.eu).

⁵ SMSG (europa.eu).

⁶ 2022 SMSG Advice.

⁷ SMSG (europa.eu).





2. ESMA's achievements

2.1. ESMA's key deliverables and successes in 2022

The following topics have been carefully chosen as a sample of the key achievements of ESMA in 2022. These achievements highlight ESMA's commitment to promoting market integrity, investor protection, and financial stability in the European Union.

2.1.1. Peer reviews

In 2022, ESMA concluded three important peer reviews, in addition to the mandatory annual peer review on CCP supervision (see Section 2.4.2), which should support further enhancement of supervisory convergence in key areas of securities regulation.

Peer review on the supervision of cross-border services

In March, ESMA published its peer review report on the supervision of cross-border activities of investment firms. ESMA identified recommendations for home NCAs to significantly improve their approach in the authorisation, ongoing supervision and enforcement work, relating to investment firm's cross border activities. The peer review further promoted supervisory convergence initiatives to facilitate NCAs' access to and exchange of information, including through data collection on actual cross-border activities, and improve NCAs' assessment and understanding of cross-border-related risks.

In the scope of this peer review, ESMA issued for the first-time specific recommendations under Article 16 of the ESMA regulation with the aim to structurally strengthen the supervisory approach and capacity of NCAs. The use of Article 16 entails that the NCAs shall make every effort to comply with those recommendations.

The actions and recommendations resulting from this peer review are expected to strengthen investor protection and the proper functioning of the single market.

Prospectus peer review

In July, ESMA published its peer review report on the scrutiny and approval procedures of prospectuses by

competent authorities. This peer review also assessed the impact of different approaches regarding scrutiny and approval by competent authorities on issuers' ability to raise capital in the European Union.

NCAs generally scrutinise prospectuses in a satisfactory manner, albeit in various ways, with scrutiny often reinforced for heightened risk prospectuses. The report set out important recommendations directed at NCAs to address weaknesses identified in the peer review and at both ESMA and the Commission to reinforce and enhance the scrutiny and approval of prospectuses.

Some of the key recommendations were related to enhanced transparency, timely and efficient approval processes, enhanced supervisory practices, enhanced cooperation and coordination, staff competence and resources, and risk assessment. Acting on these recommendations will lead to better outcomes for both issuers and investors in the EU.

Peer review on the Brexit relocation processes

In December, ESMA published its peer review report into the NCAs' handling of relocation to the EU in the context of the UK's withdrawal from the EU. It gives further insight into the supervisory approaches adopted by NCAs when authorising firms that have relocated due to Brexit.

It focused on some of the areas where full convergence was most difficult to achieve and therefore sets out important recommendations for future ESMA work to achieve greater convergence at the EU level on the application of the risk-based approach, the proportionality principle and on outsourcing/delegation arrangements. In addition, NCAs are also encouraged to improve their assessment of the adequacy of the internal control function, the extent of outsourcing and delegation, and the appropriateness of governance arrangements – to ensure a strong set-up of the EU entity already at the authorisation stage. These recommendations will help to promote further supervisory convergence at the EU level and to strengthen the authorisation process of NCAs going forward.

2.1.2. Responses to geopolitical challenges

Response to the Russian invasion

ESMA has intensified its risk monitoring and supervisory activities in response to the Russian invasion of Ukraine, ensuring heightened vigilance in assessing potential impacts on EU financial markets and taking necessary actions to safeguard market stability and investor protection.

ESMA, in coordination with NCAs, closely monitored the impact of the Ukraine crisis on financial markets and was prepared to use its relevant tools to ensure the orderly functioning of markets, financial stability and investor protection. This was part of the European Union's overall response to the tragic consequences of Russia's military aggression. ESMA provided a forum for supervisors to discuss questions and coordinate responses arising from the situation. To ensure stakeholders are adequately informed, ESMA outlined its specific supervisory and coordination activity, along with recommendations to financial market participants.

Throughout 2022, the invasion of Ukraine by Russia had a significant impact on the business operations and the rating activities of credit-rating agencies (CRAs), as well as CCPs and the clearing ecosystem. The significant price and volatility increases in energy derivative markets triggered sharp margin increases by CCPs to cover the related exposures, creating in turn liquidity strains on certain participants to meet these margin calls. As a result, in accordance with its risk-based approach, ESMA reprioritised some activities and set up dedicated monitoring activities.

ESMA actively engaged with CRAs to monitor the direct and indirect impact on the most exposed sectors and on their operations, focusing on business continuity and adherence to key requirements of the CRA regulation. In the immediate aftermath of the events, ESMA's supervisory attention was dedicated to ratings issued by Russia-based CRA branches and on ratings directly impacted by the crisis, also considering the EU sanctions applied in April 2022. In this phase, the key priorities were adequacy of analytical capability, access to information and transparency to the market.

In March and in May, ESMA published two public statements on the implications of Russia's invasion of Ukraine on investment fund portfolios exposed to Russian, Belarusian and Ukrainian assets. In the first one, ESMA outlined its specific supervisory and coordination activity relevant to the investment management sector in this exceptional context. In the second one, ESMA recalled some general principles that can be derived from EU law, including appropriate actions to deal with valuation issues in case of exposure to Russian, Belarusian and Ukrainian assets and where the use of liquidity management tools, specifically side pockets, may be warranted.

In May ESMA also issued a public statement on the implications of Russia's invasion of Ukraine on half-yearly financial reports. ESMA recognised the human cost of Russia's military aggression against Ukraine and the significant challenges to business activities and effects on the global economic and financial system posed by the invasion. The statement, with the aim of promoting investor protection, provided overarching messages to issuers and auditors, including a reminder of the main International Financial Reporting Standards (IFRS) requirements, ESMA's expectations regarding disclosures in financial statements and interim management reports, and a reminder on issuers' obligations vis-à-vis the market abuse regulation (MAR).

Finally, ESMA's July 2022 statement addressed EU sanctions related to Russia's invasion of Ukraine. The statement advised prospectus issuers to expect inquiries or requests for extra documentation regarding parties and areas under EU sanctions. Additionally, the Commission clarified that violating EU sanctions can give NCAs grounds to reject prospectus approval.





Response to the energy crisis

In light of the high levels of margins and excessive volatility observed in energy derivatives markets in the summer 2022, the Commission sent a formal request to ESMA in September 2022. In its public response, ESMA set out its high-level assessment concerning the areas where the Commission requested input on measures to limit excessive volatility (circuit breakers) and to alleviate liquidity pressures faced by certain clearing participants due to CCP margins increases. ESMA then adopted temporary emergency measures expanding the pool of CCP eligible collateral to address these liquidity strains. ESMA also made further suggestions on commodity clearing thresholds, on improving regulatory reporting on commodity derivatives and on regulating and supervising commodity traders.

Furthermore, in October, the European Union Agency for the Cooperation of Energy Regulators and ESMA agreed to strengthen their cooperation to avoid potential market abuse in EU's spot and derivative markets. As part of that agreement, the two authorities established a joint task force to reinforce their cooperation and enhance the exchange of data and knowledge.

2.1.3. Report on the EU carbon market

In March ESMA published a report on the European market for emission allowances and derivatives thereof, which analysed its functioning, the safeguards to preserve its integrity and put forward a number of policy recommendations to improve market transparency and monitoring. In particular the report proposed to extend position management

controls to European Union Allowances (EUA) derivatives; amend EUA position reporting; track the chain of transactions in MiFIR regulatory reports; and provide ESMA with access to primary market transactions. These proposed measures would provide more information to market participants, regulators and the public and are intended to contribute to the continued smooth functioning of the market, which plays an important role for the EU's transition to a low-carbon economy. In July, as a follow-up to this report, ESMA published, inter alia, an opinion clarifying how TC counterparty entities should be classified in weekly positions reports on commodity derivatives and emission allowance derivatives under MiFID II.

2.1.4. Advice on proposed leverage limits

In November, ESMA published its first advice on proposed leverage limits for investment funds as foreseen in Article 25 of the alternative investment fund managers directive (AIFMD). ESMA's advice followed the notification from the Central Bank of



Ireland (CBI) to impose leverage limits on commercial real-estate funds. In its advice, ESMA concluded that the conditions for taking action under the AIFMD were met and that proposed leverage limits by the CBI should contribute to improving the resilience of real-estate funds and to limiting the build-up of risk in the commercial real-estate sector. The CBI's notification was the first one received by ESMA from an NCA using its power under the AIFMD to impose leverage limits to a specific type of alternative investment funds (AIFs).

2.1.5. Mystery shopping

In 2022, ESMA coordinated the first mystery shopping exercise among a number of NCAs, following the attribution of the related tasks and powers to ESMA in the ESA's review⁸.

ESMA coordinated the identification of a common topic (requirements on costs and charges of the revised markets in financial instruments directive (MiFID II)), the adoption of a common methodology and the sharing of relevant outcomes in the respective jurisdictions. Ten NCAs took part in the exercise in 2022. Its results will be analysed by ESMA and NCAs, together with the outcome of the common supervisory action (CSA) carried out in 2022.



2.2. Cross-cutting themes

ESMA had defined three cross cutting priorities for 2022: support the development of sound capital

markets, promoting sustainable finance and innovation and fostering innovation and digitalisation. ESMA has achieved these goals through a range of initiatives, including updating regulatory frameworks, developing guidelines and recommendations, conducting research and analysis and engaging with stakeholders across the financial industry. This section details ESMA's achievements linked to its strategic priorities for 2022.

2.2.1. Supporting the development of sound capital markets

Objectives for 2022

Contribute to developments in the regulatory and supervisory framework supporting the development of efficient and orderly capital markets.

Foster investor participation and greater cross-border investment by supporting the development of a capital markets union (CMU).

Support SME access to capital markets.

ESMA continued to provide Technical Advice to the European Commission, develop Technical Standards and strengthen supervisory convergence with the aim to enhance transparency, disclosure, and investor protection standards for listed companies, promoting functioning capital markets and market integrity, thus supporting the development of sound capital markets (see in particular sections 2.3.1, 2.3.2, 2.3.3 and 2.4.4).

ESMA's ongoing technical input on the MiFID II/MiFIR review supported co-legislators in the negotiations of these important proposals. The MiFIR review will contribute to the development of a CMU via the establishment of a real-time consolidated tape covering various asset classes, notably shares and bonds.

ESMA provided input on the review of sectoral legislation currently included in the proposed Listing Act thus providing valuable input for the Commission when developing their legislative proposal. In particular, in February 2022, ESMA responded to Commission consultation on the Listing Act. The

⁸ Article 9(f) of the ESMA regulation.



response reflected ESMA's views on the existing regulatory framework for companies' listing on public markets. ESMA affirmed that, while the broad regulatory framework in place regarding listing activities is strong and effective, there is some scope to streamline certain rules and find ways to carefully alleviate certain burdens for issuers, which may in turn reduce costs and enhance incentives for listing.

In December, ESMA published an opinion on the proposed position limits for the ICE Endex Dutch Title Transfer Facility (TTF) Gas contracts. Further ESMA's responses to the energy crisis are listed under the section 2.1.2.

2.2.2. Sustainable finance

Objectives for 2022

Deliver on ESMA's sustainable finance roadmap and contribute to the EU transition towards more sustainable financial markets in the areas that are within ESMA's remit.

Ensure that developments relating to environmental, social and governance (ESG) factors are taken into account across ESMA's activities.

In 2022, ESMA maintained its focus on sustainable finance by incorporating ESG factors across the wide range of its activities. The financial sector has a key role to play to provide the financing needs required as the EU shifts to a more sustainable economy, and ESMA acknowledges the important contribution it can make by fostering a trusted environment for sustainable investments.

ESMA's 2022–2024 sustainable finance roadmap

In February 2022, ESMA published a three-year sustainable finance roadmap, which builds on ESMA's 2020 strategy on sustainable finance.

The roadmap set out ESMA's deliverables on sustainable finance and how they will be implemented over the next three years and identifies three priorities: a) promoting transparency and tackling greenwashing, b) building NCA's and ESMA's capacity and c) monitoring, assessing and analysing ESG markets and risks.

As part of the roadmap, ESMA established a Consultative Working Group (CWG), during the summer, composed of various stakeholders and technical experts in sustainable finance.

In the context of assessing market trends, risks and vulnerabilities, ESMA looked into the implementation of the guidelines on the disclosure of ESG factors in CRA press releases. ESMA published its findings in an article. It found that the overall level of disclosures has increased since the introduction of the guidelines, but that there is still a high level of divergence across CRAs, which means there is still room for further improvement, especially around the extent of the disclosure on environmental factors in press releases. In addition, in the interest of transparency, some explanation as to why ESG factors were considered to be immaterial, especially for 'ESG extreme' issuers, would be beneficial to enable investors to make informed decisions.

Call for evidence on greenwashing

In May, the Commission requested that each of the ESAs, individually but in a coordinated manner, provide their respective input by means of a progress and final report on several aspects relating to greenwashing and its related risks, along with the implementation, supervision and enforcement of

sustainable finance policies aimed at preventing greenwashing.

In preparation for the reports, ESMA, together with the other ESAs, published a call for evidence on greenwashing in November to seek input for relevant stakeholders which will be analysed by the ESAs and considered in their interim and final report. The objective of this exercise was to gain a better understanding of the greenwashing phenomenon, identify the challenges in the implementation of relevant sustainable finance legislation, and map out the supervisory response and assess its adequacy. The ESAs will issue recommendations in accordance with the findings made.

ESG supervisory briefing

With the supervisory briefing on sustainability risks and disclosures in the area of investment management published in May, ESMA made a number of recommendations to achieve greater convergence at the EU level on common supervisory practices for the supervision of the integration of sustainability risks and sustainability-related disclosures. In



particular, the briefing focuses on the supervision of sustainability disclosures in fund documentation and marketing material, and proposes additional supervisory actions for ongoing supervision, such as thematic reviews and portfolio analysis. This common approach should serve to increase the comparability of disclosures for investors and combat the risk of greenwashing.

Guidelines on MiFID II suitability requirements

In 2022, ESMA consulted and finalised its work on the review of its guidelines on the assessment of suitability. The guidelines – which apply to the provision of any type of investment advice and to portfolio management – integrate sustainability factors, risk and preferences into the suitability assessment. The revised guidelines also take into account the results of the 2020 CSA conducted by NCAs, complementing the document with the good and poor practices observed and providing some practical guidance to firms in the areas where lack of convergence still seems to persist.

In September, ESMA published these guidelines with the aim to promote investor protection and to ensure convergence in the implementation of the main amendments introduced into the MIFID II delegated regulation to integrate sustainability factors, risk and preferences into certain organisational requirements and operating conditions for investment firms.

The guidelines gave specific advice on the information that needs to be provided to clients on sustainability preferences, the way to collect information from clients on sustainability preferences, on the assessment of sustainability preferences, and finally on the organisational requirements firms need to adopt.

Consultation on guidelines for ESG or sustainability-related terms used in funds' names

In November 2022, ESMA launched a consultation seeking to collect the views of stakeholders on a proposal for the use of ESG or sustainability-related terms in funds' names. The objective was to ensure that investors are protected against unsubstantiated or exaggerated sustainability claims while providing both NCAs and asset managers with clear and

measurable criteria to assess names of funds including ESG or sustainability-related terms.

ESMA published a letter to the Commission in June summarising findings from a call for evidence on the EU market structure for ESG rating providers. A total of 59 providers are active across almost half of the EU Member States. The market is dominated by a few large non-EU providers and many smaller EU entities. Respondents reported shortcomings in their interactions with providers, including transparency, feedback timing and error correction.

Responses to EU and international consultations on corporate reporting sustainability standards

During the summer, ESMA published its response to the consultation launched by the International Sustainability Standards Board (ISSB) on their first exposure drafts. In its answer, ESMA expressed its support to the publication of internationally accepted high-quality sustainability reporting standards that constitute a common global baseline and underlined the need for the standards to be interoperable with the future European ones and the need to consider a double materiality approach.

In September, ESMA responded to the European Financial Reporting Advisory Group's public consultation on the first set of draft European Sustainability Reporting Standards (ESRS). In its response ESMA highlighted its support for a strong materiality assessment while expressing its concern about the suggested 'rebuttable presumption' approach.

Interaction with relevant EU and international bodies

In the international arena, ESMA has actively contributed to the work done by the IOSCO Sustainability Task Force notably as co-chair of the carbon markets workstream.

During COP27, in November, two consultation reports were published; the first one contained recommendation for establishing sound compliance carbon markets, aiming to build upon lessons learnt from existing compliance markets; the second one was seeking feedback on considerations for enhancing the resilience and integrity of voluntary carbon markets.

2.2.3. Innovation and digitalisation

Objectives for 2022

Contribute to develop the single rulebook in the area of digital finance following the adoption of the Digital Operational Resilience Act (DORA), markets in crypto-assets (MICA) and the regulation on a pilot regime for market infrastructures based on distributed ledger technology.

Further our understanding of the impact of financial innovation on financial markets' functioning and participants and foster a coordinated approach with the NCAs, for a regulatory and supervisory treatment of new or innovative financial activities and technological innovation.

Provide advice to the EU institutions, market participants or consumers where appropriate.

ESMA played a significant role in the preparatory work for the regulation of crypto assets within the EU.

Focusing on investor protection, ESMA, with the two ESAs, issued warnings to investors and NCAs about

the risks of crypto assets, by promoting transparency for issuers (see section 2.6.1). ESMA also conducted monitoring and analysis of crypto assets, assessing the relevant risks (see section 2.5.1).

Additionally, in 2022, ESMA actively monitored market participants involved in crypto assets and took the appropriate actions to address identified risks, aiming to ensure investor protection, market integrity, and stability in the rapidly evolving world of crypto assets (see section 2.3.1).

In January, the three ESAs (EBA, EIOPA and ESMA) published a statement welcoming the European Systemic Risk Board's (ESRB) recommendation on systemic cyber risk, which calls on the ESAs to prepare for the gradual development of a pan-European systemic cyber incident coordination framework.

ESAs' work mandated by DORA is included in Section 2.6.3.

Distributed Ledger Technology Pilot Regime

In January 2022, ESMA published a call for evidence on distributed ledger technology (DLT). The call for evidence sought input from stakeholders on the use of DLT for trading and settlement and on the need to



amend the regulatory technical standards (RTS) on regulatory reporting and transparency requirements.

Following the call for evidence, in September ESMA published a report on the DLT Pilot Regime, which concluded that there was no need to amend the RTS of the markets in financial instruments regulation (MiFIR) on transparency and reporting at this stage, but that further guidance on certain technical elements would be useful ahead of the application date. ESMA worked on this supervisory guidance and in December published a first batch of Q & As on the implementation of the DLT Pilot Regime, clarifying the application of certain elements of the MiFIR RTS on transparency and data reporting requirements.

Also in December, ESMA published guidelines on standard forms, formats and templates to apply for a permission to operate a DLT market infrastructure under the DLTR. Namely: a DLT multilateral trading systems, a DLT settlement system or a DLT trading and settlement system. DLT market infrastructures can request limited exemptions from specific requirements in EU legislation (MiFIR, MiFID II, central securities depositories regulation (CSDR)), provided they comply with the conditions attached to those exemptions and the compensatory measures requested by the relevant competent authority.

2.3. Investors and issuers

2.3.1. Investment services

Objectives for 2022

Contribute to the review of MiFID II and the development of a single rulebook in the area related to investment firms, the provision of investment services, the application of the TC firms' regime and crowdfunding by ensuring that the relevant technical advice, technical standards and other relevant documents are delivered to the Commission within the deadlines.

Promoting supervisory convergence by ensuring consistent application of MiFID II and MiFIR requirements and coordination between NCAs in the area of investor protection and intermediaries (including cross-border activities).

Foster convergence in the application of the new European crowdfunding service providers regulation.



Promoting consistent application of MiFID II and MiFIR

In 2022, ESMA undertook a variety of actions to support common supervisory culture, the convergence of supervisory practices and to ensure consistent application of MiFID II and MiFIR requirements and coordination between NCAs.

Common supervisory actions

ESMA launched a CSA with NCAs to assess the application by firms of the MiFID II requirements on costs and charges in February. The focus of the CSA was on the information provided to retail clients and will allow ESMA and the NCAs to assess the application by firms of the MiFID II requirements on costs and charges.

In July 2022, ESMA published the results of a CSA that was carried out the previous year to assess the application of MiFID II product governance rules across the EU. The CSA has shown that firms generally define a target market for the products they manufacture and/or distribute. However, in some cases, the definition of a target market appears to be approached as a formalistic exercise, meaning the definition does not always translate into a compatible distribution strategy that enables the product to reach the identified target market.

Guidelines

In March, ESMA finalised the review of its guidelines on certain aspects of the MiFID II remuneration requirements. The purpose of the guidelines was to foster convergence in relation to the conflicts of interest and conduct of business requirements, with a focus on the area of remuneration.

In July, ESMA opened a consultation on reviewed guidelines on MiFID II product governance guidelines to ensure that firms act in their clients' best interests during all stages of the investment product's life cycle and prevent mis-selling. ESMA proposed to update the 2017 guidelines following several regulatory and supervisory developments.

Supervisory briefings

In February, ESMA published a supervisory briefing to ensure convergence across the EU in the supervision of firms using tied agents, in particular those based outside the EU. ESMA and NCAs have

been analysing the behaviour of firms in order to understand whether their interaction with EU-based clients is done in a way that is compliant with the MiFIR and markets in financial instruments directive (MiFID) (including the regimes providing the conditions for TC firms to provide investment services and activities in the union). The briefing contained the supervisory expectations of ESMA and NCAs on this important topic.

In December, ESMA published another supervisory briefing to ensure convergence across the EU in the supervision of the cross-border activities of investment firms. The free provision of services in the EU rests on the supervision of the home NCA and on the cooperation between home and host supervisors. In an earlier peer review report, ESMA had identified the need for home supervisors to significantly improve their approach in the authorisation, ongoing supervision and enforcement work, relating to investment firm's cross-border activities for retail clients.

ESMA statements

In September, ESMA issued a public statement reminding firms to consider inflation and inflation risk when applying relevant MiFID II investor protection requirements, as it believes that investment firms may play a role in considering inflation and inflation risk, both when manufacturing and distributing investment products and when providing investment services to retail clients. Investment firms can also help raise clients' awareness of inflation risk.

In December, ESMA also issued a public statement to give clarity to market participants on best execution reporting in a situation where the MiFID II / MiFIR legislative procedure was likely to exceed the temporary suspension of the RTS 27 reporting requirement.

Coordination of data collection on cross-border services

The increasing exposure of retail clients to service providers authorised in other jurisdictions in the EU warrants the need for host NCAs to have more visibility on cross-border activities provided in their territory; therefore, ESMA has coordinated the collection of data by NCAs on cross-border services provided to retail clients across the EU in order to facilitate cooperation and the exchange of information among home and host NCAs on this important area of firms' activities.

Annual sanctions report under MiFID II

In July 2022, ESMA published its fourth annual report on NCAs' use of sanctions and measures under MiFID II in the previous year. Overall, in 24 (out of 30) EU/EEA Member States, NCAs imposed a total of 411 sanctions and measures in 2021. Those applied sanctions and measures were of an aggregated value of EUR 12 203 139. Both the number of Member States where sanctions and measures were applied and the total amount of imposed administrative fines increased in 2021 in comparison to 2020.

Advice to the Commission on investor protection in the MiFID II / MiFIR review

In its April advice to the Commission on certain aspects relating to retail investor protection, ESMA proposed to make it easier for investors to get the key information they need to take well-informed investment decisions while protecting them from aggressive marketing techniques and detrimental practices. The proposals put forward aim at maintaining a high level of investor protection, while ensuring that retail investors can benefit from digitalisation opportunities. The recommendations relate to, inter alia, requiring machine readability of disclosure documents, addressing information overload, suggesting the development of a standard EU format of information on costs and charges, addressing issues related to misleading marketing campaigns on social media and the use of online engagement practices, such as the use of gamification techniques.

ESMA submitted to the Commission an advice on best execution reporting requirements for firms, with a few technical proposals to enhance the quality of information reported by firms and facilitate access to them and their use by investors and market participants.

Technical standards

ESMA and NCAs have noted the continued increase in cross-border activities for retail clients provided under the MiFID II free provision of services regime. This increase resulted from several factors, including the development of the single market and the digitalisation of financial services, which further helps firms to provide services across borders. The pandemic also created conditions that contributed to an increase in retail investors' exposure to securities markets, including cross-border.

In the light of the above, ESMA opened a consultation in November on the review of the technical standards on the provision of investment services across the EU. ESMA proposed to complement the current list of information that investment firms are required to provide at the passporting stage.

Financial education and investor warnings

In February, ESMA held, together with the EBA and EIOPA, the first joint high-level conference on financial education and literacy. The conference highlighted the crucial role that consumers' understanding of finances play in retail investor protection and ensuring the long-term stability of the financial sector. To raise awareness, the conference gathered high-level government representatives as well as experts from public authorities, academia, NGOs, consumer associations and the industry. It also offered a forum to share ideas and best practices and to gather input from all the stakeholders on how to tackle future challenges.

In March, the ESAs warned consumers that many crypto assets are very risky and speculative and are not suited to most retail consumers as an investment or as a means of payment or exchange. The ESAs also warned consumers that they should be aware of the lack of recourse or protection available to them, as crypto-assets and related products and services typically fall outside existing protection under current EU financial services rules.

Product intervention

ESMA issued an opinion on the proposed measure by the German Federal Financial Supervisory Authority (BaFin) regarding futures with additional payment obligations. It also encouraged NCAs to monitor these instruments to assess whether similar risks for retail investors as those identified by BaFin could arise in their markets.

Crowdfunding

In May, ESMA published a final report on the relevance of extending the transitional period set out in the crowdfunding regulation. To avoid delays in the implementation of the crowdfunding regulation, ESMA suggested to the Commission to extend the transitional period only to crowdfunding service providers that operated on a national basis and that had applied for authorisation before October 2022.

ESMA also issued various sets of Q&As to help ensure a convergent implementation and application of the crowdfunding regulation.

Supervisory review and evaluation process

In July, ESMA and the EBA published the final guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) for investment firms. The guidelines were based on the investment firms directive (IFD) and harmonised the supervisory practices regarding the SREP of investment firms.

2.3.2. Investment management

Objectives for 2022

Achieve greater convergence and consistency of NCAs' supervisory approaches and practices in relation to the EU legislation on investment management, with a particular focus on improving investor protection and financial stability.

Contribute to the development of the single rulebook in relation to the upcoming reviews of the AIFMD, the European long-term investment fund and the money market fund (MMF) as appropriate.

In 2022, ESMA undertook several actions to monitor and enhance the convergence of supervisory practices in the area of UCITS and AIFs supervision.

ESMA launched a CSA on the valuation of UCITS and open-ended AIFs across the EU. The CSA aimed to assess compliance of supervised entities with the relevant valuation-related provisions in the UCITS and AIFMD frameworks, in particular the valuation of less liquid assets, and was conducted throughout 2022.

In March, ESMA conducted a study⁹ on investment funds during market stress. The study analysed the performance of actively managed equity UCITS in relation to their benchmark indices between 19 February and June 2020. The results shed light on equity fund performance by type of management, especially during a period of stress such as the first wave of COVID-19. ESMA concluded that actively managed funds did not consistently outperform passively managed ones during this period.



⁹ TRV article 'Fund performance during market stress – The Corona experience'.

In May, ESMA also released a report on the 2021 CSA on costs and fees of investment funds. The report presented the main results of this exercise and highlighted areas where shortcomings were identified, in particular regarding undue costs and conflicts of interest management in related-party transactions. ESMA highlighted the importance of NCA follow-up supervisory and enforcement actions and of ensuring that investors are adequately compensated in all cases where they were charged with undue costs, including cases where there were calculation errors that resulted in a financial detriment to investors.

In November, ESMA published an advice on proposed leverage limits on commercial real-estate funds in Ireland. ESMA's advice followed the notification from the CBI to impose leverage limits on commercial real-estate funds under Article 25 of the AIFMD. In its advice, ESMA concluded that the conditions for taking action under the AIFMD were met and that proposed leverage limits by the CBI should contribute to improving the resilience of real-estate funds and to limiting the build-up of risk in the commercial real-estate sector.

ESMA followed up on steps undertaken by NCAs with regard to the priority areas defined in the ESMA final report published on 12 November 2020 following the ESRB recommendation of May 2020 on corporate debt and real-estate investment funds. ESMA carried out a supervisory engagement with investment funds together with NCAs. The exercise focused on liquidity risk in corporate debt and real-estate funds.

Money market funds

In February, ESMA proposed reforms to improve the resilience of MMFs. The proposed reforms relate to the MMF regulation, which is the regulatory framework for EU MMFs. The proposals would improve the resilience of MMFs by addressing in particular liquidity issues and the threshold effects for constant net asset value MMFs. ESMA urged the EC to implement these proposals sooner rather than later, as it believes they are crucial for enhancing the stability and safety of MMFs in the EU.

In addition, following the transmission of the 2022 adverse scenario by the ESRB, ESMA published the annual update of the guidelines on MMF stress tests. The 2022 update of the guidelines on MMFs stress tests was published in the context of the resurgence

of the COVID-19 pandemic, compounded with zero-covid policies in some regions, uncertainty about the economic consequences of the Russian invasion of Ukraine and geopolitical tensions.

Cross-border activities

Under the UCITS directive and the AIFMD, ESMA finalised the development of RTS and implementing technical standards for the notifications of cross-border activities. The purpose of the draft ITS and RTS was to facilitate the process for notifying cross-border activities in relation to UCITS and AIFs, along with the cross-border provision of services by standardising the format of the information to be provided by management companies, UCITS and AIFMs. The final report on the technical standards was adopted in December 2022 and submitted to the Commission.

Finally, since July 2022, ESMA publishes on its website the list of notifications of cross-border marketing of funds (AIFs and UCITS) in the EU.

2.3.3. Issuer disclosure

Objectives for 2022

Continue contributing to the single rulebook under the prospectus regulation, the shareholders rights directive II and the transparency directive, as necessary.

Continue contributing to the set-up of standards for sustainability reporting and maintaining an updated regulatory framework for digital reporting.

Strengthen the level of supervisory convergence and facilitate the exchange of experience in the areas of corporate reporting, prospectus, notifications of major holdings and takeover bids.

Strengthen the supervision and enforcement of financial and sustainability information, with a particular focus on issues related to alternative performance measures, sustainable finance and the European single electronic format (ESEF).



Annual review on corporate reporting enforcement and regulatory activities

ESMA also published its *2021 Corporate Reporting Enforcement and Regulatory Report* with the aim of promoting investor protection, by providing transparency and accountability to the market on the activities carried out by ESMA and enforcers of financial and non-financial information. ESMA made recommendations to issuers and auditors to improve future financial and non-financial reports, by assessing how issuers comply with IFRS and non-financial reporting obligations and adhere to ESMA's recommendations.

Public statement on transparency on the implementation of IFRS 17 on insurance contracts

In May, ESMA issued a public statement on the transparency on the implementation of IFRS 17 on Insurance Contracts. The statement highlighted the importance of issuers providing adequate information to enable users of their financial statements to understand the expected accounting implications of

the new standard's application. In particular, the statement emphasised the importance of providing known or reasonably assessable quantitative and qualitative information that is relevant to evaluate the possible impact that the application of the new IFRS will have on the entity's financial statements in the period of initial application¹⁰.

26th extract of EECS's database of enforcement

In May ESMA issued the 26th extract of its EECS database of enforcement of financial reporting. The decisions included in the extract were taken by national enforcers in the period from March 2020 to November 2021. ESMA regularly publishes such extracts with the aim of strengthening supervisory convergence and providing issuers and users of financial information with relevant information on the appropriate application of the IFRS.

European single electronic format

ESMA updated the ESEF RTS in June to reflect the 2022 IFRS taxonomy, with the aim of enabling up-to-date electronic reporting requirements and facilitating

¹⁰ i.e. reporting periods starting on or after 1 January 2023.

comparability of IFRS financial statements. In August, ESMA revised the ESEF reporting manual to establish a uniform approach for creating annual financial reports. The updated manual includes comprehensive instructions for implementing block tagging requirements. In December, ESMA published the 2022 ESEF XBRL files and updated the ESEF Conformance Suite to assist software vendors and issuers in preparing for the latest ESEF format. The ESEF taxonomy package includes labels in all EU languages.

Call for evidence on the implementation of the revised shareholders rights directive

In October 2022, ESMA published a call for evidence on the implementation of the revised shareholders rights directive to collect information from market participants and map the state of play with regards to the implementation of the provisions of the revised shareholders rights directive on the identification of shareholders, transmission of information, facilitation of the exercise of shareholder rights and on the transparency of proxy advisors.

Public statement on the 2022 European common enforcement priorities

ESMA issued, also in October, its annual public statement on European common enforcement priorities. The 2022 priorities covered the impact of Russia's invasion of Ukraine, the macroeconomic environment and climate-related matters relating to financial and non-financial information. The statement also highlighted the importance of comprehensive disclosures pursuant to Article 8 of the taxonomy regulation.

Comment letters to the International Accounting Standard (IAS) Board

In 2022 ESMA continued to contribute to developing high-quality IFRS and published three letters addressing the International Accounting Standards Board's exposure drafts on a new general approach to disclosure requirements in IFRS standards, on proposed amendments to IAS 1 regarding classification and disclosure requirements for non-current liabilities with covenants and on proposals for improvement of disclosures for supplier finance agreements. Additionally, ESMA submitted a letter to

the International Accounting Standards Board, following their request for information on the post-implementation review of IFRS 9 on Classification and Measurement.

ESMA's responses to EU and international consultations on corporate reporting sustainability standards are listed under the section sustainable finance 2.2.2.

2.3.4. Benchmark providers

Objectives for 2022

Establish and implement a data-driven, risk-based and outcome-focused supervisory framework following the entry into force of ESMA's new mandate for direct supervision of administrators of EU critical benchmarks and TC administrators recognised in the EU under the benchmarks regulation (BMR).

Monitor the use of benchmarks in the EU for early identification of new critical benchmarks.

Assess applications for recognition by TC administrators: ensure applicants meet the regulatory requirements and objectives of the BMR and that applications are completed within regulatory deadlines.

Identify and remediate risks related to the provision of critical and recognised TC benchmarks and adopt enforcement actions where breaches of the BMR are identified.

Continue (i) to contribute to the establishment of a robust regulatory framework under the BMR, (ii) to develop policy tools in support of ESMA's and NCAs' supervisory activities and (iii) to promote supervisory convergence.

Since 1 January 2022, ESMA is the supervisor of administrators of critical benchmarks in the EU and of TC benchmarks administrators recognised in the EU under the BMR.

In addition to the eight benchmarks administrators transferred under ESMA's supervisory remit in January 2022 (i.e. one administrator of EU critical benchmarks and seven TC recognised administrators), during 2022 ESMA recognised further two TC administrators. Moreover, ESMA has engaged with several other TC

administrators interested in potential recognition and sees a continuously high interest in recognition, despite TC benchmarks being under a grace period until the end of 2025. In this context, ESMA encourages TC administrators willing to apply for recognition to preliminarily engage with ESMA ahead of submitting their formal application.

Specifically, for TC administrators located in the United Kingdom, ESMA also established in December 2022 a memorandum of understanding (MoU) with the UK Financial Conduct Authority regarding cooperation and exchange of information with respect to UK-based benchmark administrators seeking recognition or recognised in the EU. The MoU enabled ESMA to start recognising benchmark administrators from the United Kingdom.

In 2022, ESMA also took over the chairmanship of the EURIBOR College of Supervisors from the Belgian Financial Services and Markets Authority, which is comprised of the supervisors of all credit institutions contributing to EURIBOR.

Following the invasion of Ukraine in February 2022, ESMA engaged with its supervised benchmark administrators to verify the impact of market developments and sanctions on the provided benchmarks. It also engaged and coordinated with NCAs regarding the impact on benchmarks provided by the administrators under NCAs' supervisory remit.

Over the summer of 2022, ESMA published its response to the Commission's consultation on the regime applicable to the use of benchmarks administered in a TC. In its response, ESMA commented on the functioning of the current regime and proposed improvements to the regulatory and supervisory framework and to the EU benchmark labels.

ESMA published a final report on the form and content of recognition applications by TC benchmark administrators in November 2022, along with a consultation on amendments to RTS for EU benchmark administrators. The final report included draft RTS aimed at aligning recognition applications with the amended BMR and ensuring equal treatment between EU and non-EU administrators. The proposed RTS ensure that applications provide all necessary information for ESMA and NCAs to assess BMR requirements.

In 2022, ESMA continued to serve as the secretariat of the EURO risk-free rate working group. The focus of the working group during the year was the identification of potential issues related to the Libor's discontinuation to ensure a smooth transition, fostering the use of the euro short-term rate in a diverse range of financial products, assessing the availability of Euribor fallback rates and identifying potential impediments, and related solutions, to the adoption of Euribor fallback provisions.

2.3.5. Credit-rating agencies

Objectives for 2022

Assess registration applications under the CRA regulation, ensure registrants meet the regulatory requirements and objectives of the CRA regulation and that applications are completed within regulatory deadlines.

Ensure credit ratings in the EU are independent, objective and of high quality by conducting effective supervisory activities.

Identify timely (employing data-driven supervisory tools), the key industry trends, supervisory risks and concerns to support proactive and outcome-based supervision of CRAs.

Request timely and effective remediation and adopt enforcement actions where breaches of the CRA regulation are identified.

Continue to contribute to the establishment of a robust regulatory framework under the CRA regulation and provide support to ESMA's supervisory activities.

In 2022, ESMA increased its level of periodic interactions with CRAs and further increased its analytical coverage of rating activities through the data reported to ESMA by the CRAs. This approach allowed ESMA to inform relevant stakeholders and identify supervisory concerns.

In its engagement with CRAs, ESMA focused in particular on the business continuity, quality and timeliness of analytical process, sufficiency of information, adequate disclosure, information technology (IT) and information security.



Policy developments

ESMA carried out a public consultation on the scope of the CRA regulation for private credit ratings. This consultation focused on a targeted revision of its guidelines and recommendations on the scope of the CRA regulation. This revision of the guidelines intended to provide greater clarity on the exemptions provided for private ratings under the CRA regulation and will assist ESMA in the undertaking of its perimeter activities.

Direct supervision

Small and medium-sized credit-rating agencies

During 2022, ESMA continued to develop its calibrated engagement with small and medium-sized CRAs (SMCRAs)¹¹. This included ongoing monitoring and the delivery of entity-specific remedial action plans. In addition, ESMA monitored a number of acquisitions and de-registrations within the SMCRAs sector. This included the withdrawal of registration for Rating Agentur Expert RA and Qivalio SAS, effective as of 20 October 2022 and 29 January 2023 respectively.

ESMA will continue to monitor and engage with SMCRAs according to a risk-based approach to ensure that they are meeting ESMA's supervisory expectations and adhering to the requirements of the CRA regulation.

Market trends and risks in outstanding ratings

ESMA has been actively monitoring the credit-rating market to identify and address new risks posed by industry and capital market developments, such as those stemming from Russia's invasion of Ukraine, deteriorating economic conditions, developments in ESG products, the assessment of cyber risk and the impact of new technologies.

Concerning the medium and long-term impact of the crisis, ESMA engaged in discussions with CRAs' management and analytical teams to assess how the changing macroeconomic conditions and other risks arising are factored into methodologies and credit ratings.

Through its data-driven monitoring activities and active engagement with CRAs, ESMA further

¹¹ Including three certified non-EU CRAs and the EEA-based CRA (see [CRA Authorisation \(europa.eu\)](https://www.europa.eu)).

consolidated its views on certain areas of potential risk, for example in the context of BBB-rated entities, CRAs' rating surveillance processes and application of specific methodologies.

Methodologies and quality-rating process

ESMA continued to review material changes and to assess errors in the rating methodologies and their application. In this respect, ESMA followed up on previously identified inconsistencies around CRAs' identification, evaluation, resolution and disclosure of errors.

A key area of attention remained the changes in rating methodologies. ESMA focused its work on assessing the drivers of changes to methodologies and on ensuring that CRAs use methodologies that are robust, systematic, continuous and subject to validation, including back-testing. ESMA focused on the role and the empowerment of internal review functions by conducting dedicated interviews with relevant CRA staff, including independent directors, and by reviewing relevant policies and procedures.

Concerning the quality of the rating process, in addition to the work carried out in the aftermath of Russia's invasion of Ukraine, ESMA continued to focus on the observed divergence in relation to CRAs' surveillance practices and disclosures to the market, including around withdrawals, discontinuations and defaults.

Credit rating agencies' strategy and governance

In 2022, ESMA continued to actively engage with CRAs' senior management to address concerns in the area of strategy and governance. ESMA focused on the integrity and effectiveness of CRAs' boards, assessing their independence from the rating business and their ability to provide sufficient oversight. In the course of 2022, for the first time, ESMA attended board meetings of certain CRAs as an observer, with the objective to closely assess the dynamics and the involvement in strategic decision-making of board members, in particular of independent non-executive directors. The latter play a key role in shaping their firm's culture and strategy and in providing constructive criticism in areas such as business development, internal controls and risk management.

In addition, ESMA has engaged with CRAs to address concerns on the organisational aspects of their control environment that undermine the independence of control functions and that enhance compliance monitoring activities.

Information technology and security

Throughout the year, ESMA reviewed all IT and information security incidents and had follow-up discussions with CRAs where needed. In addition, ESMA continued to engage with CRAs to assess their approach to cyber risk and to address identified concerns on cloud outsourcing, notably in the context of the ESMA guidelines on outsourcing to cloud service providers.

2.4. Markets and infrastructures

2.4.1. Third-country central counterparties

Objectives for 2022

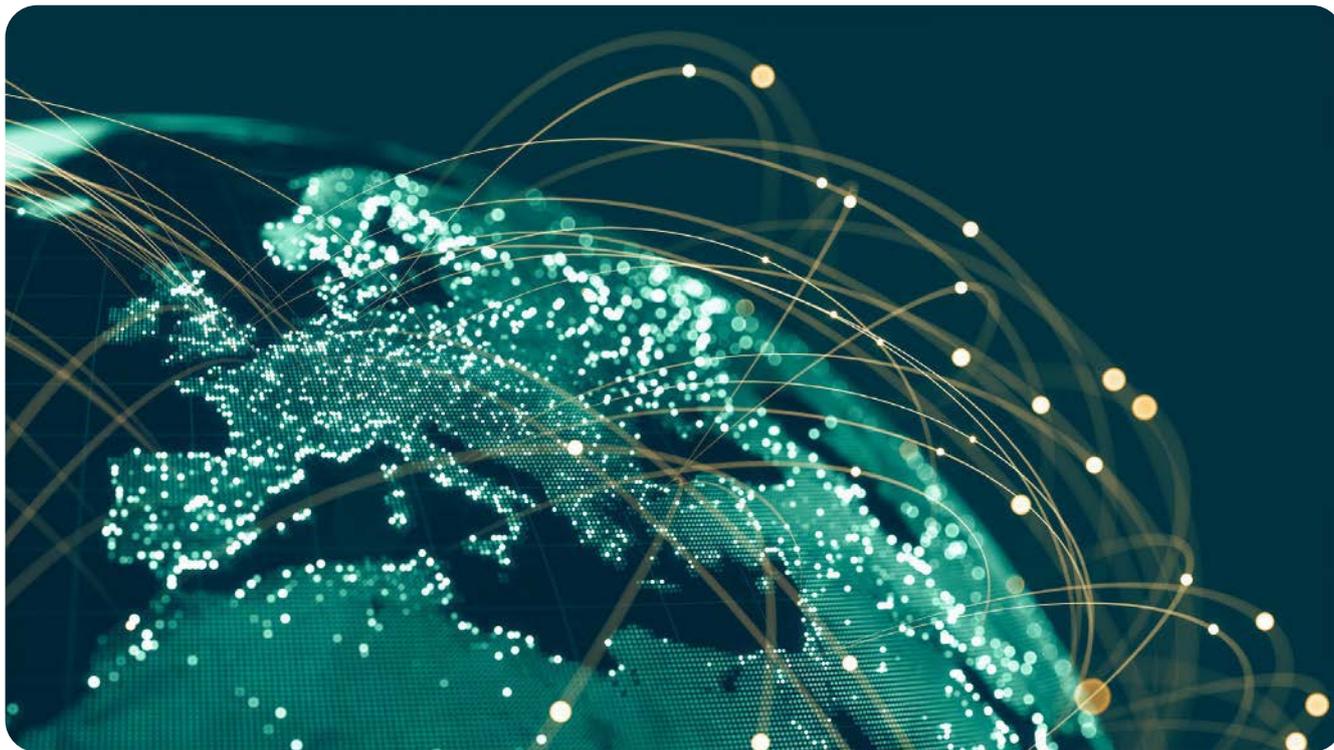
Ensure the appropriate categorisation of TC CCPs between Tier 1 and Tier 2 TC CCPs, depending on their systemic importance for the EU or one of its Member States, and monitor the risks stemming from their activities in the EU and the evolution of TCs' legal and regulatory frameworks and market developments.

Conduct ongoing supervision of Tier 2 TC CCPs, including compliance with EMIR or comparable requirements, liaising with the home supervisor when needed and adopting effective enforcement actions when required.

Address systemic risks resulting from TC CCPs or clearing services deemed substantially systemic for the financial stability of the EU or one or more of its Member States.

Recognition of third-country central counterparties

In 2022, ESMA announced it had finalised the review of the recognition of 26 previously recognised TC



CCPs and signed a revised MoU with the relevant TC authorities.

In addition, ESMA recognised eight new Tier 1 TC CCPs¹² in 2022, among which six were motivated by the adoption by the Commission of an equivalence decision between the supervisory and regulatory framework of the TC authorities supervising these CCPs and EMIR in 2022. ESMA also decided to extend the recognition decisions under Article 25 of EMIR for the three CCPs established in the United Kingdom until 30 June 2025.

As no agreement on a revised MoU could be reached with the Indian authorities in charge of the supervision of Indian CCPs, following the revision required by the review of EMIR, ESMA decided in October 2022 to withdraw the recognition of the six TC CCPs established in India, with a delayed application as from 30 April 2023. A transition period was granted, with the aim of mitigating adverse impacts on EU market participants.

Monitoring of risk and regulatory developments

ESMA regularly monitors the activities and services provided by recognised TC CCPs. In 2022, ESMA conducted a survey to gather information on

interlinkages, exposures and volumes cleared by EU clearing members in EU currencies. The survey was sent to 35 Tier 1 TC CCPs in July 2022 and included questions to TC supervisory authorities on potential regulatory and supervisory developments impacting CCPs in 2021. Based on the information gathered, ESMA drafted a report on risks arising from recognised Tier 1 TC CCPs for the EU and regulatory and supervisory developments in these TCs.

Tier 2 TC CCPs

ESMA deemed two TC CCPs established in the United Kingdom – LCH Ltd and ICEU Clear Europe – to be systemically important for the EU or one of its Member States (Tier 2 CCPs).

Over the last year, ESMA has further developed its supervisory approach to Tier 2 CCPs. The key objective of ESMA's supervisory approach was to introduce an internal framework to identify risks and supervisory priorities. This framework included, among others a comprehensive review of the Tier 2 TC CCPs, assessing the compliance of recognised Tier 2 CCPs with the requirements from Articles 16 and Titles IV and V of EMIR. In line with ESMA's risk-based approach for Tier 2 CCP supervision, ESMA applied its internal methodology for assessing the

¹² The National Securities Clearing Corporation (NSCC); the Options Clearing Corporation (OCC) and Fixed Income Clearing Corporation (FICC) – both under the supervision of the US Securities Exchange Commission; ComDer Contraparte Central (Chile); the Shanghai Clearing House; Dubai Clear; Bursa Malaysia Derivatives Clearing Berhad (BMDC) and the Taiwan Futures Exchange Corporation (TAIFEX).

severity and the impact of the risk of non-compliance for each relevant EMIR article. The supervisory approach also included ongoing supervisory tasks (such as regular interactions with the CCPs and the use of quantitative and qualitative information) to monitor ongoing developments, which were intensified as needed in connection to relevant market developments relating to the Russian invasion of Ukraine. In addition, ESMA conducted ad hoc reviews, such as validations of significant changes to risk models and parameters, and included the Tier 2 TC CCPs in the fourth CCP stress test.

This is complemented with regular cooperation with the BoE – supported by the MoU between ESMA and the BoE on UK CCPs¹³, including regular meetings on specific topics (such as model validations or other significant initiatives and relevant market developments) – and participation in global colleges. ESMA staff also participated in certain of the BoE's reviews of Tier 2 TC CCPs.

EMIR 3 proposal

In April, ESMA wrote to the Commission providing its high-level response to the consultation on a targeted review of EMIR with respect to the EU central clearing framework. In its response, ESMA recommended a set of measures for consideration that will support the EU objective of increasing the attractiveness of EU markets, while reducing exposure to CCPs located outside the EU, and in particular Tier 2 TC CCPs.

2.4.2. European central counterparties

Objectives for 2022

Promote a pro-active approach to supervisory convergence across EU CCPs, develop a common supervisory culture and ensure a consistent implementation of the EMIR regulatory framework for EU CCPs by the CCP Supervisory Committee.

Complete the single rulebook in the area of central counterparties by reviewing the existing Level-2 measures where necessary and developing new Level-2 measures and guidelines with respect to the CCP recovery and resolution regulation.

Assess the resilience of CCPs to adverse market developments and identify potential risks for financial stability with the use of CCP stress tests.

Supervisory convergence

In July, ESMA published its annual peer review report on the supervision of EU CCPs by NCAs. The peer review measured the effectiveness of NCA supervisory practices in assessing CCP compliance with EMIR's requirements on business continuity, in particular in remote access mode. It showed that some aspects of business continuity in remote access mode were not always specifically assessed. In most cases, this is explained by the fact that, for many CCPs, remote working was already common practice or part of existing business continuity arrangements. In this context, remote working did not introduce any new major risks to be re-assessed.

As part of its supervisory convergence tools, ESMA reviewed four draft NCA decisions related to the authorisation of a CCP's extension of services or outsourcing arrangement and adopted three opinions addressed to the respective NCAs to promote a consistent and coherent application of EMIR. ESMA also validated seven significant changes to risk models and parameters.

Single rulebook under the European market infrastructure regulation

In January, ESMA launched a consultation paper to review the EMIR requirements on anti-procyclicality margin measures for CCPs.

On 19 May 2022, ESMA published its final report on highly liquid financial instruments for CCP investment policies under EMIR. The report concludes that it was premature to allow CCP investments in MMFs, but identifies a number of possible improvements to the existing RTS, including a potential revision of the conditions defining high-liquid financial instruments

¹³ Memorandum of understanding between ESMA and the Bank of England to set out arrangements for cooperation on the monitoring and supervision of CCPs established in the United Kingdom.

with minimal market and credit risk deemed suitable for CCP investments and a common supervisory approach regarding CCP investment practices.

Following a letter from the Commission, ESMA proposed on 22 September a number of measures to alleviate the liquidity pressure faced by non-financial counterparties (NFCs) active on gas and electricity regulated markets cleared in EU-based CCPs. On 14 October 2022, ESMA published a final report providing draft RTS. These temporarily expanded, for a period of 12 months, the pool of CCP eligible collateral to uncollateralised bank guarantees for NFCs acting as clearing members and to public guarantees for all types of counterparties.

Single rulebook under the central counterparty recovery and resolution regulation

ESMA published several final reports and guidelines as mandated under the **CCP recovery and resolution regulation**. In January, seven final reports were published on the recovery regime, including proposals for methodology, factors and recompense mechanisms. Guidelines were also included for early intervention measures, recovery plan indicators and dividend restrictions.

In May, six final reports were published on the resolution regime, including proposals for the content of resolution plans, valuation and safeguards for clients. Guidelines were also included for assessing when a CCP is failing and valuing contracts. In September, ESMA published a consultation paper on proposed rules for CCPs' business reorganisation plans.

In November, two additional final reports were published on the assessment of resolvability and cooperation arrangements. These reports related to EU and TC CCPs providing services to clearing members and clients.

Stress test

Climate change and the financial risks that come with it have, in recent times, encouraged policymakers and the financial services industry to consider the integration of environmental factors into their risk frameworks. In February, ESMA, to support the EU's efforts in improving the financial sector's resilience and contribution to sustainability, has started

developing a climate risk stress testing framework tailored to the specificities of CCPs by publishing a call for evidence.

In July, ESMA published the results of its fourth stress test exercise for CCPs. The results confirm the overall resilience of EU CCPs and of TC Tier 2 CCPs to credit, concentration and operational risks under the tested scenarios and implemented framework. However, the stress test also identified areas where some CCPs may need to strengthen their risk management frameworks or where further supervisory work should be prioritised, including on concentration and operational risks.

2.4.3. Data reporting service providers

Objectives for 2022

Ensure the effective and consistent application of ESMA's data-driven, risk-based approach to its new mandate for the supervision of data reporting service providers (DRSPs) as of January 2022.

Ensure continued compliance by DRSPs following the handover of supervisory duties from the NCAs.

Adopt effective enforcement actions, when required.

Direct supervision

On 1 January 2022, ESMA took on its new mandate as direct supervisor of the largest EU DRSPs. The new role gave ESMA direct authorisation and supervisory powers over DRSPs, except for those entities that, due to more limited market impact, continued to be supervised by their Member State authority.

During the first months of 2022 ESMA completed the transfer of supervisory responsibilities from NCAs and introduced all necessary tools to supervise DRSPs. This included setting up the necessary systems for receiving and monitoring data.

In parallel and line with the objectives set in the 2022 AWP, ESMA started applying its data-driven and risk-based approach when conducting supervision of DRSPs.

At the same time, ESMA began implementing its data-driven and risk-based approach to supervising



DRSPs, in line with the objectives outlined in its 2022 AWP. The primary focus for ESMA in 2022 was to maintain DRSPs' compliance with regulatory requirements.

To do so, ESMA evaluated the completeness and timeliness of DRSP reporting, checked for adherence to format and content rules and analysed the consistency between reports from approved reporting mechanisms and approved publication arrangements. Additionally, ESMA verified that approved publication arrangements were providing data access as required by regulations.

ESMA also engaged with the DRSPs on the following areas: (a) cloud outsourcing, where ESMA engaged with DRSPs that had decided to outsource parts of their IT environment to cloud service providers, to ensure they notify the required information to ESMA in accordance with ESMA cloud computing guidelines, and (b) IT and information security incidents, where ESMA engaged with the DRSPs to ensure their internal IT and information security incident management process is able to meet ESMA's established supervision practices and the relevant MiFIR incident reporting regulatory requirements. ESMA notified the DRSPs of deficiencies identified in these areas and requested appropriate remedial actions.

ESMA also analysed and assessed multiple IT and information security incidents, which affected the confidentiality, integrity and availability of MiFID data

reported by DRSPs. ESMA followed up accordingly with the firms to ensure that the issues were appropriately addressed.

Through its day-to-day supervision, ESMA identified various issues and requested DRSPs to take corrective actions where necessary.

Management bodies

ESMA published a draft RTS setting out criteria for the sound and prudent management of DRSPs and for their operational effectiveness under MiFIR in March. The RTS addressed the different roles and functions carried out by members of DRSP management bodies, with a view to preventing conflicts of interest between them and the users of DRSP services.

2.4.4. Trading

Objectives for 2022

Promote consistent application of MiFID II and MiFIR requirements, in particular the revised commodity derivatives framework, the boundaries of multilateral systems and the transparency framework.

Provide technical advice and/or develop technical standards as a follow-up to the MiFID II / MiFIR review covering transparency, market structure and commodity derivatives issues.

Monitor the transition to risk-free benchmarks and amend the RTS on the clearing obligation (CO) and the derivatives trading obligation (DTO), where appropriate.

Promote consistent application of the MAR regime by specifically following up on the findings of the MAR review technical advice in those areas where guidance is needed.

Enhance the cooperation and the information exchange between ESMA, the European Union Agency for the Cooperation of Energy Regulators and the NCAs in relation to market monitoring for market abuse.

Contribute to the potential revision of the short selling regulation (SSR) by issuing technical advice to the Commission.

Provide guidance to market participants in relation to the application of the new lower threshold for the SSR reporting of net short positions to NCAs.

Monitor and contribute to the consistent implementation and application of EMIR, in particular through the development of reports, by providing guidance to market participants and NCAs, and through dedicated supervisory case discussions.

Contribute to the single rulebook in the area of over-the-counter (OTC) derivatives by reviewing and amending technical standards under EMIR.

Short selling regulation

As of January 2022, and following an ESMA opinion, the Commission amended Article 5 of SSR and lowered the reporting threshold of net short positions in shares from 0.2 % to 0.1 % of the share capital. To provide guidance to market participants, ESMA issued a statement clarifying the technicalities of the transition and gave practical examples on what, when and how to report under the new threshold.

ESMA published the final report on the review of the SSR in April. The final report was based on the experience gathered in the aftermath of the COVID-19 outbreak, mostly from the short selling bans and the temporary lowering of the notification threshold of NSPs that followed. In its final report ESMA also addressed the episodes of high volatility of the so-called 'meme stocks' during the first months of 2022.

Market abuse regulation

In January, ESMA published its final report on the amendment of the MAR guidelines on delayed disclosure of inside information in relation to institutions subject to prudential supervision. The revised guidelines clarified the legitimate interest to delay the disclosure of redemptions, reductions and repurchases of own funds subject to supervisory authorisation and the information exchanged within the SREP.

The ESMA report on MAR accepted market practices that was published in January 2022 identified a decreasing number of liquidity contracts and volumes traded under these practices.

In 2022 the Commission proposed several amendments to the RTS on liquidity contracts for small and medium-sized enterprise (SME) growth market issuers and the implementing technical standards (ITS) on insider lists submitted by ESMA in 2021. ESMA published two opinions about the proposed amendments in May. In particular, ESMA objected to the proposed exemption of SME growth market issuers from the obligation to identify each piece of inside information in their insider lists.

ESMA issued a positive opinion on the proposed amendment to the Portuguese accepted market practice, concluding that the proposal was in line with MAR and with its points for convergence.

In July, further to the 2020 MAR review advice to the Commission, ESMA published a call for evidence on pre-hedging, requesting technical input on a wide range of issues.

ESMA contributed to the Commission consultation on the listing act that contained a number of proposals to amend the EU market abuse regime.

Finally, ESMA published the annual report on the MAR administrative and criminal sanctions and measures in November. The data provided for this



report showed that the number of sanctions and measures significantly decreased, while the overall value of the financial penalties increased.

Trading venue perimeter

ESMA launched a consultation paper (CP) on its opinion of what constitutes a multilateral system. The CP also provided guidance on concrete examples where the trading venue perimeter is not easily identified and might be subject to different interpretations from market participants and NCAs.

The consultation followed the final report on the functioning of organised trading facilities under MiFID II in which ESMA had committed to publish an opinion clarifying the definition of multilateral systems and providing guidance on when systems should be considered as multilateral systems and, in consequence, seek authorisation as trading venues. The proposed opinion intended to enhance supervisory convergence in the EU and to level the playing field between market participants¹⁴.

Pre-trade controls

In early May 2022, a flash crash affected European markets, leading several stock indexes to plunge for a few minutes. The event was triggered by a number of erroneous trades due to a human error. ESMA subsequently carried out a survey addressed at both investment firms and trading venues to better

understand the state of play of the application of the pre-controls mandated by MiFID II¹⁵.

Neobrokers

In light of the recent expansion of digital trading platforms (conventionally called 'neobrokers'), ESMA conducted a series of analyses throughout 2022 to collect a detailed overview of the current landscape of the neobrokers active in the EU and their characteristics and to assess their impact on the EU market structure. The work was not concluded in 2022 and ESMA will continue its work in this area in order to obtain a comprehensive understanding of the neobrokers' trading activity in the EU.

Clearing and trading obligations

In July, ESMA launched a consultation which ran until September, exploring the extension of the scope of both the CO and the DTO. Based on the progress made with the benchmark transition in the interest-rate derivative market, ESMA proposed to introduce additional classes to the scope of the CO and of the DTO. These changes complemented the first set of changes, also developed in the context of the benchmark transition, which were published in 2021 and had entered into force in 2022.

Pension scheme arrangements

ESMA sent a letter to the Commission in February providing its views on the CO for pension scheme

¹⁴ ESMA published the final opinion in January 2023.

¹⁵ ESMA is currently analysing the responses to the survey and may introduce some policy recommendations in the course of 2023.

arrangements (PSAs) and recommending the end of the current exemption from the CO with a 1-year implementation period. ESMA concluded that PSAs are, to a large extent, operationally ready to clear their OTC derivatives, but they should be given sufficient time before a CO for PSAs takes effect. Therefore, ESMA recommended to start applying the CO to PSAs from 19 June 2023. In addition, ESMA issued in June a risk-based supervision statement in relation to the CO for PSAs, in order to provide guidance with regards to the period from 19 June 2022 when the previous temporary exemption ended and until the approval process of the delegated act from the Commission on the new extension of the PSAs' exemption was completed.

Temporary exemptions regime for intragroup contracts

In June, the ESAs published a final report with draft RTS proposing to amend the Commission delegated regulation on the risk mitigation techniques for OTC derivatives not cleared by a CCP under the EMIR (bilateral margining). The draft RTS proposed extending the current temporary exemptions regime for intragroup contracts with a TC group entity by three years. This would accommodate the ongoing assessment of TC equivalence and allow for a review of the intragroup exemptions' framework under the EMIR review.

ESMA also published at the same time a final report with a new draft RTS proposing to amend in a similar manner the three Commission delegated regulations on the CO under the EMIR. In addition, the ESAs published on that occasion a risk-based supervision statement to provide guidance on these temporary exemptions.

European market infrastructure regulation clearing thresholds

In June, ESMA published its final report with draft technical standards proposing the increase of the commodity derivatives EMIR clearing threshold from EUR 3 billion to EUR 4 billion. The final report considered the need for structural changes in the way the clearing thresholds should be calculated, the time that it will take for these changes to be effective in view of the EMIR review and the exceptional circumstances that NFCs are facing.

An earlier discussion paper on the review of the clearing threshold had provided valuable input for changes to EMIR Level 1. ESMA sent these recommendations, along with several other recommendations on the EMIR framework, to the Commission in its high-level response to the consultation on the targeted review of the central clearing framework in the EU.

Transparency

Review of regulatory technical standards 1 and 2

In March, ESMA proposed targeted amendments to RTS 1 and RTS 2, which specify the MiFIR transparency requirements for equity and non-equity, respectively. The general objective of the reviewed RTS 1 and 2 was to clarify and improve the pre- and post-trade transparency regime for equity and non-equity instruments, in particular in view of the establishment of a consolidated tape. A second and broader review of these two technical standards will be carried out following the MiFIR review, which is currently under discussion.

In March ESMA published its assessment of the main elements on the Commission MiFIR review proposal and its recommendations for the consideration of co-legislators.

Following the submission of the RTS 1 and 2 review to the Commission, ESMA started working on providing further guidance on the application of the MiFIR post-trade transparency requirements. This notably included guidance on the post-trade transparency information which has to be made public, as requested by many stakeholders.

Fractional shares

In the context of its work, ESMA became aware of the increased trading of fractional shares in the EU, which triggered questions with regards to the classification of such instruments and the application of transparency, reporting and investor protection requirements. In 2022, ESMA has undertaken work, including a survey addressed to NCAs, to understand the trading and the regulatory frameworks governing fractional shares in the EEA, with a view to set out a harmonised classification of fractional shares and develop regulatory convergence across NCAs.

Periodical ESMA publications and calculations under MiFID II / MiFIR

An important part of ESMA's role is to publish a range of periodical reports and data extracts to support national supervisors and market participants. This includes (i) quarterly liquidity assessments for bonds subject to the pre- and post-trade requirements of MiFID II and MiFIR; (ii) quarterly reports with data for the systematic internaliser quarterly calculations for equity and equity-like instruments, bonds and other non-equity instruments under MiFID II and MiFIR; (iii) annual transparency calculations for equity, equity-like and non-equity instruments; and (iv) annual reports on waivers and deferrals for equity and non-equity instruments. In 2022 ESMA had to delay the publication of certain systemic internaliser regime data due to operational constraints and data quality issues. Overall, ESMA observed no major change in market microstructure, and the use of waivers and deferrals remains an integral part of the EEA's market structure.

Report on the EU carbon market

In March ESMA published a report on the European market for emission allowances and derivatives thereof, which analysed its functioning, the safeguards to preserve its integrity and put forward a number of policy recommendations to improve market transparency and monitoring. In particular the report proposed to extend position management controls to European Union Allowances (EUA) derivatives; amend EUA position reporting; track the chain of transactions in MiFIR regulatory reports; and provide ESMA with access to primary market transactions. These proposed measures would provide more information to market participants, regulators and the public and are intended to contribute to the continued smooth functioning of the market, which plays an important role for the EU's transition to a low-carbon economy. In July, as a follow-up to this report, ESMA published, inter alia, an opinion clarifying how TC counterparty entities should be classified in weekly positions reports on commodity derivatives and emission allowance derivatives under MiFID II.

Commodity derivatives

In September, ESMA substantially updated its Q & A on MiFID II and MiFIR commodity derivatives topics to reflect the changes introduced by the MiFID II recovery package for commodity derivatives, including the reduced scope of position limits, the new exemptions to position limits and the revised tests for the ancillary activity exemption.

In its response to the Commission dated 22 September 2022¹⁶ on the current level of margins and of excessive volatility, ESMA made proposals to improve the regulatory reporting on commodity derivatives trading, notably by providing competent authorities with increased visibility on OTC transactions for contracts with the same underlying features as those traded on EU trading venues. ESMA also proposed regulating and supervising commodity traders acting like investment firms under financial regulation.

In December, ESMA published an opinion on the proposed position limits for the ICE Endex Dutch TTF Gas contracts. ESMA agreed with the position limits notified by the Dutch Authority for the Financial Markets for the ICE Endex Dutch TTF Gas futures and options contracts. ESMA found that those limits are consistent with the objectives established in MiFID II and with the methodology developed for setting the limits.

2.4.5. Central securities depositories

Objectives for 2022

Monitor and contribute to the consistent implementation and application of the CSDR, in particular through the development of reports, by providing guidance to market participants and NCAs and through dedicated supervisory case discussions.

Contribute to the single rulebook in the area of settlement and central securities depository (CSD) requirements by reviewing and amending technical standards under the CSDR and by developing new technical standards or revising existing ones if amendments to the CSDR were introduced as a result of its review and by developing reports on CSDR matters.

¹⁶ https://www.esma.europa.eu/sites/default/files/library/esma24-436-1414_-_response_to_ec_commodity_markets.pdf.

Recognise TC CSDs and periodic monitoring of compliance.

Prepare for the application of the DLT Pilot Regime and ensure consistency with the CSDR.

Settlement discipline

In June, ESMA published a final report proposing an amendment of the RTS on settlement discipline to postpone the application of the CSDR mandatory buy-in regime for three years. The proposed amendment was based on the expected changes to the CSDR buy-in regime presented in the Commission's legislative proposal for the CSDR review and on the amendment made to the CSDR through the DLT Pilot Regime, which allowed ESMA to propose a later start date for the CSDR buy-in regime.

Following the entry into force of the CSDR settlement discipline regime in February, and notably the cash penalty measures, ESMA conducted a number of discussions with its post-trading consultative working group and supervisory case discussions to monitor its implementation.

Cash penalty process for cleared transactions

Following a public consultation that was organised in July, ESMA published in November a final report proposing an amendment of the RTS on settlement discipline. The report simplified the cash penalties process by putting the CSDs in charge of collection and distribution, including for CCP-cleared transactions, thus establishing a single harmonised process for all transactions (both cleared and uncleared).

2.4.6. Securitisation repositories

Objectives for 2022

Continue to contribute to the establishment of a robust regulatory framework under the securitisation regulation (SECR).

Further establish and ensure risk and outcome-based supervision of securitisation repositories (SRs), with a focus on SR data quality and operational resilience.

Engage with relevant regulators and market participants to monitor SR data quality, the securitisation market and the adequacy of existing technical standards and reporting guidance under the SECR.

Promote consistent application of the SECR requirements, exchange supervisory experiences and coordination among NCAs, in particular in the areas of disclosure requirements and of simple, transparent and standardised (STS) securitisations.

Direct supervision

In line with the 2022 AWP, ESMA's main supervisory focus was to ensure enhancement of the quality of the data reported to and made available by the two registered SRs. ESMA ensured this by (i) performing the re-validations on SR data (ii) assessing the completeness and consistency of SR data (iii) addressing feedback from the users of SR data and (iv) addressing any issues with SRs directly.

ESMA also focused on the operational resilience of SRs by analysing IT and information security incidents provided by SRs in 2022, in order to ensure the reliability of SRs' IT systems and to ensure the confidentiality, integrity and availability of SR data. ESMA followed up where appropriate with the SRs to ensure that issues were addressed.

ESMA continued to engage with individual SRs and to monitor the proper functioning of the securitisation data reporting to SRs. In this context, ESMA communicated and discussed with SRs on associated topics such as the use, role and risks of entities which act as third-party reporting providers, who report securitisation data on behalf of reporting entities to SRs.

Finally, ESMA continued to engage and cooperate with relevant stakeholders of SR data and other regulatory and supervisory bodies at the EU and TC levels.

Launch of the simple, transparent and standardised register

In 2022, ESMA launched an automated register for the notification of STS securitisations under the securitisation regulation. The entry into force of the securitisation regulation on 1 January 2019 introduced

an obligation for originators and sponsors to jointly notify ESMA and their NCAs that a securitisation meets the STS criteria for being granted the STS label. The new STS register replaced the previous interim solution of an STS list on the ESMA website.

Revision of the reporting templates for securitisation

In 2022, in cooperation with industry participants, ESMA initiated the process of reviewing the technical standards setting out the information to be made available by the originators and sponsors of securitisation transactions to regulators and investors through the SRs. The objective of the revision was to consider the introduction of more proportionality into the templates where possible and increase the usefulness of the data for investors and regulators.

2.4.7. Trade repositories

Objectives for 2022

Follow the risk-based and data-driven supervision of trade repositories (TRs) under the EMIR / securities financing transactions regulation (SFTR), with a main focus on ensuring TR data quality, along with the confidentiality, integrity and availability of EMIR/SFTR data by conducting efficient supervisory activities with lasting impact.

ESMA and NCAs will continue to further enhance the data quality with regards to reporting entities to ensure increased quality, availability and usability of the EMIR/SFTR data.

Request timely and effective remediation and adopt enforcement actions at individual TR level where breaches against EMIR or SFTR are identified.

Assess any registration applications under EMIR and SFTR and ensure delivery within regulatory deadlines and quality standards.

Direct supervision

In March 2022, ESMA fined trade repository REGIS-TR S.A. a total of EUR 186 000 and issued a public notice for eight breaches of EMIR. The breaches related to failures in ensuring the integrity of EMIR data and providing direct and immediate access to regulators.

The breaches were committed between 2017 and 2020. Five out of eight breaches were found to have resulted from negligence on the part of REGIS-TR.

In September, ESMA withdrew the registration of UnaVista TRADEcho B.V. (UnaVista) under the SFTR.

Data quality

ESMA aimed to improve data quality and system resiliency in line with the 2022 AWP. This included focusing on data access, accuracy and integrity for EMIR and SFTR reports, and identifying and addressing potential TR data quality issues. ESMA monitored TRs for reporting issues and worked with NCAs to support their supervisory activities. In April 2022, ESMA published the second edition of its data quality report, which found that coordinated supervisory actions improved data quality in 2021 but more work is needed for data reconciliation. NCAs now receive monthly data quality indicators under EMIR, and ESMA has launched follow-up procedures for significant data quality issues.

In May, ESMA adopted a revised strategic approach to the supervisory convergence on data quality under the EMIR and SFTR, with the intention to further expand it to other reporting regimes. The key objective was to implement more targeted actions making efficient use of NCAs' resources and making substantial and observable improvements in the data quality. The actions put in place included the launch of the data quality dashboard under the EMIR and the development of the framework for the follow-up on the significant data quality issues under the SFTR (further to the already existing framework under EMIR).

European market infrastructure regulation reporting

In December, ESMA published guidelines for reporting under the EMIR, clarifying the legal provisions on reporting and data management under the amended EMIR rules. The guidelines – prepared in the context of the implementation of EMIR Refit – will enhance the harmonisation and standardisation of reporting under the EMIR contributing to the high quality of data necessary for the effective monitoring of systemic risk. The increasing harmonisation and standardisation of reporting will also allow for costs to be contained along the complete reporting chain.



Securities financing transactions regulation reporting

In July, ESMA issued a third statement on the legal entity identifier (LEI) requirements for TC issuers under the SFTR reporting regime and encouraged the use of relevant solutions put in place by the Global Legal Identity Identifier Foundation to facilitate LEI coverage. ESMA, therefore, clarified that until further notice the trade repositories should not reject SFT reports of securities without a TC issuer LEI which are lent, borrowed, or provided as collateral in an SFT.

Transfer of data

In April 2022, ESMA published guidelines on the transfer of data under the SFTR and updated the existing guidelines under the EMIR, thus removing any portability obstacles for market participants and ensuring that the quality of data is preserved through the data transfer process.

2.5. Risk assessment

In undertaking risk assessments, ESMA monitors and assesses market developments and risks within its remit, along with trends in financial innovation,

sustainable finance and retail consumer behaviour. The risk assessments are carried out with a view to supporting ESMA's objectives of promoting investor protection, orderly markets and financial stability.

2.5.1. Risk monitoring and analysis

Objectives for 2022

Identify and assess financial market risks, report on these risks to the relevant institutions and inform the public.

Provide data, statistical and analytical basis for ESMA and NCA supervision, regulation and convergence activities.

Cooperate with EU and international bodies, including the ESRB, IOSCO and the FSB, to identify and assess financial stability and systemic risks.

Identify opportunities and risks related to financial innovation, with particular attention to crypto asset market developments and risks. Systematically monitor trends and risks related to retail investor and ESG developments.

Trends, risks and vulnerabilities

ESMA's trends, risks and vulnerabilities (TRV) reports and risk dashboards contribute to promoting financial stability and enhancing consumer protection by regularly investigating cross-border and cross-sector issues in financial markets, at both the wholesale and retail levels. ESMA publishes TRV reports twice per year, which are complemented by a risk dashboard.

ESMA published its first TRV report in February and, in its outlook for 2022, continued to see high risks to retail and institutional investors of further, possibly significant, market corrections. For the first time, environmental risk as a category was included in the risk dashboard, and new risk indicators on climate-related disclosures, firms' reputational risk and EU carbon markets were covered in the statistical annex. In addition, ESMA published the TRV structural market indicators, a collection of statistics, built using ESMA's regulatory datasets, which provide structural indicators on securities, markets, market participants and infrastructures for the EEA and the EU, and by Member State.

In June, ESMA updated its risk assessment report to account for the impacts of Russia's invasion of Ukraine on financial markets and the deteriorating economic environment.

To support its single rulebook and convergence and supervisory tasks, ESMA undertakes in-depth research into a wide range of contemporary market issues that are published as stand-alone articles or working papers. In 2022, ESMA published eleven such topical TRV articles and three working papers, some of which are highlighted in the following sections.

ESMA's market reports

In ESMA's market reports series (published in 2022), ESMA leverages data it collects and maintains, including where possible supervisory data, to share insights that can help market participants' supervisors, for example by facilitating oversight and enhancing supervisory convergence across the EU.

In February, ESMA published its fourth report on EU AIFs. The main risk faced by the sector related to a mismatch between the potential liquidity of the assets and the redemption timeframe offered to investors. While at the aggregate level this mismatch was unlikely to materialise, it indicated that AIFs with a liquidity deficit would face challenges if large redemptions were to occur. This was particularly the case for real-estate funds and funds of funds.

The fourth annual statistical report on the cost and performance of EU retail investment products,



published in April, examined the 10-year period ending in 2020 and found that, while costs show signs of reducing in certain jurisdictions, in most Member States and in the EU as a whole there was limited progress in funds becoming more affordable. Retail investors continued to pay higher fees than professional investors.

In December, ESMA released its first statistical report on EU prospectuses under Article 47 of the prospectus regulation. This report followed the ESMA prospectus activity reports of 2021 and earlier and covered data for prospectuses approved in 2021.

Topical Analysis

Securities markets, infrastructures and services

Leverage and derivatives – the case of Archegos

In May, ESMA published a study showing how regulatory reporting data can be used to identify risks in derivatives markets, such as it occurred in the case of Archegos. In the study, ESMA found that the build-up of exposures by Archegos, a US family office whose collapse in March 2021 resulted in more than USD 10 billion in losses, can be seen in data reported under the EMIR. The high level of concentration and the associated risks posed by the firm are also visible. These findings showed how regulatory data collected under the EMIR can be used to monitor leverage and concentration risk arising in derivatives markets and could foster the development of early warning indicators by supervisory authorities to track different types of risk.

Parsing prospectuses: a text-mining approach

This analysis, where natural language-processing techniques were applied to a unique dataset consisting of all prospectuses approved under the prospectus regulation between end November 2020 and January 2022, found that prospectuses from issuers in the EU can pose challenges for those intending to use them. It suggested that an abundance of material can present a challenge to identify information that is key to assessing the product, even for specialised readers.

A framework to assess operational resilience

In December, ESMA published an article presenting a set of new tools aimed at assessing the operational resilience for financial entities providing time-critical services and the application of those tools in the context of the fourth ESMA CCP stress test.

The 2020 short selling bans – market impact

This empirical analysis sought to contribute to supervisory convergence in the context of the latest review of the EU SSR¹⁷, with the aim of taking stock of the experience gathered during COVID-19, which led six European authorities to impose long-term short selling bans. The article observed that, consistently with prior theoretical and empirical work, these short selling bans are associated with a liquidity deterioration.

Sustainable finance

Monitoring environmental risks in EU financial markets

The publication depicted how climate risks can be expected to impact EU securities markets and laid out ESMA's approach to integrating climate risks into its risk monitoring framework.

EU Ecolabel: calibrating green criteria for retail funds

In this study, ESMA tested a set of key Ecolabel criteria for retail financial products and found that only 16 funds would be eligible (0.5 %) for the EU Ecolabel out of more than 3 000 sustainability-oriented equity funds. These findings highlighted the trade-off between the stringency and feasibility of the Ecolabel requirements. The article further illustrated the impact of different threshold calibrations on the number of eligible funds and potential volumes of green finance channelled through Ecolabel funds.

Financial innovation

Crypto-assets and their risks for financial stability

Crypto-assets have gained increasing attention due to their rapid growth, and so has the interest around their implications for the traditional financial system

¹⁷ See ESMA (2021), Consultation Paper – Review of certain aspects of the short selling regulation.

– including financial stability. ESMA has been following these developments closely for several years, including because of their risks to consumer protection; in this article, it outlines the latest understanding of the risks of crypto-assets and of transmission channels to financial markets.

Consumers

Key retail risk indicators

After receiving a new mandate, ESMA developed a proposal for key retail risk indicators for the EU single market. The proposed retail risk indicators highlighted risks around inexperienced investors, the use of digital tools by younger investors and spikes in overall trading during periods of market stress. The purpose of the indicators was to reflect market developments, especially the rise of online- or mobile-based retail trading.

2.6. Joint Committee

In 2022 the Joint Committee, under the chairmanship of EIOPA, continued to play a coordinating role and facilitated discussions and the exchange of

information across the three ESAs, the Commission and the ESRB. The Joint Committee focused on issues of cross-sectoral relevance, including joint risk assessment, sustainable finance, digitalisation, consumer protection and financial innovation, securitisation, financial conglomerates and central clearing.

2.6.1. Joint risk assessment

The Joint Committee prepared two joint risk reports in spring and autumn respectively. In spring, the report highlighted increasing vulnerabilities across the financial sector, notably regarding inflation risk, a possible deterioration in asset quality, an increase in yields and a sudden reversal of risk premia, along with the rise of environmental and cyber risks. It also included a preliminary assessment of the consequences of Russia's invasion of Ukraine. The ESAs encouraged supervisors and market participants to prepare for the challenges ahead, including compliance with sanctions, and warned against rising risks to retail investors. They also called on financial institutions to further incorporate ESG concerns in their business strategies and governance structures and to strengthen cyber resilience.



The autumn joint risk report argued that the deteriorating economic outlook, high inflation and rising energy prices had increased vulnerabilities across the financial sectors. It considered the implications of Russia's invasion of Ukraine, inflationary pressures and their impact on interest rates and cyber and digitalisation-related risks. The ESAs advised national supervisors, financial institutions and market participants to intensify preparation for the challenges facing them, which remained largely in line with those identified in the spring risk report and also included risks arising from crypto assets.

2.6.2. Sustainable finance

Sustainable finance continued to be a central element of the work of the Joint Committee in 2022, which focused on the sustainable finance disclosure regulation (SFDR). The ESAs issued an updated joint supervisory statement on the application of the SFDR. The statement invited NCAs and market participants to use the interim period from 10 March 2021 until 1 January 2023 to prepare for the future application of the RTS and implement the relevant measures of the SFDR and the taxonomy regulation

in line with the timeline indicated in the statement. Under Article 5 and 6 of the taxonomy regulation, market participants were requested to provide an explicit quantification (i.e. a numerical disclosure of the percentage) of the extent to which investments underlying the financial product are taxonomy-aligned.

In June, the ESAs published a clarification on the ESAs' draft RTS under SFDR. This clarified principal adverse impact (PAI) disclosures, financial product disclosures and 'Do not significantly harm' disclosures. The clarification document responded to numerous requests by stakeholders.

As set out in Article 18 of the SFDR, the ESAs published their first report on the extent of voluntary PAI disclosure of investment decisions on sustainability factors. The report examined the state of disclosures under Article 4 of the SFDR on PAIs, noting that disclosures were made under Level 1 measures. Based on a survey of NCAs' practices, the report found that implementation varied across jurisdictions, with discrepancies in how the PAIs were disclosed and in the level of details used in explaining why financial market participants did not take into account the PAIs of their investment decisions.



In September, the ESAs published a final report containing RTS amending the SFDR delegated regulation related to disclosures in financial products of investments in fossil gas and nuclear energy. The report was prepared in response to an urgent request by the European Commission, received in April. The amendments added a 'yes/no' question to identify whether financial products make fossil gas or nuclear energy taxonomy-aligned investments. In case of a positive answer to the question, additional graphical representations are required. The ESAs also proposed minor technical revisions to the SFDR delegated regulation. The ESAs also published practical application Q & As providing clarifications on the SFDR delegated regulation.

Finally, the ESAs made progress in preparing the amendment of the SFDR delegated regulation in response to a Commission mandate which was received in April. The mandate requested that the ESAs further develop the PAI indicators¹⁸ and include specific financial product disclosures on decarbonisation targets (i.e. reduction of greenhouse gas emissions)¹⁹.

2.6.3. Digitalisation

Digital issues were also at the core of the Joint Committee work in 2022. In February, the ESAs published a joint report on digital finance. The report set out the findings and advice of the ESAs in response to the European Commission's call for advice on digital finance and related issues. It covers cross-sectoral and sector-specific market developments in relation to fragmented financial services value chains, digital platforms and mixed-activity groups. It also considers the risks and opportunities posed by digitalisation in finance. The ESAs present ten cross-sectoral and two insurance-specific recommendations for actions to ensure that the EU regulatory and supervisory framework remains fit for the digital age.

DORA includes several policy mandates for the ESAs. To follow up on this work, the Joint Committee set up a subcommittee on digital operational resilience, with the involvement of the relevant NCAs and European authorities. The subcommittee's mandate was

published in June, and the first meeting took place in November. The subcommittee develops technical advice and draft technical standards, guidelines and recommendations mandated by DORA or the Commission (call for technical advice) or to be delivered in 2023 or 2024. It will help the ESAs ensure consistency in this cross-sectoral policy work including ICT risk management (with ICT third-party risk management and operational resilience testing), ICT related incidents and threats reporting, and the oversight of critical ICT third party service providers.

2.6.4. European Forum for Innovation Facilitators

In 2022, the European Forum for Innovation Facilitators (EFIF) remained as a key forum to facilitate information exchange and supervisory convergence in innovation in the FinTech sector in the EU. ESMA chaired the EFIF in the first part of 2022. The forum held three meetings, each attended by over 60 EFIF members. EFIF members shared experiences and updates on developments in the design and operation of their innovation facilitators and on innovative products and trends identified through the hubs and sandboxes. They also discussed various topics and case studies in the areas of RegTech, artificial intelligence, decentralised finance, non-fungible tokens, synthetic data, data protection, ESG and GreenTech, digital sandboxes, facilitation of financial innovation, and quantum computing.

In 2022, EFIF finalised the procedural framework for cross-border testing. The framework aims to assist innovative FinTechs in their engagement with innovation facilitators cross-border through digital tools. The ultimate purpose of this initiative is to help innovators save time and money as they deliver new products and services to the market. This framework was enabled by the launch of the EU digital finance platform in April 2022. The digital platform supports the functionalities related to cross-border testing, such as a standardised common form that firms can use to express their interest in conducting cross-border testing. Finally, the Joint Committee adopted the EFIF work programme for 2023, which includes the development of an updated joint ESAs report on

¹⁸ Under Article 4 of the SFDR, financial market participants need to provide transparency on whether they consider PAIs of their investment decisions on sustainability factors. The ESAs developed indicators for PAI covering environmental and social factors, included in Annex I of the SFDR delegated regulation.

¹⁹ The ESAs aim to submit a final report with draft RTS to the Commission in 2023.



innovation facilitators in 2023. After the October EFIF meeting, the EBA took over the EFIF's chairmanship.

2.6.5. Consumer protection and financial innovation

Consumer protection remained at the heart of the Joint Committee cross-sectoral work in 2022. The Joint Committee continued to work on packaged retail and insurance-based investment products (PRIIPs) and intensified its work on digital and financial education issues.

Regarding PRIIPs, at the end of April the ESAs delivered their advice on the review of the PRIIPs regulation following a call for advice received from the European Commission. The advice served as input for the Commission's work to develop a strategy for retail investment. The ESAs recommended significant changes to the PRIIPs regulation in order to make the key information document (KID) more user friendly, notably presenting the information in a layered format, with a new section highlighting information on sustainable characteristics or objectives, and allowing for different approaches for different types of products, where necessary, including by providing more flexibility on the

information provided in the performance section of the KID. They also suggested not to extend the scope to additional products at this stage, but to further specify the existing scope and make changes to better facilitate comparison between different investments in multi-option insurance products.

The ESAs also issued a joint supervisory statement about the 'What is this product' section of the KID for PRIIPs, having identified a range of poor practices in how manufacturers describe products under this section, such as insufficient information being provided regarding capital protection levels and potential losses for the investor. The supervisory statement provides an overview of these issues and sets out the ESAs' expectations in each area to ensure that information is presented to retail investors in an adequate, clear and accessible manner.

In 2022, the ESAs published two sets of Q & As on PRIIPs incorporating into the existing ESA joint Q & As on PRIIPs, one in October 2022 and one in December 2022, relating to (a) existing ESMA Level 3 guidance applying to UCITS that is relevant in a PRIIPs context based on the implementation of the PRIIPs KID for UCITS from 1 January 2023, (b) the currently applicable PRIIPs Delegated Regulation (2017/253), and (c) new

requirements in the Commission Delegated Regulation (EU) 2021/2268 amending the existing PRIIPs delegated regulation and applicable from 1 January 2023.

During 2022, in total 6 administrative sanctions or measures under the PRIIPs Regulation were reported to the ESAs by the competent authorities in two Member states (Croatia and Hungary). These measures were fines and orders to the PRIIP manufacturer or person advising on, or selling, the PRIIP to remedy specified breaches of the PRIIPs Regulation or the PRIIPs Delegated Regulation²⁰.

The ESAs also worked on addressing the risks to consumers arising from crypto assets. Against the backdrop of growing consumer activity and interest in crypto assets and aggressive promotion of those assets and related products to the public, including through social media, the ESAs issued a joint warning in March 2022. The warning informs consumers that many crypto assets are highly risky and speculative and sets out key steps consumers can take to ensure they make informed decisions.

The ESAs were also actively engaging with the public. In February, they organised a high-level hybrid conference on financial education and literacy to exchange ideas and experiences, stimulate the discussion and raise awareness on the topic. The discussion focused on the following topics related to financial education: the CMU; digitalisation with a specific focus on cybersecurity, scams and fraud; financial resilience of vulnerable groups and sustainable finance. The ESAs also organised the ninth edition of the Joint ESAs Consumer Protection Day, which took place as hybrid event in Frankfurt am Main, Germany, in September 2022. It focused on addressing the needs of consumers and helping them navigate the current complex landscape. It tackled issues related to sustainable finance, open finance and financial inclusion.

In addition, the ESAs built a thematic repository of financial education initiatives on digitalisation, focusing on cybersecurity, scams and fraud. The repository contains a list of 127 national initiatives and related description and hyperlinks that consumers can avail themselves with to obtain helpful information to improve their financial literacy.

Finally, based on the thematic repository, the ESAs also drafted a thematic report on the implementation across the EU of national financial education initiatives on digitalisation, with a focus on cybersecurity, scams and fraud. The report identified twelve good practices that NCAs and other public entities can follow when designing and implementing their financial education initiatives. These include the publication of a blacklist of fraudulent providers and the targeting of digitally literate consumers to help them properly assess the financial risks arising from financial products and services linked to new technologies, such as crypto assets. They also comprise search engine optimisation to ensure that NCAs' financial education websites appear among the first search results when consumers look for information on specific financial subjects. The report also draws on insights from a workshop organised by the ESAs with NCAs to facilitate an exchange on the implementation of financial education initiatives.

2.6.6. Securitisation

The ESAs continued their cross-sectoral work on securitisation throughout 2022. Following a Call for Advice from the Commission to assess whether the current securitisation framework, including its prudential aspects, is functioning in an optimal manner and to identify potential areas for improvement, the ESAs published a Joint Committee advice.

The ESAs welcomed the opportunity to assess the capital and liquidity framework for securitisation and thoroughly reviewed the aspects on which the Commission had requested feedback. The advice on banking includes targeted recommendations to support the securitisation market in a prudent manner and to promote the issuance of resilient securitisations qualifying for a more beneficial capital treatment, without jeopardising investor protection and financial stability.

The Joint Committee also issued a public consultation on the joint RTS on disclosure of information on sustainability indicators for STS securitisations in spring. In the course of 2022, the ESAs analysed the responses to the consultation and discussed the scope of the RTS.

²⁰ Regarding the fines, the Central Bank of Hungary reported fines totalling 3 500 000 Ft (approximately 8 731 EUR).

2.6.7. Financial conglomerates

The Joint Committee published its 2022 annual list of identified financial conglomerates, which includes 63 financial conglomerates with the head of group located in the European Union or in the EEA. Following the finalisation of the draft ITS on reporting templates for conglomerates on intra-group transactions and risk concentration, the final ITS was published by the Commission in the *Official Journal of the European Union* in December 2022. The new templates aim to align the reporting to enhance supervisory overview of group-specific risks, in particular contagion risk. They also aim to increase comparability among financial conglomerates of different Member States, thereby improving supervisory consistency.

2.6.8. Other relevant cross-sectoral Joint Committee work

The ESAs published their final report on EMIR draft RTS with regards to intragroup contracts. The final report comprised new draft amending RTS on the risk mitigation techniques for OTC derivative contracts not cleared by a CCP, notably bilateral margining. The draft RTS proposed to amend the Commission delegated regulation setting out the detailed bilateral margin requirements in relation to the treatment of OTC derivative contracts concluded between counterparties that are part of the same group and where one counterparty is established in a TC and the other counterparty is established in the Union.

The ESAs have also issued a statement to provide clarifications for the period between the publication of the report and the finalisation of the nonobjection procedure by the European Parliament and the Council.

Finally, the Joint Committee approved the draft consultation paper on the guidelines drafted pursuant to the mandate from Article 31(a) of the ESA regulations to set up a cross-sectoral system for the exchange of information on the fit and proper assessments, paving the way for a public consultation in early 2023. The work also continued on the related IT solution consisting of a cross-sectoral NCAs' contact list and searchable shared database of holders of qualifying holdings, directors and key function holders assessed for fitness and propriety.

2.6.9. ESAs' Joint Board of Appeal

The Board of Appeal is a joint independent body of the ESAs, introduced to effectively protect the rights of parties affected by decisions adopted by the ESAs, and is responsible for deciding on appeals against certain of the ESAs' decisions. The ESAs provide administrative support to the Board of Appeal and serve as its Secretariat through the Joint Committee. The Board of Appeal took a decision in a case against the EBA in July 2022 and decided to dismiss the appeal as it was directed against a decision of the EBA which was not challengeable.



2.7. ESMA as an organisation

2.7.1. Governance and external affairs

Objectives for 2022

Support ESMA's external and internal communications through the development and use of the relevant tools (publications, infographics, digital marketing, website and social media).

Support an effective and efficient organisation, through a robust governance. Facilitate strategic direction and provide annual and multiannual planning and reporting.

Lead and coordinate ESMA's relationship with the EU institutions, including monitoring and advising on all legislative processes within ESMA's remit, as well as providing support to the budgetary proceedings.

Ensure accountability to the European Parliament and the Council of the European Union. Develop and protect ESMA's reputation among the EU institutions.

Lead and coordinate ESMA's relationships with international standard setting bodies (e.g. IOSCO, FSB) and non-EU regulators. Organise ESMA's work on regulatory equivalence, by monitoring regulatory and supervisory developments in TCs considered equivalent to the EU framework and advising the Commission with technical input where new equivalence decisions could be granted.

Provide support to ESMA in the areas of organisational risk management, audit and accountability.

Ensure effective relationship with all relevant key stakeholders.

Governance

In 2022, ESMA published its 2023–2028 strategy²¹, detailing its long-term priorities and how it will use

its competences and toolbox to respond to future challenges and developments. The strategy built on the successful development of ESMA since its establishment and reflects the evolving environment in which it operates.

The 2023–2028 ESMA strategy is centred around three priorities and two thematic drivers. Fostering effectiveness and stability of the EU markets, enhancing the protection of retail investors and doing both these things through strengthened supervision are at the core of what ESMA is all about. The key twin drivers of sustainability and technological and data innovation are also now embedded across all areas of the organisation.

In November 2022, ESMA revised the structure of ESMA's groups reporting to the Board of Supervisors (standing committees) as well as their substructures, to align these important working structures with the new ESMA strategy and support its implementation over the period of 2023–2028. The new Standing Committee structure is included in Annex VIII.

In line with its obligations under its founding regulation and financial regulation, in 2022 ESMA produced and sent to the EU institutions a multiannual programming document for 2023–2025, including a detailed AWP for 2023.

In its 2023 AWP, ESMA set out its work areas of highest priority to deliver on its mission to enhance investor protection and promote stable and orderly financial markets. The 2023 AWP is the first work programme developed under the ESMA strategy for 2023–2028; it will see ESMA delivering, among other things, on the priorities we set out in our sustainable finance roadmap, adapting to digitalisation in financial markets and enhancing the access to and quality of supervisory data. A core part of our mission is to further improve the protection of retail investors, and we will do this by promoting the convergence of supervisory and regulatory practices across the EU.

European Union institutions and international organisations

In 2022, ESMA continued its close cooperation with the EU institutions to ensure its accountability as an agency of the EU. In particular, the ESMA Chair presented ESMA's key achievements and the main challenges for the EU securities markets at the

²¹ [esma_strategy_2023-2028.pdf \(europa.eu\)](#).

annual hearing of the ESAs' Chairs at the Economic and Monetary Affairs Committee of the European Parliament. In addition, ESMA participated in two further public Economic and Monetary Affairs Committee hearings, on the collapse of FTX and on energy derivative markets, while also participating in other meetings at the invitation of co-legislators. In the context of the energy crisis, at the request of the Commission, ESMA promptly drew up a set of proposals aimed at taming some of the adverse consequences observed.

ESMA also continuously provides advice to the European Parliament, the Council of the European Union and the Commission on legislative initiatives of relevance, in line with ESMA's mandate and strategy.

On the international front, ESMA was actively involved in the work of standard-setting bodies, such as the FSB and IOSCO, where it played an important role in shaping standards that are likely to affect EU legislation and markets.

Particularly, ESMA engaged in the FSB's and IOSCO's work regarding financial stability and systemic risks associated with non-bank financial intermediation activities, such as MMFs and open-ended funds. ESMA also played a prominent role in the sustainability work being undertaken by IOSCO, including through the ESMA Chair's role in co-leading work on international carbon markets.

Moreover, ESMA continued to enhance its cooperation with TC regulatory and supervisory bodies, by engaging closely with them on matters of bilateral and multilateral interest.

Finally, as part of its equivalence monitoring mandate, ESMA assessed regulatory and supervisory developments associated with equivalence decisions with non-EU jurisdictions. The findings of this exercise informed a confidential report to the Parliament, the Council and the Commission in December 2022, as mandated by the ESMA regulation.

Communications

During 2022 the Communications team progressed on two major projects intended for launch in January 2023 to align with the entry into force of the new ESMA strategy: a new website and a new graphic identity. This involved extensive work with external providers and consultation with staff from across ESMA.

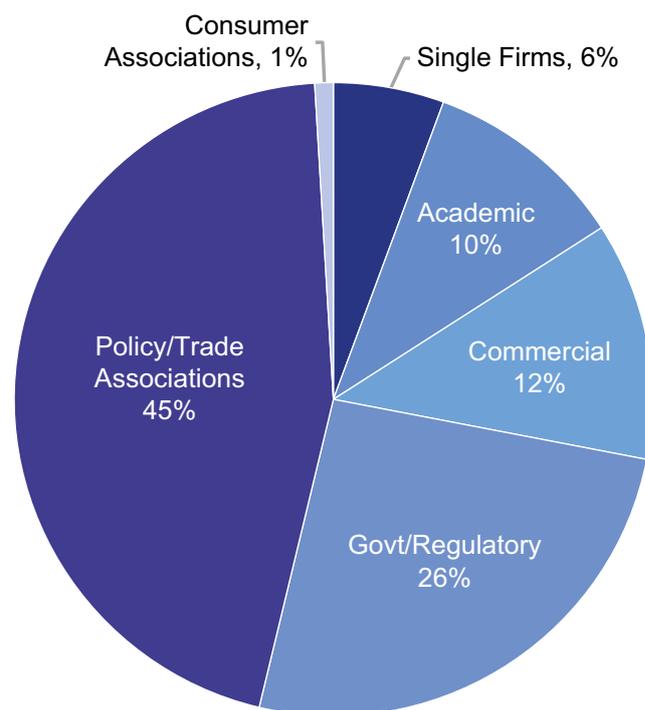
In terms of external communications, in 2022 ESMA produced a significant number of news items, press releases and statements in support of its policy work, published on ESMA's website.

Among ESMA's key publications, were the monthly 'Spotlight on Markets' newsletters, focusing on the most impactful achievements and developments in the period covered.

In addition, ESMA organised a large number of interviews and briefings with the media, and ESMA was mentioned 25 000 times in the media in 2022, while visits to ESMA's website reached 2.3 million during the year.

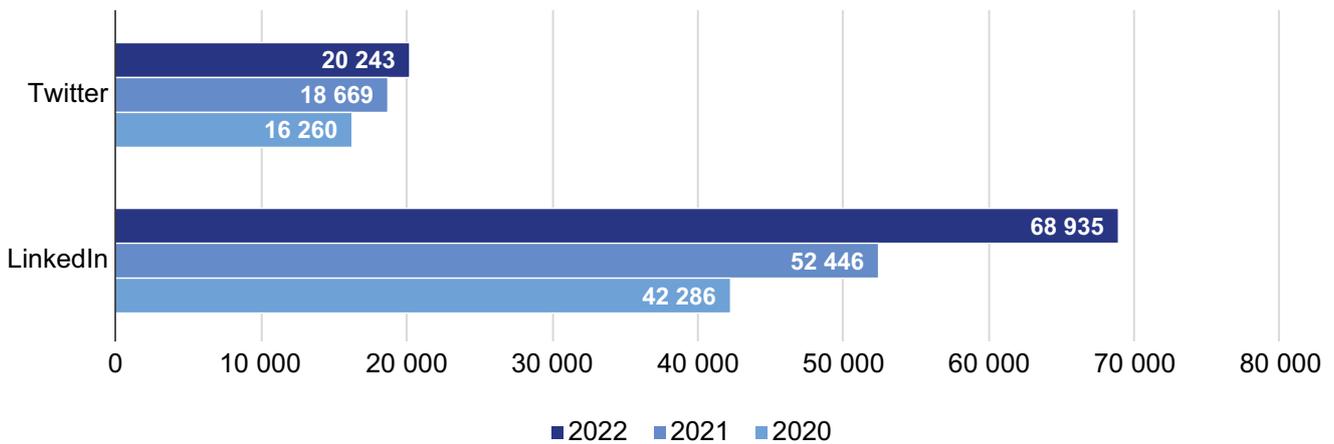
In terms of external speaking events, in 2022 ESMA accepted 214 invitations out of the 372 received, continuing its policy of prioritising appearances at events aimed at reaching the broadest stakeholder audience.

Figure 1. Accepted organiser types



In terms of followers and engagement, ESMA's social media channels (Twitter and LinkedIn) saw considerable growth in 2022. In particular, the number of followers of the LinkedIn account increased by 31.4 %, with just over 16 000 new joiners over a total of 68 935, while the Twitter account increased by 8.4 %, adding more than 1 500 new followers to reach 20 243. The differing growth and follower numbers reflect LinkedIn's use by finance industry participants, our more specialised target audience.

Figure 2. ESMA's social media followers, 2022



In terms of internal communications, the main priority for 2022 was the launch of the new ESMA strategy for 2023–2028 and the new ESMA visual identity, including a new logo and new templates to be used by ESMA staff internally and externally.

Promote data privacy by design throughout ESMA's activities and foster compliance and transparency in ESMA's processing of personal data.

2.7.2. Legal

Objectives for 2022

Provide sound and focused legal advice to ESMA's governance bodies and ESMA staff to promote informed and legally sound decision-making.

Enhance the legal drafting and soundness of legal acts adopted by ESMA, notably through the sign-off process of draft technical standards and the legal review of guidelines.

Facilitate the legally sound exchange of confidential information.

Facilitate the settlement of disagreements between NCAs in cross-border situations.

Continue to enhance the efficiency of ESMA's complaints-handling process and advise the Board on breach-of-EU-law cases.

Promote good administrative behaviour through the timely handling of requests for access to documents, among other things.

Promote a strong ethical culture at ESMA through awareness raising and the monitoring of compliance with the conflict-of-interest policy.

Legal advice and legal review

ESMA ensured legal support was provided on the full range of ESMA's activities, including its direct supervisory activities, the development of regulatory guidance and standards and other significant projects. Furthermore, ESMA reviewed all guidelines and draft technical standards issued in 2022, along with other impactful measures such as ESMA's opinion on BaFin's proposed product intervention measures and ESMA's first formal recommendation giving rise to an obligation on the competent authority to explain itself and make any adjustments to its rules and/or practices following a peer review report (March 2022 recommendation to the Cyprus Securities and Exchange Commission).

Litigation

In 2022, ESMA contributed to two cases before the Court of Justice of the European Union. The cases concerned: (i) a preliminary ruling on the interpretation of the requirements in the UCITS directive relating to the UCITS prospectus; and (ii) a case on the staff regulations and inter-agency mobility for staff, specifically with respect to pension rights. In the first case, the Court of Justice ruled by providing an interpretation of the UCITS directive similar to the view expressed by ESMA in the proceedings. In the second case, a decision by the General Court is expected to be reached in 2023.

Legal advice on, and handling of, access to documents requests

ESMA is committed to high transparency standards. In 2022, ESMA received 18 requests for access to documents and one confirmatory application. In most cases, ESMA granted access, whereas, on one occasion, access to some of the requested documents was refused. Subsequently, a complaint was lodged before the European Ombudsman. In two cases, given the broad scope of the requests, ESMA proactively engaged with the applicants and managed to find a solution that suited them. In six cases, ESMA was not in possession of the requested documents.

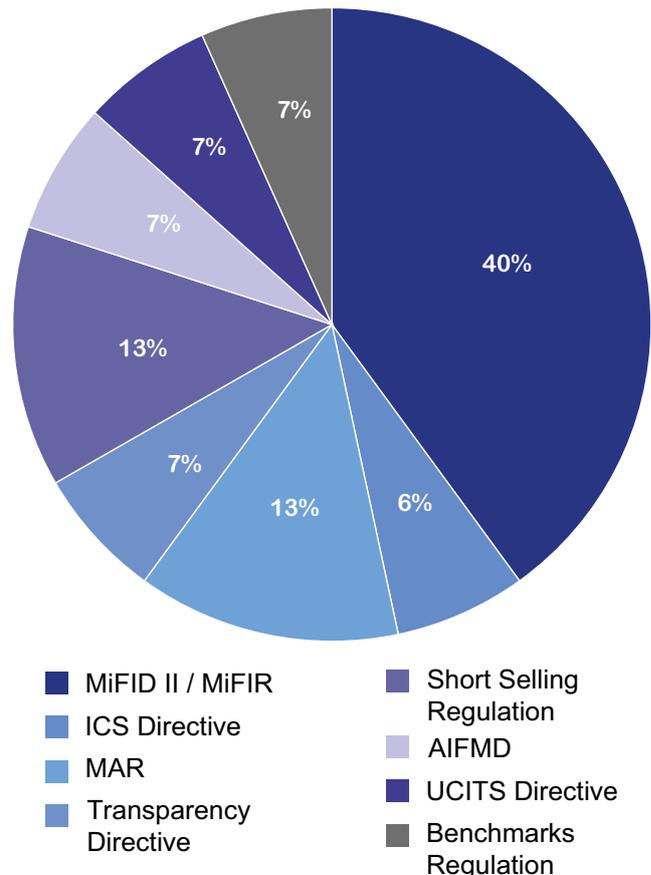
Breach of EU law

During 2022, ESMA received and handled 222 complaints. Of these complaints, most (188) were considered inadmissible because they were outside ESMA's remit or failed to refer (explicitly or implicitly) to an NCA. For example, this is the case of the numerous complaints received in relation to alleged breaches of EU law by financial market participants, which do not contain allegations of a breach by an NCA.

A total of 35 admissible complaints²² were bundled into 11 cases. In addition to the complaints received, ESMA opened two cases on its own initiative (*ex officio*). Nine cases were resolved over the year without the need to launch a formal investigation or run a mediation procedure. Four cases are still pending.

More precisely, the admissible cases referred to potential breaches of the MiFID II / MiFIR framework²³, the investor compensation scheme directive²⁴, the MAR²⁵, the transparency directive²⁶, the SSR²⁷, the AIFMD²⁸, the UCITS directive²⁹ and the BMR³⁰ by nine NCAs.

Figure 3. Breach of EU law cases per legislative act



To formally obtain clarifications / additional information from the concerned NCAs, ESMA sent seven requests for information under Article 35 of the ESMA regulation in 2022.

The overall objective of ESMA's breach-of-EU-law and complaint-handling activities is not the opening of formal breach-of-EU-law investigations but rather the achievement of greater supervisory convergence outcomes through a structured dialogue leading to effective change in the contested national supervisory approaches during the preliminary investigations. In this regard, two cases which ESMA closed in 2022 provide good examples of positive results in terms of supervisory convergence and successful cooperation with the NCAs concerned.

²² A total of 34 complaints were received in 2022 and one complaint was carried over from 2021.

²³ The topics addressed were namely: the supervisory approach towards multilateral systems; compliance with the systematic internaliser regime and share trading obligations; supervisory/enforcement measures taken by the NCAs in relation to services provided by investment firms.

²⁴ The topic addressed was oversight of the investor compensation schemes.

²⁵ The topics addressed were namely: insider dealing, market manipulation and disclosure of inside information.

²⁶ The topic addressed was the obligation to report major holdings.

²⁷ The topic addressed was disclosure of data regarding net short positions, notified under Articles 5 and 6.

²⁸ The topic addressed was obligations related conflicts of interest, pursuant to Article 14.

²⁹ The topics addressed were namely: execution of transactions with related parties; implementation of remuneration policies; lack of policies and procedures and adequate internal control mechanisms; obligations related to half-yearly and annual reporting; issues related to the mechanism for reporting infringements.

³⁰ The topic addressed was index replacement and withdrawal of the authorisation.

ESMA initiated a case regarding BaFin's approach to supervising multilateral systems, specifically in cases where an entity was operating an organised trading facility under an investment firm license. BaFin committed to amend its supervisory practice one month after ESMA's request for information, aligning it with ESMA's and other NCAs' implementation of MiFID II provisions related to organised trading facilities. The case was closed due to this supervisory convergence achieved through a change in national practice.

ESMA successfully closed another case in 2022 involving the public disclosure of data reported to the national supervisor under Article 5 of the SSR by natural or legal persons with net short positions between 0.2 % and 0.5 % of the issued share capital of companies traded in Sweden. After ESMA's request for information under Article 35, the Swedish Finansinspektionen informed ESMA that it had disclosed the data further to requests made under the national law on public access to information but decided to change its practice and rejected similar requests received thereafter. This swift outcome ensured the correct and consistent application of EU rules, under which public disclosure is foreseen for net short positions above the 0.5% threshold only. The decision was upheld by national courts.

ESMA closed its preliminary inquiries in 2022 without opening a breach-of-EU-law investigation under Article 17 of the ESMA regulation. This is due to the fact that certain allegations appeared to be unsubstantiated or better suited for another body, such as national courts, or because the issues were resolved at this stage by a change of NCAs' practice.

Finally, developments are monitored very closely in relation to one specific NCA in the light of the high number of complaints received against it and the recurrence of the issues raised.

Fraud-related correspondence

In 2022, ESMA received and replied to a record number of queries (601) regarding the fraudulent use of ESMA's logo and identity. To address the investor detriment created, ESMA undertook several measures, such as requesting the closure of fake websites imitating ESMA's website and domain names, running social media campaigns and updating the fraud dedicated webpage under ESMA's website.

Further outreach to NCAs is being explored to enhance the impact of ESMA's warnings.

Data protection

Throughout 2022 continued support to ensure compliance with Regulation (EU) 2018/1725 was provided across ESMA on a wide range of areas – two new personal data processing activities were started, with corresponding data records published on ESMA's website; an enhanced data protection review of the procurement process was agreed on and implemented; assessment and notification to European Data Protection Supervisor (EDPS), where appropriate, of personal data breaches was carried out; continuous awareness raising was carried out, both for newcomers and all ESMA staff, via the establishment of the Data Protection Coordinators Network and upgraded practical information to staff.

Ethics

In 2022, ESMA facilitated a targeted survey, run by the Comisión Nacional del Mercado de Valores, for the NCAs via ESMA's legal network, on the practices and rules applicable to staff behaviour on social media. This was furthermore followed up by ESMA in liaison with the EBA, EIOPA and the SRB, with a view to assess whether any action or change in practice would be required at ESMA. The conclusions of the survey and the follow-up did not call for any targeted policy or rules change but acknowledged the need to continue and enhance awareness raising on this topic among ESMA staff.

Management of conflicts of interest

ESMA examined the annual declarations of conflicts of interest submitted by all staff and members of ESMA's governing bodies. No issues were raised relating to potential conflicts of interest. In addition to the annual declarations, ESMA reviews and assesses a considerable number of requests and declarations from ESMA staff as a going concern (54 declaration in selection procedures, 13 declarations on gainful employment of spouse, 41 requests for outside activity, 21 requests for publication or speech, 23 requests to deal in financial instruments, 10 requests for activity while on leave on personal grounds, 10 declarations on intended activity after leaving ESMA). While the

absolute majority of the declarations raised no conflict-of-interest concerns, in two instances a change in the composition of the selection board was recommended, and in one instance safeguards were imposed in respect of a manager leaving ESMA (a cut-off from confidential information and a temporary lobby ban towards ESMA staff).

Furthermore, in 2022 ESMA undertook several actions to raise awareness of conflicts of interest and ethics rules, including conducting induction sessions for newcomers. It also held an all-staff session to brief staff about the main facts and figures in ethics, in-depth clarifications on dealing with financial instruments and the priorities for 2022.

Also, in response to the high volatility and uncertainty in the financial markets further to the invasion of Ukraine by Russia, in spring 2022 ESMA imposed a general trading ban on financial instruments applicable from 8 March 2022 until 8 April 2022 included.

Anti-fraud measures

ESMA continued the implementation of the anti-fraud strategy for 2022–2025, which includes an assessment of the main risks relating to fraud and specific action points to achieve the objectives set out in the strategy. The main objectives of the strategy are to: (i) enhance anti-fraud culture across the organisation; (ii) strengthen measures for the detection of fraud; and (iii) maintain an efficient reporting system.

2.7.3. Supervisory convergence work across all sectors

Objectives for 2022

Promote a common EU risk-based and outcome-focused supervisory and enforcement culture, notably through convergence actions driven by risks and problems identified in the EU and with a potential high impact on investor protection, orderly markets or financial stability.

Select appropriate convergence tools taking into account the nature of risks and problems identified.

Foster similar outcomes through reinforced dialogue and cooperation among NCAs' supervisors and enforcement specialists. Coordinate supervisory action by issuing and following up on Union strategic supervisory priorities (USSPs) and promoting the coordination of NCAs' supervisory activity.

Increase knowledge on EU financial markets and NCAs' organisation, resources and independence in that respect.

Foster an equally high level of supervisory outcomes and promote investor protection, orderly markets and financial stability through convergence in the EU.

Common EU risk-based and outcome-focused supervision and increased supervisory dialogue

With a view to improving risk-based and outcome-focused supervisory convergence, ESMA – together with the NCAs – reinforced the framework to identify supervisory risks, identifying those areas in which to prioritise supervisory convergence initiatives through its 2022 AWP.

ESMA organised discussions among NCAs on their respective supervisory activities, in particular on their risk-based approaches to supervision for cross-border activities, on the key supervisory risks identified and on specific supervisory cases allowing to exchange and learn on respective supervisory objectives, methods, tools and approaches.

ESMA continued working on the first part of its EU supervisory handbook, setting out – through new supervisory briefings – best practices and high-quality methodologies and processes.

ESMA increased supervisory dialogue in relation to NCAs' supervisory response to the Russian invasion of Ukraine, including as regards the application of EU sanctions. ESMA also facilitated the collection and sharing of information and experiences among NCAs regarding cyber incidents.

Coordinated supervision

In 2022, carried out important work on the USSPs. The USSPs are an important tool through which ESMA coordinates supervisory action with NCAs on specific topics.

ESMA launched a new priority on ESG disclosures. ESMA developed a robust outcome-focused framework to implement this priority through concerted supervisory actions by NCAs, with ESMA's support where needed. ESMA identified clear objectives and actions to promote increased scrutiny on ESG disclosures through effective and consistent supervision. It also promotes building supervisory capabilities to fully embed sustainable finance into daily supervisory work and supervisory culture and taking active steps to protect investors and facilitate investments in a credible ESG market.

The USSP on ESG disclosures initiated in 2022 will be pursued in the coming years. ESMA and the NCAs conducted extensive actions in 2022, including CSAs, annual statistical monitoring, and interpretative aids, as highlighted in other sections of this report. The work carried out paved the way for stronger supervision in this key area of investor protection.

ESMA and NCAs continued working on the second USSP, covering market data quality, under which ESMA developed and applied common methodologies and thematic reviews as identified in other areas of this report. ESMA identified opportunities to engage into further targeted and concerted supervisory work.

In 2022, ESMA also continued to organise voluntary supervisory colleges. The voluntary supervisory colleges are a practical and flexible tool to enhance the supervision of complex firms that operate in the EU by exchanging information between participating home NCAs, promoting best practices, reducing supervisory fragmentation and ensuring a joint supervisory approach to different structures and business models. In particular, ESMA organised voluntary supervisory colleges on three large TC firms that offer financial services in the EU, covering both investment services and investment management activities.

Organisation and independence of national competent authorities

ESMA organised discussions among NCAs on their organisations, responsibilities and resources with the aim of helping them to get to know each other better and consider how to address common challenges, such as those related to budget, markets and resources.

Together with the other ESAs, ESMA started developing common criteria supporting the assessments of NCAs' supervisory independence. For this purpose, ESMA builds on the report on the independence of NCAs it published in October 2021³¹ and the criteria for the independence of supervisory authorities published by EIOPA in September 2021³².

Enforcement

In 2022, through the work of the enforcement network, ESMA continued to facilitate closer dialogue and the exchange of practices among NCAs in the enforcement field. This work included ongoing convergence initiatives on the ESMA sanctions registers and the finalisation of two important thematic studies on the referral of cases to enforcement and achieving efficiencies in enforcement investigations (such as through settlement).

Alongside this, ESMA continued to engage in thematic discussions of real enforcement cases, which covered a wide variety of wrongdoing, and often gave rise to highly engaged and detailed exchanges among NCAs. This remains an important component of ESMA's convergence work, as it seeks to promote the use of similar approaches for similar risks and strives for comparable enforcement outcomes across the EU.

Peer reviews

In 2022, ESMA carried out significant peer review work in line with the peer review work programme set out for 2022–2023.

As indicated in Section 2.1.1, ESMA concluded two discretionary peer reviews: one into NCAs' supervision of cross-border activities of investment firms, and another into NCAs' handling of relocation to the EU in the context of the UK's withdrawal from the EU,

³¹ At the same time as the other ESAs published their own report.

³² The criteria are expected to be published in 2023.

along with a mandatory peer review of the scrutiny and approval procedures of prospectuses by competent authority.

In July, ESMA concluded the annual mandatory peer review on CCPs focusing on CCPs' business continuity in remote access mode (see Section 2.4.2).

ESMA also continued a mandatory peer review on the supervision of CSDs providing cross-border services or participating in interoperable link, whose findings were published in February 2023.

Follow-up to peer reviews

In March, ESMA published a follow-up report to the peer review on the guidelines on the enforcement of financial information. The report identified that the majority of the NCAs in question made improvements following the original peer review, although some are still experiencing staffing difficulties, with an impact on the enforcement of the financial information work plan and, more generally, on the allocation of time and skills to the topic.

2.7.4. Data reporting and management

Objectives for 2022

Perform data management and statistical analyses in order to support ESMA's activities, focusing on improving data quality, integration and usability, in close coordination with NCAs.

Enhance the data quality for the different reporting regimes.

ESMA's activities are supported by the advanced use of data, providing actionable information to ESMA, NCAs, market participants and the public. This strategic approach to use data for securities and market regulation is inherent to ESMA and has been expanded in both ambition and scope through the new ESMA strategy for 2023–2028.

ESMA takes into account the entire data life cycle, including the development and implementation of regulations based on robust international data standards, the establishment and promotion of infrastructure to facilitate consistent collection, guidance to reporting entities and oversight of data

quality, and advanced analysis for use by multiple stakeholders.

As a data hub, ESMA publishes multiple databases that allow the authorities, market participants and investors to obtain information on entities, market activity and characteristics of securities (liquidity status, credit rating) and rich statistical information. The scope of such public information will be substantially expanded in the future with the European Single Access Point project that will be developed by ESMA.

During 2022, ESMA and NCAs executed several data quality activities on the reporting regimes established under the AIFMD, the MMF regulation, the EMIR, the SFTR, the prospectus regulation and MiFID/MiFIR. These actions were reinforced by the provision of further guidance to the reporting entities (in the form of guidelines, opinions, Q & As and reporting instructions) and improvements in the IT system's design and established validations.

ESMA – an evidence-based authority

The ESMA strategy relies in the effective use of data to conduct evidence-based, transparent and proportionate regulatory and supervisory work. This includes the risk assessment of risks to investors, markets and financial stability (see Section 2.5) and the own supervisory responsibilities on CRAs, CCPs, DRSPs, repositories and benchmark administrators (see Sections 2.3 and 2.4), including CCP stress tests (see Section 2.4.2). In addition, another key goal is the provision of analytical evidence to the EU legislative process, the NCAs, market participants and the public to promote the design of a single and consistent rulebook and the consistent application of supervision. Therefore, during 2022 ESMA made use of the available data to provide information for decision-making and request input by stakeholders.

ESMA used the data collected under the MiFID transparency regime to provide input to both the RTS1 and RTS2 reviews and the weekly position data to provide an opinion on position limits regarding derivatives on natural gas. EMIR data provided insights to support the discussions on intragroup COs, commodity derivatives clearing thresholds and bilateral margins. Furthermore, derivatives data provided insights for the consultation paper on clearing and trading obligations on contracts linked

to the euro short-term rate and for the report on emission allowances and their derivatives.

Data on MMFs was used to propose and set the guidelines on stress test scenarios for these entities. In the area of investment funds, different sources, including data provided by NCAs, were used for the CSA, with NCAs regarding the supervision of costs and fees of UCITS across the EEA. Similarly, text-mining techniques were used for the peer review of the scrutiny and approval procedures of prospectuses and statistical information was provided to the Commission for its impact assessment on the review of the Listing Act. Text analysis was also relevant for the consultation paper on the guidelines for fund names. Finally, data on issuers was used to provide the report on corporate reporting enforcement and regulatory activities.

In relation to EU CCPs, the statistical information regularly reported to ESMA by the NCAs was extensively used to define the different potential policy choices and their corresponding strengths and weaknesses. This supported the consultation and final report on the proposed RTS on calculation and maintenance of the additional amount of pre-funded dedicated CCP own resources in the context of a CCP recovery.

2.7.5. Human resources

Objectives for 2022

Deliver human resource (HR) services, enabling ESMA to attract, deploy and retain the talents required to achieve its objectives and ensuring efficient HR administration while at the same time fulfilling the regulatory requirements of an EU authority.

ESMA employs different categories of staff:

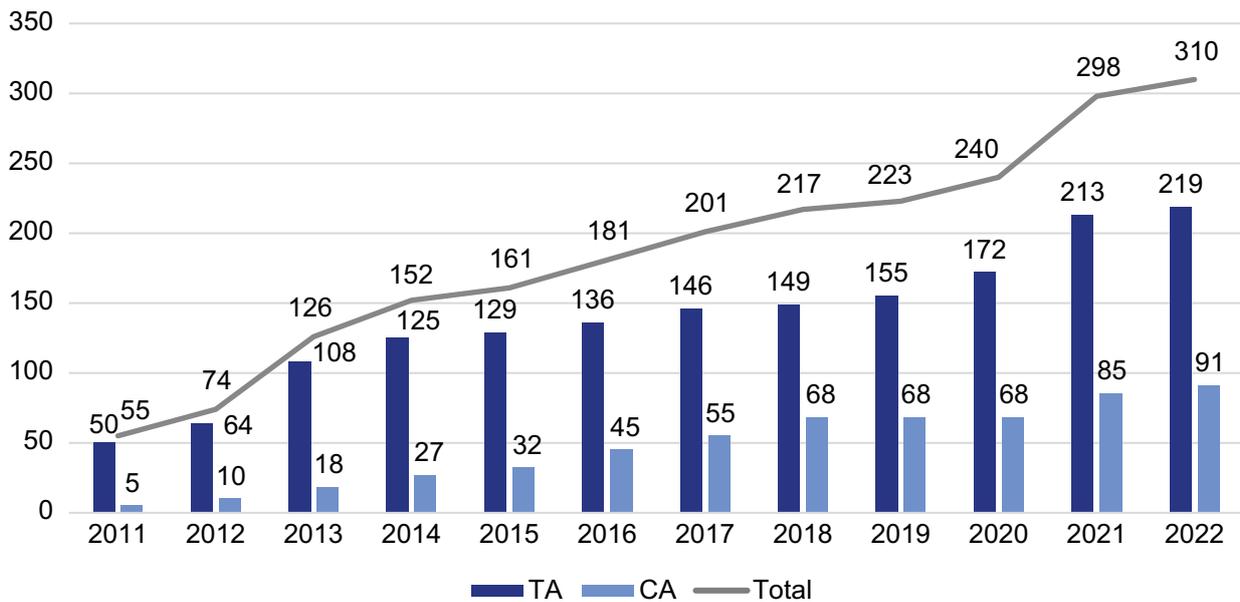
- Temporary Agents (TAs)³³,
- Contract Agents (CAs) and
- Seconded National Experts (SNEs).

At the end of 2022, ESMA employed 310 statutory staff members (TAs/CAs): 219 TAs and 91 CAs, i.e. 12 more statutory staff members than 1 year before or a + 4 % increase.

³³ Posts for TAs are listed in the establishment plan of ESMA, which is part of the EU budget.



Figure 4. Statutory staff population



In addition, 12 SNEs were also working at ESMA at the end of 2022 (versus 10 in 2021), bringing the total number of ESMA staff (TAs/CAs/SNEs) to 322, versus 308 the year before, or a 5 % increase, after a rise of 23 % in 2021 compared to 2020. This increase in staff stems from the results of the review of ESMA regulation in 2019 that granted ESMA additional supervisory mandates and strengthened its role in supervisory convergence.

ESMA has been allocated additional SNE posts as part of recent legislations. The actual increase in SNEs at ESMA can be attributed to the collaborative

efforts between ESMA and the NCAs. SNEs bring valuable specific expertise, such as direct supervisory experience, and secondments create knowledge-sharing opportunities between the organisations involved.

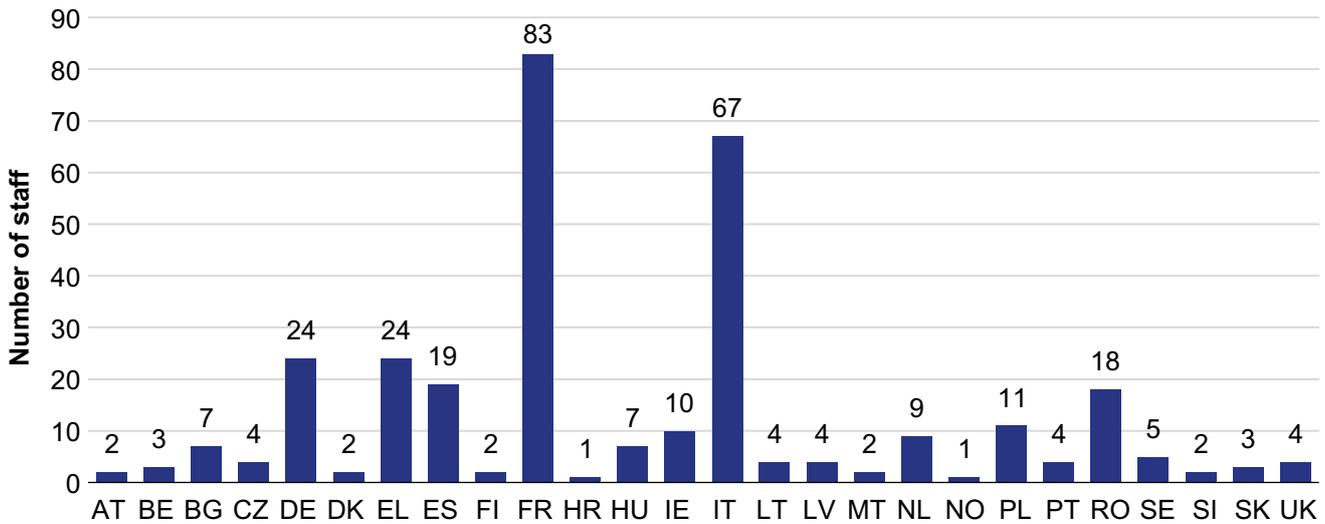
At the end of 2022, ESMA staff (TAs/CAs/SNEs) included 24 different EU nationalities, four nationals from the United Kingdom and one national from the EEA (Norway).

The following table shows the distribution of nationalities per contract type and function group:

| | AT | BE | BG | CZ | DE | DK | EL | ES | FI | FR | HR | HU | IE | IT | LT | LV | MT | NL | NO | PL | PT | RO | SE | SI | SK | UK | Total |
|--------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|-----------|-----------|-----------|------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------|
| TA | 2 | 1 | 5 | 3 | 19 | 2 | 13 | 13 | 1 | 58 | | 4 | 8 | 44 | 3 | 2 | 1 | 5 | 1 | 5 | 3 | 13 | 5 | 1 | 3 | 4 | 219 |
| CA | | 2 | 2 | 1 | 3 | | 11 | 3 | 1 | 23 | 1 | 3 | 2 | 21 | 1 | 2 | | 2 | | 6 | 1 | 5 | | 1 | | | 91 |
| SNE | | | | | 2 | | | 3 | | 2 | | | | 2 | | | 1 | 2 | | | | | | | | | 12 |
| Total | 2 | 3 | 7 | 4 | 24 | 2 | 24 | 19 | 2 | 83 | 1 | 7 | 10 | 67 | 4 | 4 | 2 | 9 | 1 | 11 | 4 | 18 | 5 | 2 | 3 | 4 | 322 |
| % | 1% | 1% | 2% | 1% | 7% | 1% | 7% | 6% | 1% | 26% | 0% | 2% | 3% | 21% | 1% | 1% | 1% | 3% | 0% | 3% | 1% | 6% | 2% | 1% | 1% | 1% | 100% |

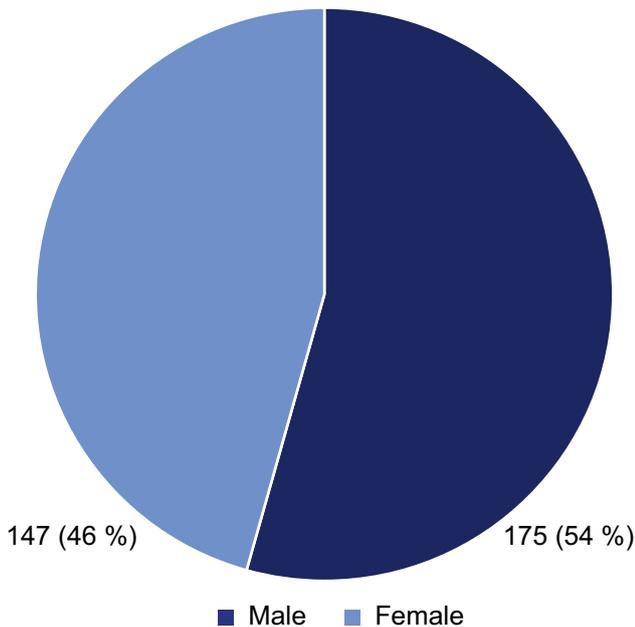
Figure 5 shows the distribution of nationalities for ESMA staff (TAs/CAs/SNEs) at the end of 2022.

Figure 5. Nationalities at ESMA



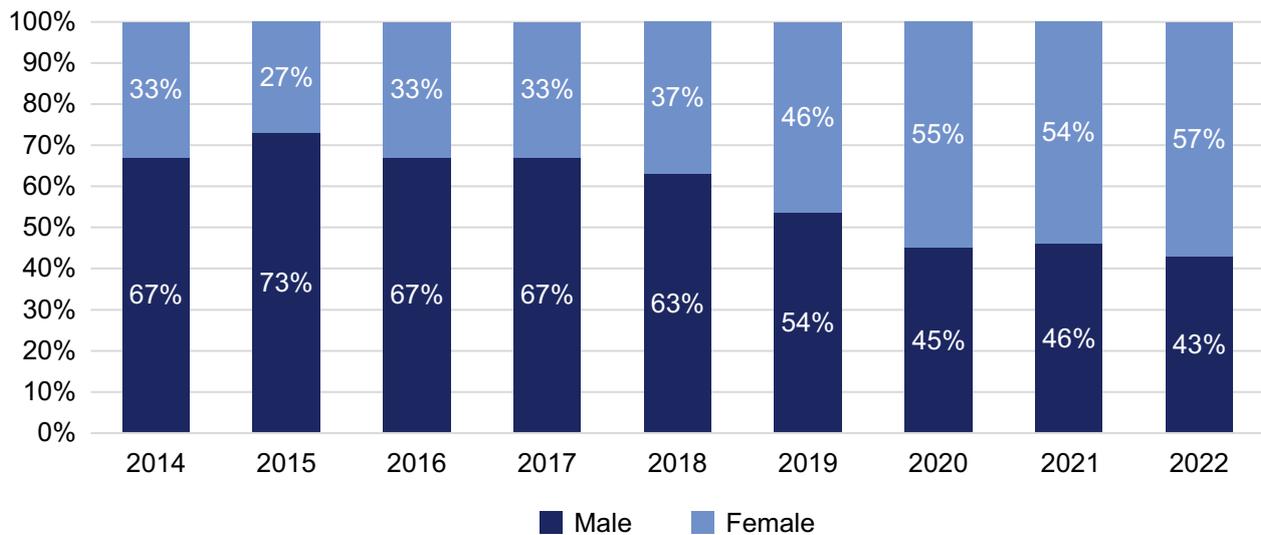
The global gender balance among ESMA staff (TAs, CAs and SNEs combined) was 54 % (male) and 46 % (female) in 2022, versus 53 % male and 47 % female in 2021.

Figure 6. Gender distribution at ESMA



The evolution of the gender balance (in all staff groups) over the last 10 years indicates that the proportion of female staff members has progressively increased from 37 % in 2012 and stabilised around 46-47 %.

As regards staff with formal management responsibilities (Chair, Executive Director, CCP Directors, Heads of Departments and Heads of Units), the percentage of women has stabilised in the past few years at around 55 % of the staff with formal management responsibilities (whereas in 2011 ESMA had only one woman with formal management responsibilities - 12,5 %).

Figure 7. Male/female % in managerial functions

The staff turnover rate was 2.6 % in 2022 versus 3.6 % in 2021.

In 2022, 17 recruitment procedures were launched (vs 21 in 2021) and 1 288 CVs were screened (versus 2 075 in 2021). The selection boards interviewed 114 candidates and ESMA recruited 34³⁴ staff members (versus 102 in 2021). In addition, ESMA recruited 49 trainees throughout the year (10 % less than in 2021).

The average recruitment lead time, defined as the number of days from the publication date of the vacancy notice until the date when the reserve list of successful candidates is established, increased to 142 days on average (versus 120 in 2021). The recruitment activities (interviews and written tests) were almost exclusively conducted remotely to lower greenhouse gas emissions, in line with ESMA's environmental policy.

As regards internal training, ESMA staff (TAs, CAs and SNEs) attended a total of 834 days of training in 2022 versus 623 days in 2021, or an average of 2.6 days per full-time equivalent versus 2.2 days the year before and 1.3 days in 2020. The positive trend of the last 2 years is notably the result of the virtual delivery of training courses, which allows for more flexibility and encourages participation.

Training provided to national competent authorities

In 2022, ESMA organised 11 training events for the NCAs, out of which 10 were online and one in person (due to its topic, 'Enforcement Investigative Interview').

The total number of participants reached almost 1 200 (slightly less than in 2021). Participants came from 30 countries or territories comprising the 27 EU Member States and the three countries of the EEA (Iceland, Liechtenstein and Norway).

The overall satisfaction was 87 %, above the internal target of 80 % and the 85 % reached in 2021.

2.7.6. Finance and procurement

Objectives for 2022

Further align the financial and procurement function to the ESMA strategy by continuing to enhance the efficiency of financial and procurement processes.

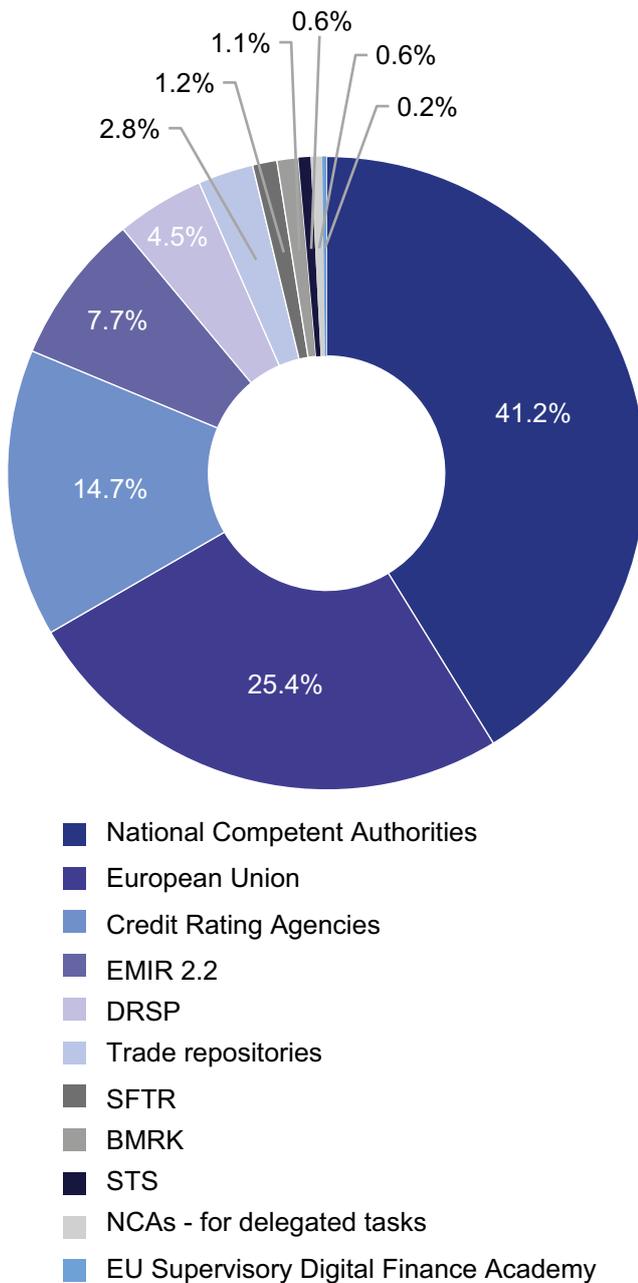
A growing and more complex budget was managed with a stable overall number of transactions. This was thanks to a continuous effort to further simplify and optimise financial transactions.

ESMA spent 99.72 % of its 2022 budget, amounting to EUR 67 668 551 (excluding the contributions from the NCAs and other external entities for the IT delegated tasks). This budget was + 15 % higher than in 2021.

In 2022, ESMA was financed by eleven streams of income, as shown in Figure 8.

³⁴ Number of people who accepted the offer letter, including the result of internal/external recruitment (TA, CA, SNE).

Figure 8. Revenue for 2022 by source



2022 was the first year ESMA collected fees from benchmark administrators and data reporting services providers under its supervision, on top of the fees from CRAs, TRs under EMIR and under SFTR, from securitisation repositories and from TC CCPs under EMIR 2.2.

In 2022, ESMA continued to benefit from the full digitalisation of all financial and procurement processes. During the year, 14 procurement procedures were managed (15 in 2021), out of which 3 were open tenders in the area of IT representing a total value of EUR 99.4 million.

2.7.7. Corporate services

Objectives for 2022

Provide proactive and effective support to ESMA by ensuring the smooth running of ESMA's facilities and the acquisition of goods and services, in accordance with the EU public procurement rules and procedures.

Protecting the health and safety of ESMA staff and visitors.

Provide support to ESMA's core business by organising missions and events and providing an appropriate working place for staff and visitors.

In 2022, ESMA continued to successfully tackle the many logistical challenges posed by the evolution of the COVID-19 pandemic. For example, it kept the office open (as it had been the case all year long in 2021), even at the start of the year when the pandemic was still very much going on, having adjusted the protective measures related to social distancing in ESMA's premises. It also continued to prepare for the 'new normal' and implemented a new visitor management tool.

Sustainability was more than ever a key focus for ESMA in 2022, a year when ESMA was officially recognised for its environmental management system under the European Eco-Management and Audit Scheme (EMAS) and ISO 14001 standards.

EMAS is a premium management instrument developed by the Commission for companies and other organisations to evaluate, report and improve their environmental performance. The EMAS registration of ESMA in 2022, covering all ESMA's operational and core business activities, was a major milestone for the organisation. ESMA is the 100th organisation registered with EMAS in France.

In 2022, missions progressively resumed as the sanitary situation improved. During the year, ESMA staff members (TAs/CAs/SNEs) undertook 261 missions, versus only 13 in 2021, when missions were suspended all year long due to the health crisis, with only a few duly justified exceptions.

2.7.8. Information and communication technologies

Objectives for 2022

Provide effective and proactive ICT support to staff and manage ESMA's ICT resources in a flexible and efficient way.

Promote supervisory convergence and manage financial information through building and maintaining relevant IT systems, with the objective to collect, exchange, analyse and disseminate securities and financial markets information as required by relevant EU legislations.

Manage financial information, in particular collect, exchange, analyse and disseminate securities and financial markets information as required by EU legislation.

Contribute to ESMA's operations by leveraging information technologies, by delivering IT services and solutions, and advise and collaborate with all of ESMA's departments to deliver its objectives.

ESMA's ICT activity represents two main categories:

- the support to ESMA as an organisation; and
- the EU IT projects, aiming to support supervisory convergence, risk analysis and the exchange of financial data amongst NCAs and between NCAs, ESMA and the large public.

At the end of 2022, ESMA managed 41 applications and 316 virtual servers.

At the same time, there were 2 391 users of ESMA's systems, an increase of + 4 % compared to 2021. A vast majority (1 855 or 78 %) were external active users from NCAs, trading venues, CRAs, TRs, etc.

The ICT helpdesk continued to face a heavy workload: in 2022, it managed 28 473 tickets, a decrease of - 9 % compared to 2021, with a similar reduction of - 9 % in the number of incidents despite the increase in number of staff and stakeholders to support. The average time of closing requests decreased to 1.09 days, below the 1.83 days of 2021 and the target of 3 days.

The chart below shows the annual evolution of the total number of tickets managed by the unit since 2012.

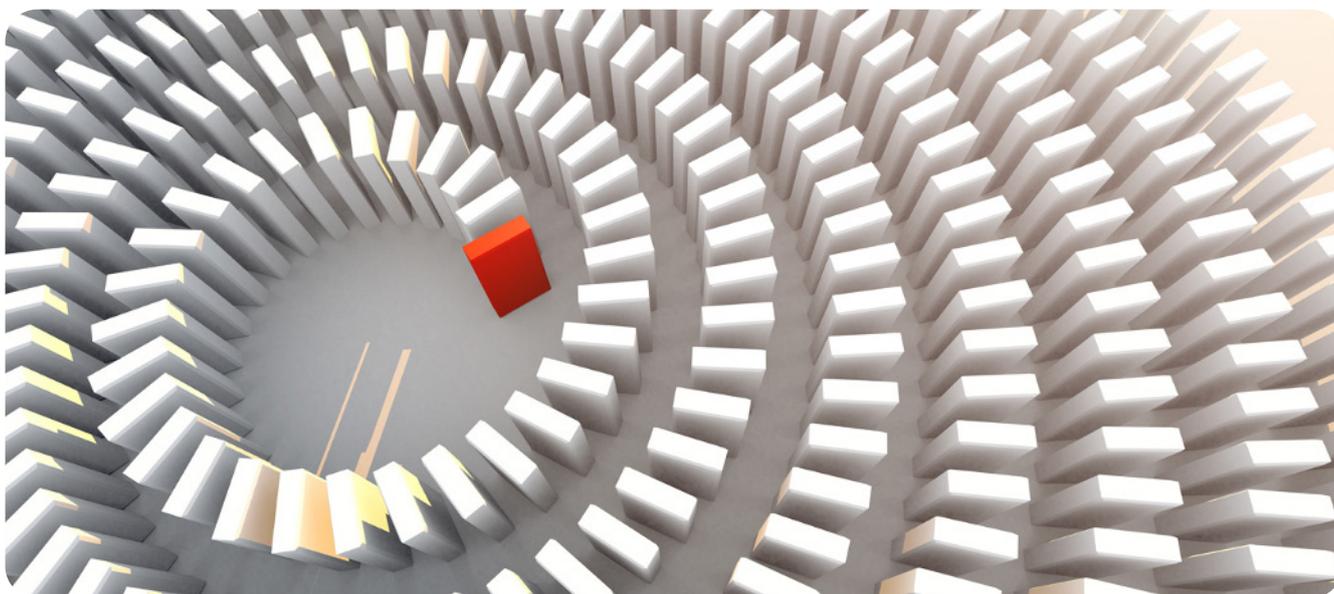
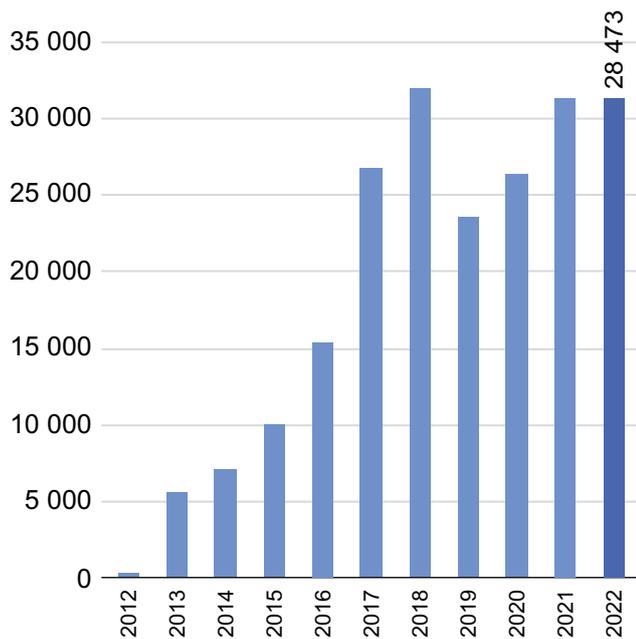


Figure 9. Number of IT requests for support

In 2022, ESMA continued to upgrade its workplace tools. It fully benefitted from the changes carried out the years before, notably the migration to the Public Cloud (Microsoft Azure), thus improving customers' experience, workforce enablement, digital security and resilience, and agility and innovation in the context of the continued increase of IT needs.

With a general cybersecurity landscape presenting heightened threats, a higher number of attacks and many challenges, ESMA also continued to increase its cybersecurity response capacities.

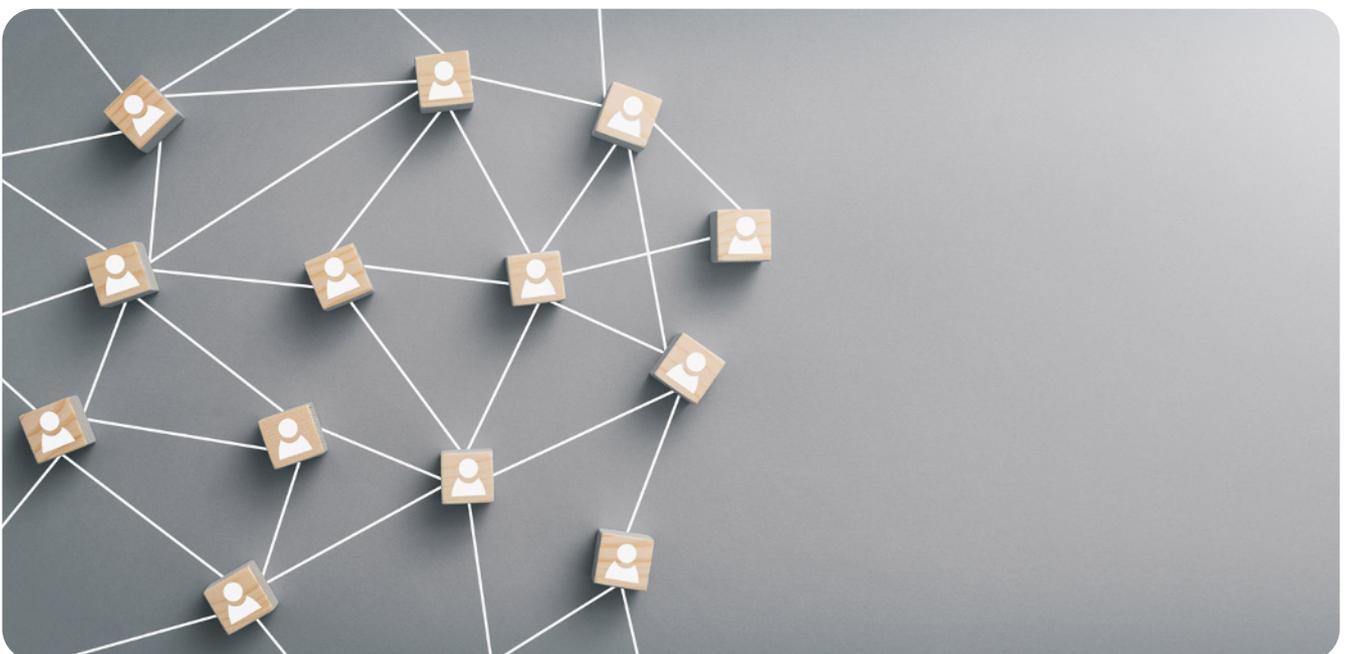
Additionally, ESMA continued to adapt to the new situation and prepare for the 'new normal' with several projects – by implementing a new visitor management tool, for example.

2.8. Management

2.8.1. Follow-up on audits and evaluations

In 2022, ESMA was audited for the first time by the European Data Protection Supervisor (EDPS). The audit focused on the processing of personal data in the context of its e-recruitment practices, which involved remote invigilation by an EU service provider using third country processors. The EDPS presented its final report and recommendations in October. ESMA had implemented all recommendations by January 2023, which led, among other things, to clarifying information provided to candidates on their data subject rights, including their right to object to the online processing of their personal data. In addition, during this audit, ESMA's service provider was found to not have implemented all required safeguards for international data transfers, and ESMA subsequently decided to stop using its services.

ESMA has put in place measures to ensure that all recommendations made by the internal and external auditors are promptly and adequately addressed within the agreed deadlines through dedicated action plans. ESMA follows up on all findings and





recommendations and reports to the Management Board on a periodic basis.

European Court of Auditors

ESMA is audited every year by the European Court of Auditors (ECA). The audit provides a statement of assurance of the reliability of the accounts of the authority and the legality and regularity of the underlying transactions.

The 2021 statement of assurance indicated that the accounts of the authority for the year ending on 31 December 2021 presented fairly, in all material respects, the financial position of the authority on 31 December 2021, the results of its operations, its cash flows and the changes in net assets. These were in accordance with its financial regulation and with accounting rules adopted by the Commission's accounting officer. It also stated that the revenues and payments underlying the annual accounts for the year ending 31 December 2021 were legal and regular in all material respects.

The 2021 ECA statement of assurance included observations relating to:

- Monitoring of publication of procurement procedures;
- internal rules in relation to the management of Col.

Three recommendations from previous years were considered outstanding, and ECA recognised that solving these recommendations is not under ESMA's control, as they relate to the need to resolve issues in the regulation of fees and the need to avoid cross-financing of fee-related activities.

The ECA audit of the 2022 annual accounts is ongoing. The draft report will be available by mid-2023.

Internal Audit Service

ESMA is also audited by the Internal Audit Service (IAS) of the Commission.

In 2022, the IAS performed an audit on Data Management in ESMA, IAS acknowledged ESMA's achievements in setting up its data management framework, as well as the continue efforts to define a more coherent vision on the data management activities. IAS identified weaknesses in both the design, and effective and efficient implementation of the internal control systems set up for the data management process. IAS did not identify any critical finding.

In the context of the audit, the IAS issued five recommendations (two of them very important) in the following areas:

- consistency and completeness of the framework applied across datasets;

- data quality dimensions;
- feedback from stakeholders;
- objective settings and performance indicators;
- data catalogue and data dictionary.

2.8.2. Follow-up on observations from the discharge authority

On 4 May 2022 the European Parliament adopted in its plenary meeting the report on discharge in respect of the implementation of the ESMA budget for the financial year 2020 (2021/2138(DEC)) – the '2020 discharge report'³⁵. The ESMA Regulation specifies that ESMA should provide a reasoned opinion on the position of the European Parliament and on any other observations provided by the European Parliament in the discharge procedure.

The corresponding opinion³⁶ was published on 25 July 2022 by ESMA and included the following key points in the light of the 2020 discharge report.

- Regarding its **funding model**, ESMA noted that due to the increasing complexity of its budget structure, which may hamper its ability to react to significant market events, the fee-funding model would deserve a revision, in particular to allow ESMA to manage more efficiently the growing number of fee sources derived from new direct supervisory mandates.
- On **resources**, ESMA recalled that it should be granted sufficient resources to be able to conduct its work effectively and respond to requests and market needs in high priority areas.
- With regard to the **prevention and management of conflicts of interest**, ESMA emphasised that, considering the serious financial market developments, it made use of a temporary ban on trading in selected financial instruments by its staff so as to avoid any risk of insider dealing.
- On **staff policy**, ESMA noted the European Parliament's recognition of its solid track record with regard to gender balance at both the management and staff levels and mentioned its



³⁵ https://www.europarl.europa.eu/doceo/document/TA-9-2022-0180_EN.pdf

³⁶ https://www.esma.europa.eu/sites/default/files/library/esma24-436-1333_esma_opinion_on_2020_discharge_report.pdf

intent to develop a "Diversity and Inclusion Policy", which would ultimately be part of ESMA's Human Resources Strategy.

2.8.3. Strategy for efficiency gains

ESMA continues to pursue efficiency gains and synergies in its areas of activity. This section gives some examples of areas in which efficiency gains have been or are being made.

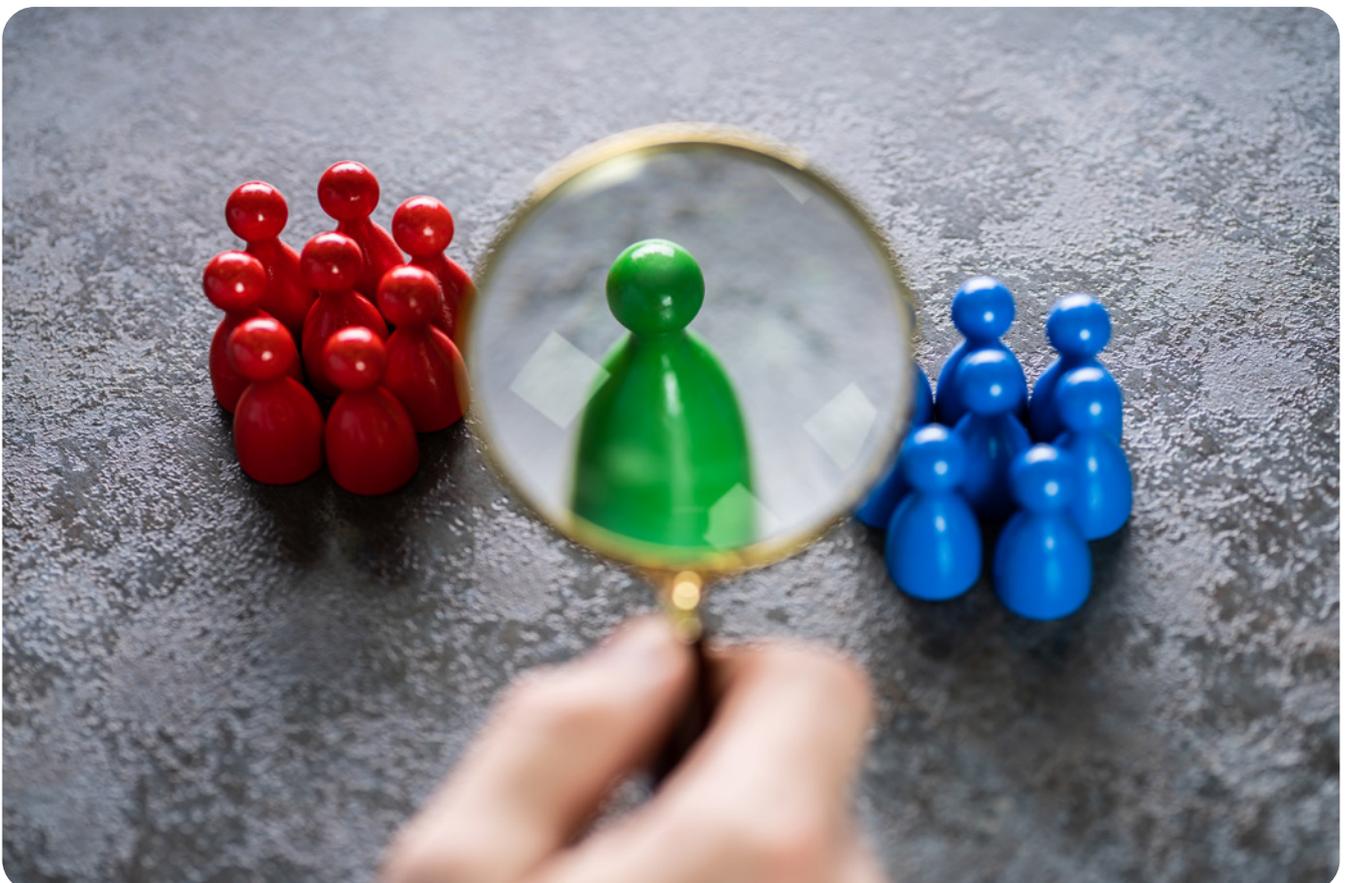
ESMA conducted an evaluation of its 2022 AWP to enhance efficiency. This review aimed to allocate resources effectively in response to external factors, such as the financial market impact of the Russian invasion of Ukraine and the number of parallel reviews and legislative proposals in ESMA's remit, and notably the European Single Access Point proposals, which were not envisaged when the 2022 AWP was published.

In terms of administrative efficiencies, ESMA had already made major efforts before 2022. In particular, the entirety of ESMA's administration and support functions (HR, ethics, finance, procurement and facility management processes) have been digitalised (zero paper) for several years. This has led to a general

improvement in efficiency in these areas, notably in terms of speed and reliability, while also reinforcing traceability and contributing to a greener environment by reducing paper consumption. In addition, in 2022, ESMA benefited from the migration of its ICT infrastructure to the public cloud (finalised in 2021), signifying a major step forward in terms of cost-efficiency too, as savings are expected when systems are scaled up, allowing ESMA to further streamline its IT budget.

In 2022, the high level of digitalisation and significant prior experience in teleworking allowed all key administrative functions to continue operating extremely satisfactorily and without disruption, as in 2020 and 2021 despite the persistence of the COVID-19 pandemic at the beginning of the year, which forced the staff to telework frequently. Regarding meetings, thanks to its prior investments in audio- and videoconferencing and with an online voting tool, ESMA continued to work smoothly during the COVID-19 pandemic.

The COVID-19 pandemic drove organizational change in 2022, with new ways of working for efficiency gains. ESMA adapted to the improving sanitary situation, gradually easing special measures. Lessons learned



continue to optimize operations, with new work approaches like teleworking and remote meetings. This transition towards a 'new normal' provided more flexibility for the organisation and a greater focus on the environmental performance, contributing to additional savings. Moreover, in the context of the energy crisis, ESMA designed and implemented an energy sobriety plan comprising various measures to further reduce energy consumption in its premises.

Among other areas in which efficiency gains have been made, a growing budget has been managed with a stable overall number of transactions, thanks to a continuous effort to simplify and optimise processes while respecting the financial rules; and procurement resources have been optimised by combining interinstitutional procedures and by leading major inter-agency procurement processes.

2.8.4. Delegation and subdelegation of the powers of budget implementation to ESMA's staff

Pursuant to Articles 73, 74 and 90 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of the European Union laying down detailed rules for the implementation of the financial regulation and the internal rules on the implementation of the budget, the Executive Director, as the authorising officer of ESMA, has delegated financial powers to the heads of department, heads of unit and team leaders, for the budget lines they are responsible for in line with their activities.

The ESMA subdelegation breakdown per budget line is organised to ensure:

- business continuity (e.g. through the identification of backups for each budget line);
- efficiency, through an appropriate balance between the maximum ceiling of each subdelegation and the authorising officer by subdelegation's responsibility in ESMA.

The authorising officers by subdelegation have to accept the delegations granted to them in writing, following Article 11a of the staff regulations of officials of the EU, Article 11 of the conditions of employment of other servants of the EU and paragraph 3.2 of the charter for authorising officers by subdelegation.



On a yearly basis, ESMA controls the implementation of the subdelegations granted by the Executive Director in accrual-based accounting.

2.9. Internal control

2.9.1. Effectiveness of the internal control system

The internal control framework supplements the financial regulation and other applicable rules and regulations with a view to aligning ESMA's standards with the highest international standards set by the Committee of Sponsoring Organisations of the Treadway Commission (COSO) internal control integrated framework. ESMA's internal control framework was adopted by its Management Board in November 2018, replacing the previously approved 2012 internal control standards.

The COSO framework was reviewed in 2013 to move from a compliance-based to a principle-based system, with the aim of ensuring robust internal control through consistent assessment, while providing the necessary flexibility to allow it to be adapted to the specific characteristics and circumstances of different businesses. To keep up with these recent changes in international best practice, it was appropriate to update ESMA's internal control framework accordingly.

ESMA's internal control framework consists of five internal control components, which are built on 17 principles, based on the COSO 2013 internal control integrated framework and further supported by several characteristics.

To assess the status of the internal control system in 2022, in Q1 2023 ESMA performed its annual self-



assessment of the effectiveness of the implementation of the internal control principles in accordance with the framework.

2.9.2. Conclusions of the assessment of internal control systems

The main objective of the self-assessment is to analyse in detail whether all of the internal control principles are present and functioning in the organisation.

To do so, in 2021 ESMA measured 77 internal control indicators, covering all internal control principles, as a primary source of information. In addition, ESMA analysed secondary sources of information, including audit reports.

This information allowed ESMA to identify the main strengths and deficiencies of each principle and assess each principle and component. In total, ESMA identified 42 deficiencies, most of which were minor or moderate and none of which called into question the presence and proper functioning of the principles. ESMA concluded in its self-assessment that the internal control system was present and functioning well. Some improvements are needed, mainly in the control environment, control activities and information and communication components.

2.9.3. Risk management

ESMA operates in an ever-changing environment with many uncertainties. ESMA has developed an annual process of identifying and assessing risks to assist in the mitigation of risks that could threaten the delivery of its mission. The annual organisational risk assessment takes a combination of bottom-up and top-down approaches: the bottom-up approach involves identifying risks at the department level and the top-down approach involves a management assessment and evaluation of strategic risks considering the input from departments. Significant risks are then reviewed by ESMA's Management Board, which endorses the risks and action plans.

The top risks identified during the assessment are summarised and included in ESMA's programming document. The top risks identified in 2022 in relation to the 2023 work programme were:

- Fragile, more volatile markets may affect financial stability, put at risk investors and increase supervisory risk for ESMA, with potential impact on its reputation. Reprioritization of activities at ESMA might be needed in the event of a crisis
- High number of new legislative proposals and uncertainties in timing and final outcome impacting the correct planning and delivery of



our mandates. Subsequent potential reputational risk depending on the outcome of the proposals.

- Risk of inadequate resources or lack of expertise in certain areas to adapt to the new challenges and new ESMA strategy putting delivery or quality of ESMA's work at risk and eventually damaging ESMA's reputation.
- Risk of a cyberattack targeting ESMA and affecting the security of IT systems and/or the underlying data and eventually affecting ESMA's operations or reputation.

2.9.4. Ethics, anti-fraud measures and the management of conflict of interests

ESMA upholds ethical standards in all aspects of operations. Ethical considerations include ensuring the fair treatment of all stakeholders, protecting confidential information and promoting transparency. Anti-fraud measures are also critical to prevent fraudulent activities within the organisation or by external parties. Additionally, managing conflicts of interest is crucial to maintaining the integrity of the organisation.

ESMA's work on its ethical framework, anti-fraud measures and management of conflict of interest is detailed in Section 2.8.2.

2.9.5. Statement of the manager in charge of risk management and internal control

I, the undersigned, Manager in charge of risk management and internal control within ESMA,

In my capacity as Manager in charge of risk management and internal control, I declare that in accordance with ESMA's Internal Control Framework, I have reported my advice and recommendations on the overall state of internal control in the Agency to the Executive Director.

I hereby certify that the information provided in this report and in its annexes is, to the best of my knowledge, accurate, reliable and complete.

Paris, 16 May 2023

Jakub Michalik

Acting Head of Governance and External Affairs
Department
European Securities and Markets Authority

2.10. Declaration of assurance

2.10.1. Review of the elements supporting assurance

The level of reasonable assurance is down to the personal judgement of ESMA's Executive Director and the authorising officers by delegation, based on all information at their disposal. This information can be structured around pillars or building blocks of assurance.

The main building blocks of the Executive Director's declaration of assurance are:

- the Executive Director's own knowledge of the management and control system in place;
- the observations of the ECA known at the time of the declaration;
- the observations of the IAS known at the time of the declaration;
- the declarations of assurance made by the authorising officers by delegation to the Executive Director;
- the results of the assessment of the internal control system;
- the *ex ante* and *ex post* controls;
- the validation of the accounting systems;
- an analysis of the list of recorded exceptions;

- a summary of European Anti-Fraud Office activities relevant to ESMA.

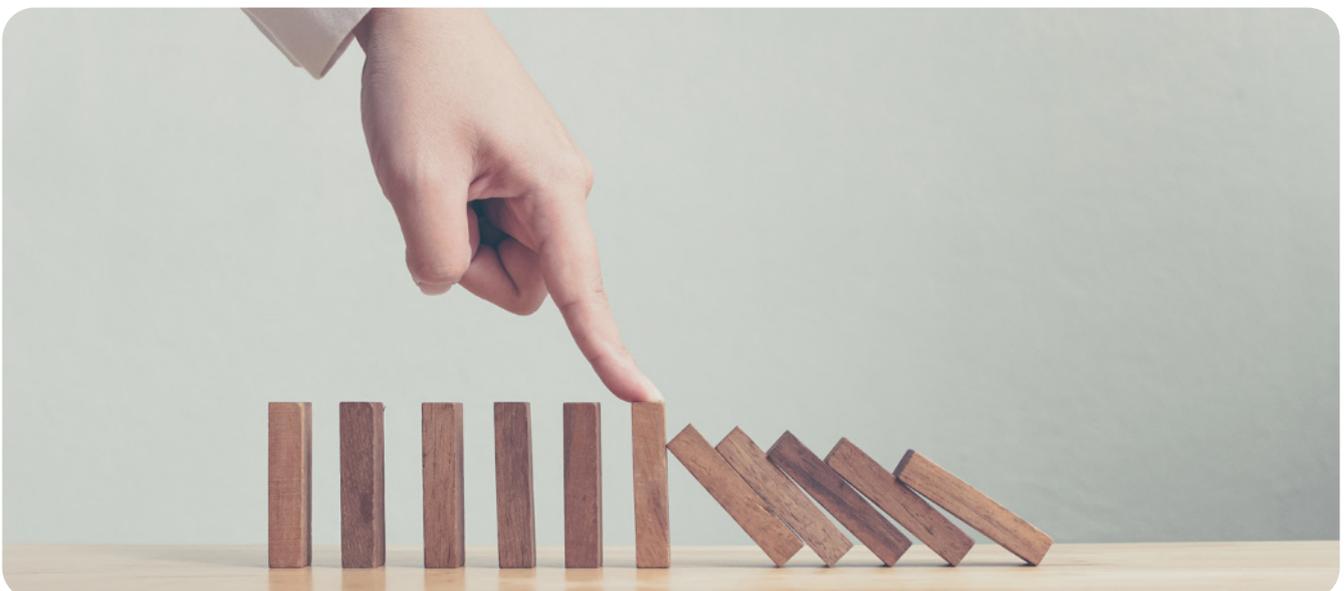
In support of the annual activity report, all authorising officers and heads of department are asked to sign a declaration of assurance for their areas of responsibility.

The purpose of these declarations is to confirm, on the basis of the facts in their possession, that the information contained in the report gives a true and fair view – except if otherwise specified in any reservations related to defined areas of revenue and expenditure – and that the resources assigned have been used for their intended purpose and in accordance with the principles of sound financial management. The heads of department and the authorising officers by delegation confirmed their reasonable assurance that, overall, suitable controls are in place and working as intended and that the risks identified are being appropriately monitored and mitigated.

Given the control system in place, the information obtained from the building blocks above and the lack of critical findings from the ECA and the IAS at the time of the declaration, there is no reason to question the efficiency and effectiveness of the control system in place.

2.10.2. Reservations

Based on the assurance provided by the control system in place, the Executive Director sees nothing that would justify or require having any reservations.



Materiality criteria used

In line with the guidelines on the preparation of the annual activity report, ESMA used the qualitative and quantitative materiality criteria described below to assess whether the issues identified merited having any reservations.

Qualitative criteria used

ESMA considers any weakness in the internal control system that falls under certain qualitative criteria to be significant, namely:

- significant errors detected during the control exercises;
- a significant weakness in the control system;
- situations in which ESMA does not have sufficient evidence from the internal control system or audit coverage to be confident in providing the necessary assurance;
- situations in which a major issue has been highlighted by the ECA or the IAS of the Commission (critical audit recommendations for underlying weaknesses) relevant to the area covered by the declaration of assurance that are not adequately addressed by other internal controls and for which the materiality threshold is exceeded;

- situations revealed through ESMA's own control work or audits in which significant risks remain unmitigated;
- a significant reputational risk.

Quantitative criterion used

In accordance with the Commission's guidelines on the preparation of annual activity reports, the ECA uses a 2 % materiality threshold. ESMA has therefore set the quantitative criterion of materiality at 2 % of its total budget.

2.10.3. Overall conclusions on assurance

Taking into account the review of the elements supporting assurance, the Executive Director is of the opinion that the management and control systems in place at ESMA are working as intended, that risks are being appropriately monitored and mitigated, and necessary improvements and reinforcements are being implemented.

Based on all of the facts presented in the report and in the light of the opinions expressed by the ECA on the reliability of the accounts and on the legality and regularity of the transactions underlying the accounts, ESMA can conclude that the systems in place provide



reasonable assurance that the resources under the responsibility of the Executive Director were used for their intended purposes and in accordance with the principles of sound financial management.

2.10.4. 2022 declaration of assurance by the Executive Director of ESMA

I, the undersigned, Executive Director of the European Securities and Markets Authority,

In my capacity as authorising officer,

Declare that the information contained in this report gives a true and fair view.

State that I have reasonable assurance that the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound

financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

This reasonable assurance is based on my own judgement and on the information at my disposal such as the results of the self-assessment, ex-post controls, the work of the Internal Audit Service and the lessons learnt from the reports of the Court of Auditors for years prior to the year of this declaration.

Confirm that I am not aware of anything not reported that could harm the interests of European Securities and Markets Authority.

Paris, 22 May 2023

Natasha Cazenave

Executive Director

European Securities and Markets Authority



3. Annexes

ANNEX I – Reporting on key performance indicators

ESMA has defined a list of key performance indicators (KPIs) that are regularly reported to the Management Board. ESMA's work programme in 2022 was measured against these indicators.

| Activity | KPI | Target | 2021 results | 2022 results |
|---|---|--------|--------------|--------------|
| Promoting supervisory convergence | Business-related KPIs | | | |
| | Number of cases of non-compliance with guidelines and recommendations | N/A | 28 | 25 |
| | Number of peer reviews conducted | 4 | 1 | 4 |
| | IT project-related KPIs | | | |
| | IT systems delivered compared with those planned (%) | 80 | 93 | 87 |
| | Projects' budget execution for the current year (%) | 95 | 97 | 96 |
| | Maintenance budget execution for the current year (%) | 95 | 100 | 96 |
| | Open tickets versus closed tickets (%) | > 95 | 99.3 | 99.3 |
| Assessing risks to investors, markets and financial stability | Number of risk topics analysed | 8 | 12 | 10 |
| | Number of risk monitoring reports delivered against the annual work programme, including ESMA trends, risks and vulnerabilities reports (2), ESMA risk dashboards (2), Joint Committee of the European supervisory authorities risk reports (2) and ESMA annual statistical reports (4) | 10 | 10 | 10 |
| | Data and statistics: coverage of ESMA databases under central data management (%) | 90 | 82 | 80 |
| Direct supervision of specific financial entities | Cases that met the time designated for the overall enforcement process (%) | > 50 | 67 | 100 |
| | Risk scenarios that triggered a supervisory action and resulted in a drop in the risk following the action (%) | > 70 | 74 | 70.5 |
| Single rulebook | Technical standards reviewed (%) | N/A | 16 | 16 |

| Activity | KPI | Target | 2021 results | 2022 results |
|-----------------------------|--|--------|--------------|--------------|
| Organisational implications | Rate of implementation of commitment appropriations (%) | > 95 | 99.94 | 99.7 |
| | Rate of cancellation of payment appropriations (%) | < 5 | 4.3 | 5.1 |
| | Rate of payments executed within legal/contractual deadlines (%) | > 95 | 97.8 | 97.2 |
| | Average vacancy rate (%) | < 10 | 4 | 6 |
| | Staff turnover rate (%) | < 10 | 3.6 | 2.6 |
| | Completion of the activities of the annual work programme (%) | > 85 | 91 | 90 |
| | Rate of implementation of audit recommendations (%) | > 85 | 75 | 80 |

NB: N/A, not applicable.

ANNEX II – Statistics on financial management

Costs and benefits of controls

The controls in place are designed to optimise their effectiveness and efficiency, by striking the right balance between the benefits of the controls, regarding in particular the legality and regularity of the underlying transactions, and the effectiveness and efficiency of the controls considering the risks involved.

ESMA estimated the costs of controls in 2022. The calculation method was inspired by the approach used by the European Commission and the guidelines provided by the Performance Network of EU agencies. ESMA has estimated the cost of controls in 2021. The estimated costs of controls include the salary costs (including social charges) of the staff directly involved in the relevant control systems. These activities were centred on the following areas: finance and verification processes, ex-ante and ex-

post controls, procurement monitoring and control, budgetary and accounting activities as well as external financial audit coordination for ex-post controls.

Considering the above, in 2022, ESMA allocated EUR 0.89 million to control activities, amounting to 1.31 % of its total budget for 2022.

Regarding the effectiveness of the controls, the ECA has given ESMA an unqualified opinion on the 2021 accounts. No other indications were found that the controls in place were not effective. Regarding the efficiency and economy of the controls, no serious anomalies were reported to bring these into question. Considering the positive results of the *ex-ante* and *ex post* controls, the absence of critical recommendations stemming from audits, the well-established framework for managing exceptions, the regularity of operations and the overall balance between the effectiveness, efficiency and economy of the controls is reasonably satisfactory.

Budget execution C1

| 2022 C1 | Voted budget | | | Payments (3) | | To be carried forward (4) | |
|---------------------|--------------------------------|-------------------|---------------|-------------------|---------------|---------------------------|---------------|
| | for 2022 (after transfers) (1) | Commitments (2) | (2) / (1) (%) | Paid (EUR) | (3) / (1) (%) | (2) – (3) (EUR) | (4) / (1) (%) |
| ESMA's budget title | Budget for 2022 (EUR) | Committed (EUR) | (2) / (1) (%) | Paid (EUR) | (3) / (1) (%) | (2) – (3) (EUR) | (4) / (1) (%) |
| I | 43 658 143 | 43 642 855 | 99.96 | 43 151 781 | 98.84 | 491 075 | 1.12 |
| II | 8 106 124 | 7 999 683 | 98.69 | 6 978 005 | 86.08 | 1 021 678 | 12.60 |
| III ³⁷ | 15 904 284 | 15 197 078 | 95.55 | 10 657 028 | 67.01 | 4 538 770 | 28.54 |
| IV | | | | | | | |
| Total C1 | 67 668 551 | 66 839 617 | 98.78 | 60 788 094 | 89.83 | 6 051 523 | 8.94 |

NB: Appropriations corresponding to the EU contribution for the current year.

³⁷ EUR 641 000 on Budget Line IT costs were not committed at the end of 2022. However, they have been manually carried over to be committed under C2 fund source by 31 March 2023. In case those are considered as committed (the appropriations are inscribed in 2022 budget but are to be committed in 2023), the commitment implementation rate of Title 3 is 15 838 078 (99.58 %) and the total commitment rate for all titles 67 480 617 (99.72 %).

ESMA spent 99.72 % of its 2022 budget, amounting to EUR 67 668 551 (excluding the contributions from the NCAs and other external entities for the IT delegated task, which represented EUR 400 000 in 2022 and

EUR 147 593 fund from DG Reform for the establishment of the EU Supervisory Digital Finance Academy).

Number and value of budget transfers

| ESMA's Budget Title | 2022 INITIAL BUDGET (A) | 1st budget transfer | 2nd budget transfer | 3rd budget transfer | 1st budget amendment | 4th budget transfer | 2022 FINAL BUDGET (B) | B-A | VAR % |
|---------------------------------------|-------------------------|---------------------|---------------------|---------------------|----------------------|---------------------|-----------------------|----------------|-----------|
| 1 Staff | 44,783,152 | 8,000 | (245,000) | (936,000) | — | 55,992 | 43,658,144 | (1,125,008) | -3% |
| 2. Infrast & Admin. | 8,060,000 | 77,000 | 82,116 | 20,000 | — | (55,992) | 8,106,124 | 46,124 | 1% |
| 3. Operating expenditure | 14,072,769 | (85,000) | 162,884 | 916,000 | 752,630 | — | 15,904,283 | 1,831,514 | 13% |
| 4. Delegated Tasks - only core budget | 66,000 | — | — | — | — | — | — | (66,000) | -100% |
| TOTAL | 66,981,921 | — | — | — | 752,630 | — | 67,668,551 | 686,630 | 1% |

Interest charged for late supplier payments

In 2022, ESMA paid a total amount of interest for late payments to suppliers of EUR 228.14.

Budget outturn and cancellation of appropriations (data from provisional accounts for 2022) (EUR)

| Calculation of budget outturn | 2020 | 2021 | 2022 |
|--|------------------|----------------|----------------|
| Reserve from the previous year's surplus | — | — | — |
| Revenue actually received | 54 762 442 | 60 881 221 | 68 004 840 |
| Payments made | (46 106 125) | (54 236 666) | (61 638 627) |
| Carry-over of appropriations | (8 137 815) | (7 422 820) | (7 687 350) |
| Cancellation of appropriations carried over | 352 306 | 301 931 | 300 324 |
| Adjustment for carry-over of assigned revenue appropriation from previous year | 725 157 | 1 081 073 | 1 532 034 |
| Exchange rate differences | (2 168) | (994) | (3 582) |
| Adjustment for negative balance from previous year | — | — | — |
| Total | 1 593 797 | 603 746 | 507 639 |

Budget outturn

For the calculation of budget outturn, the following parameters are considered. The revenue entered in the accounts is the amount actually received during the year. For the purposes of calculating the budget result for the year, expenditure comprises payments made against the year's appropriations plus any of the appropriations for that year that are carried over to the following year. Payments made against the year's appropriations are payments that are made by the accounting officer by 31 December of the financial year.

The following are added to or deducted from the resulting figure: the net balance of cancellations of payment appropriations carried over from previous years; any payments that, because of fluctuations in the euro rate, exceed non-differentiated appropriations carried over from the previous year; and the balance of exchange-rate gains and losses recorded during the year.

Payment appropriations carried over include automatic carry-overs and carry-overs by decision. The cancellation of unused payment appropriations

carried over from the previous year includes the cancellations on appropriations carried over automatically and by decision. It also includes the decrease in assigned revenue appropriations carried over to the next year in comparison with the previous year.

C1 cancelled appropriations

ESMA uses non-differentiated appropriations for its C1 credits. In 2022, the total amount of appropriations inscribed as C1 funds that were not used³⁸ at the end of the year equalled EUR 186 655.

C8 cancelled appropriations

In 2022, out of a total of EUR 5 890 785 C8 payment appropriations, 94.90 % was consumed (EUR 5 590 461). A total of EUR 300 324 (or 5.10 % of the C8 appropriations for the year) was cancelled.

³⁸ EUR 641 000 on Budget Line IT costs were not committed at the end of 2022. However, they were manually carried over to be committed under C2 fund source by 31 March 2023.

ANNEX III – Establishment plan and benchmarking exercise

ESMA's staff population in 2022 (all categories of staff)

| Staff population | | Headcount as of 31 December 2021 | Headcount as of 31 December 2022 |
|------------------|----------|-------------------------------------|-------------------------------------|
| Officials | ADs | — | — |
| | ASTs | — | — |
| | ASTs/SCs | — | — |
| TAs | ADs | 205 | 211 |
| | ASTs | 8 | 8 |
| | ASTs/SCs | — | — |
| Total TAs | | 213 | 219 |
| CAs (FG IV) | | 55 | 62 |
| CAs (FG III) | | 30 | 29 |
| CAs (FG II) | | — | — |
| CAs (FG I) | | — | — |
| Total CAs | | 85 | 91 |
| SNEs | | 10 | 12 |
| Total | | 308 | 322 |

NB: AD, administrator; AST, assistant; FG, function group; SC, secretary.

Benchmarking against the previous year's results

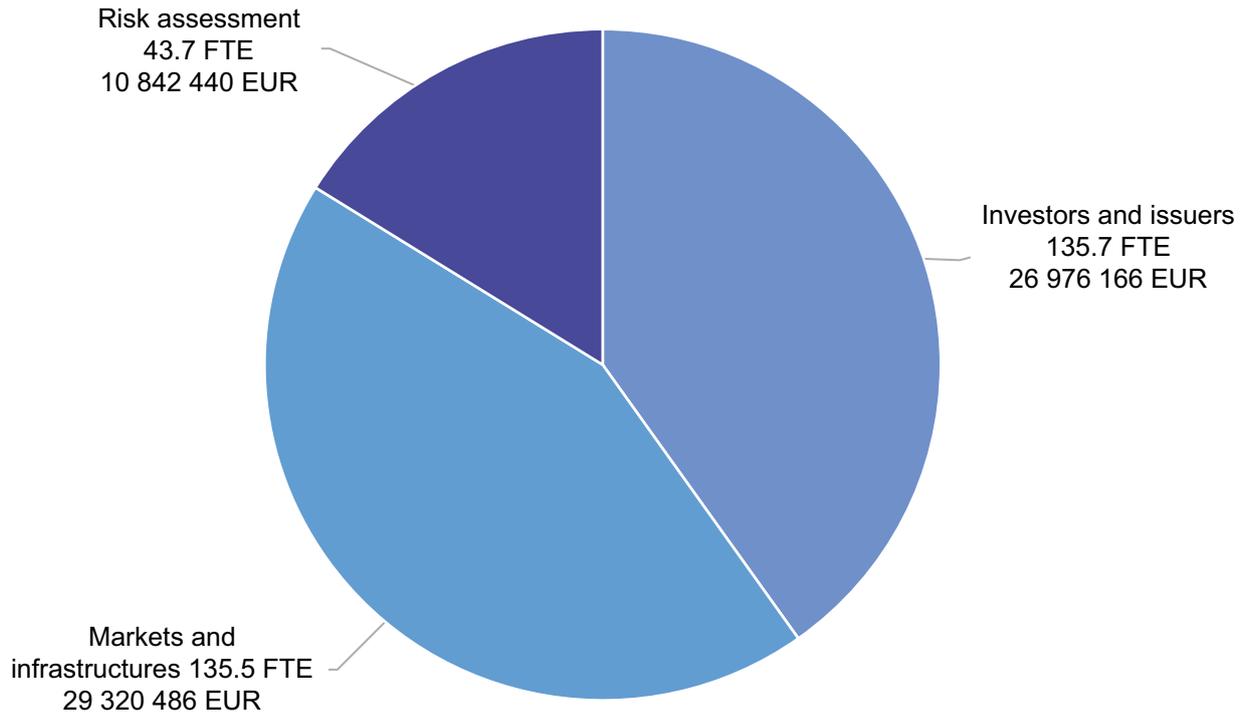
The table below outlines the results of the seventh job-screening exercise conducted in ESMA and in all EU regulatory agencies. The exercise is based on Articles 29(3) and 38(1) of the framework financial regulation. The methodology was designed by a working group including representatives from different EU agencies (including ESMA) and from the Commission (the Directorate-General for Budget, the Directorate-General for Human Resources and Security and the Secretariat-General). It was generated as an adaptation and clarification of the Commission's job-screening methodology, which it had been implementing for several years.

| Job (sub)category | 2021 (%) | 2022 (%) |
|--|-------------|-------------|
| Administrative support and coordination | 15.9 | 16.4 |
| Administrative support | 13.2 | 13.5 |
| Coordination | 2.7 | 2.9 |
| Operational | 79.7 | 79.6 |
| General operational activities | 15.1 | 15.1 |
| Programme management and implementation | 45.9 | 47.5 |
| Top operational coordination | 5.2 | 5.1 |
| Evaluation and impact assessment | 13.5 | 11.9 |
| Neutral | 4.4 | 4.0 |
| Accounting, finance, non-operational procurement, contract management and quality management, internal audit and control | 4.4 | 4.0 |
| Linguistic activities | 0 | 0 |

NB: Reference date – 31 December 2021/2022.

ANNEX IV – Human and financial resources by activity

The total costs for 2022 amount to **EUR 67 139 092**, with **314.9** internal full-time equivalents (TAs, CAs and SNEs), excluding EUR 811 572 and 0.6 full-time equivalents for the delegated projects.



NB: FTE, full-time equivalent.

ANNEX V – Contribution, grant and service-level agreements (SLAs)

At the end of 2022, ESMA had in place the following service-level agreements with other EU institutions.

| Entity | Topic | Starting year |
|---|--|---------------|
| CdT | Translation services | 2018 |
| CERT-EU | IT security support | 2014 |
| EASA | EASA inter-agency permanent secretariat | 2016 |
| EBA | Accounting services | 2021 |
| EBA – EIOPA | Article 31a of the European supervisory authorities regulation concerning the design and implementation of a system which consists of a database of holders | 2022 |
| EFSA | Inter-agency cost-sharing agreement (shared support office) | 2018 |
| EPSO-EUSA | EPSO – assistance to institutions, agencies and bodies at their request, with a view to selecting officials, TAs and CAs EUSA – training | 2019 |
| European Commission | Medical services | 2011 |
| European Commission – DG Budget | Use of ABAC and ABAC-data warehouse data extraction | 2013 |
| European Commission – DG Human Resources | Accredited European schools | 2021 |
| European Commission – DG Human Resources | Human resource services (learning and development, health and well-being) | 2018 |
| European Commission – DG for Informatics | Digital services | 2019 |
| European Commission – DG REFORM | REFORM/SLA2022/001- EU Supervisory Digital Finance Academy: Strengthening supervisory capacity in innovative digital finance | 2022 |
| European Commission – OIB | Provision of services such as designing, printing and dispatching of documents ordered by the Agency and services rendered by the statutory staff of OIB in the execution of the tasks linked to the SLA | 2012 |
| European Commission – PMO | General assistance to the authority and sharing IT applications | 2018 |
| European Commission – PMO | Services provided by the PMO on the basis of the staff regulations | 2015 |
| European Commission – PMO | Conditions under which the PMO provides services, goods or work to the client | 2021 |
| Publications Office of the European Union | Production of the general publications of ESMA and related services | 2015 |

NB: ABAC, accrual-based accounting; CdT, Translation Centre for the Bodies of the European Union; CERT-EU, Computer Emergency Response Team for the EU institutions, bodies and agencies; DG, Directorate-General; EASA, European Union Aviation Safety Agency; EBA, European Banking Authority; EFSA, European Food Safety Authority; EIOPA, European Insurance and Occupational Pensions Authority; EPSO, European Personnel Selection Office; EUSA, European School of Administration; OIB, Office pour les infrastructures et la logistique; PMO, Office for the Administration and Payment of Individual Entitlements.

The above service-level agreements allow ESMA to access high-quality and specialised services and – at the same time – benefit from economies of scale, good prices and efficiency gains. Overall, the financial impact is positive.

ANNEX VI – Environmental management

ESMA has put in place an environmental management system (EMS), which was recognised in 2022 under the European Eco-Management and Audit Scheme (EMAS) and the ISO 14001 standards.

EMAS is a premium management instrument developed by the Commission for companies and other organisations to evaluate, report and improve their environmental performance.

In the past years, ESMA conducted an environmental review to determine its environmental impact and to ensure compliance with the EU and the national and local environmental requirements. The scope of the EMS covers both ESMA's operations and activities and its mandates regarding sustainability and the integration of environmental, social and governance factors into its mission of enhancing the protection of investors and promoting stable and orderly financial markets.

ESMA's environmental policy adopted in 2017 makes the following commitments to reduce the environmental impact of its work and to improve its environmental performance:

- minimise the consumption of energy, water, paper and other resources;
- encourage the prevention of waste and environmental pollution, by maximising the recycling and reuse of items and by optimising their disposal;
- take necessary measures to reduce CO₂ emissions and minimise the impact of mobility and travel; and
- comply with relevant environmental legislation, administrative regulations and other requirements.

To honour these commitments, ESMA has been working with its staff and suppliers to minimise waste, improve recycling and reduce traveling (e.g. by making better use of technology to achieve a paperless office and to make greater use of video conferencing). The entire ESMA administration

(human resources, finance and procurement, facility management, ethics and translations processes) has been digitalised for several years. In addition, ESMA's new premises (from 2019) have the High Environmental Quality Certification, which is France's standard for green buildings, based on the principles of sustainable development, for its construction, conception and operation.

To improve its environmental performance, ESMA continually assesses the environmental impact of its actions. It sets objectives and targets and reviews them on a regular basis.

ESMA's environmental policy was revised in 2022 to take into consideration the recent changes in ESMA's context. The scope was aligned with the EMS and a new commitment was added to include environmental factors into ESMA's work, as a transversal topic, in line with the ESMA regulation.

This policy is relevant for staff and stakeholders that may influence ESMA's environmental management system.

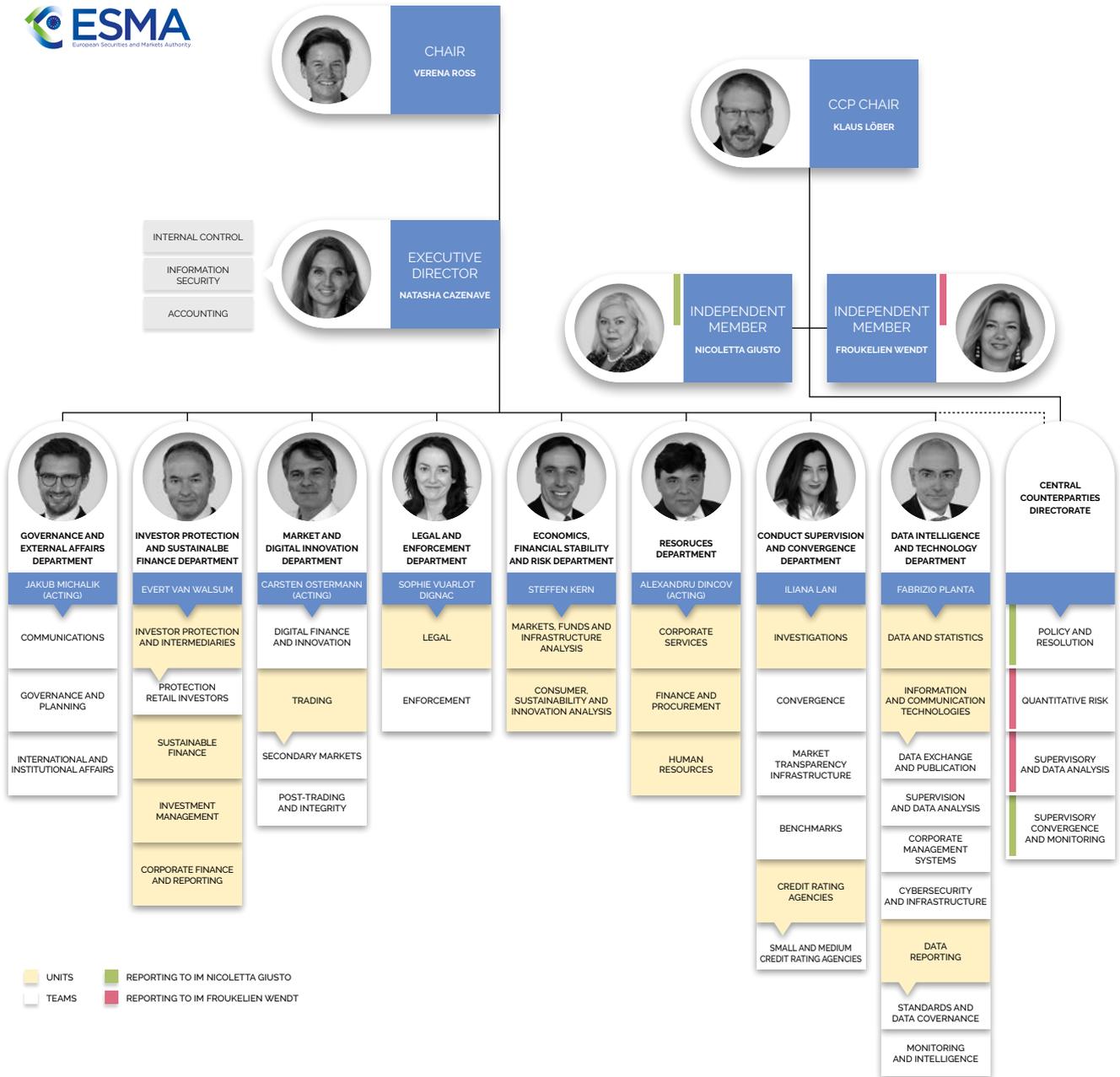
Measurement and monitoring of impact or progress towards goals achievement is done through the key performance indicator control panel. Frequency is dependent on each indicator.

The action plan's progress (percentage of actions closed) is monitored at least on a quarterly basis by the environmental coordinator and regularly discussed with ESMA's management.

The EMAS registration of ESMA in 2022 was a major milestone for the organisation. It was issued by the French Ministry for the Ecological Transition on 10 September 2022 for a duration of 3 years and covers all ESMA's operational and core business activities. ESMA is the 100th organisation registered with EMAS in France. ESMA's first Environmental Statement³⁹ was officially published on its website on 24 October 2022. The registration will help to ensure that continuous progress is achieved towards the organisation's environmental objectives.

³⁹ <https://www.esma.europa.eu/document/esma-environmental-statement>.

ANNEX VII – Organisational chart as of 1 January 2023



ANNEX VIII – ESMA's boards and standing committees

The ultimate decision-making body of ESMA is the Board of Supervisors, whereas the Management Board ensures that the authority carries out its mission and performs the tasks assigned to it.

ESMA's boards and their composition

Members of the Management Board as of 1 January 2023

| Member | Authority | Country |
|----------------------|---|-------------|
| Verena Ross | ESMA (Chair) | — |
| Eduard Müller | Finanzmarktaufsicht (FMA) | Austria |
| Thorsten Pöttsch | Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) | Germany |
| Derville Rowland | Central Bank of Ireland (CBI) | Ireland |
| Vasiliki Lazarakou | Hellenic Capital Market Commission (HCMC) | Greece |
| Jos Heuvelman | Autoriteit Financiële Markten (AFM) | Netherlands |
| Rodrigo Buenaventura | Comisión Nacional del Mercado de Valores (CNMV) | Spain |
| Ugo Bassi | European Commission (non-voting member) | — |
| Natasha Cazenave | ESMA Executive Director (non-voting member) | — |
| Vojtěch Belling | ESMA Vice-Chair (observer) | — |

Members of the Board of Supervisors as of 1 January 2023

| Member | Authority | Country |
|--------------------------|--|-----------|
| Verena Ross | ESMA (Chair) | — |
| Jean-Paul Servais | Financial Services and Markets Authority (FSMA) | Belgium |
| Mariya Filipova | Комисията за финансов надзор (FSC) | Bulgaria |
| Vojtěch Belling | Czech National Bank (CNB) | Czechia |
| Karen Dorte Abelskov | Finanstilsynet | Denmark |
| Thorsten Pöttsch | Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) | Germany |
| Andre Nõmm | Finantsinspektsioon (FSA) | Estonia |
| Derville Rowland | Central Bank of Ireland (CBI) | Ireland |
| Vasiliki Lazarakou | Hellenic Capital Market Commission (HCMC) | Greece |
| Rodrigo Buenaventura | Comisión Nacional del Mercado de Valores (CNMV) | Spain |
| Marie-Anne Barbat-Layani | Autorité des marchés financiers (AMF) | France |
| Ante Žigman | Hrvatska agencija za nadzor financijskih usluga (HANFA) | Croatia |
| Carlo Comperti | Commissione Nazionale per le Società e la Borsa (CONSOB) | Italy |
| George Theocharides | Επιτροπή Κεφαλαιαγοράς Κύπρου (Cyprus Securities and Exchange Commission) | Cyprus |
| Santa Purgaile | Finanšu un kapitāla tirgus komisija (FKTK) | Latvia |
| Vaidas Cibas | Lietuvos Bankas | Lithuania |

| Member | Authority | Country |
|-----------------------|--|-------------|
| Claude Marx | Commission de Surveillance du Secteur Financier (CSSF) | Luxembourg |
| Gergő Szeniczey | Magyar Nemzeti Bank (MNB) | Hungary |
| Christopher Buttigieg | Malta Financial Services Authority (MFSA) | Malta |
| Jos Heuvelman | Autoriteit Financiële Markten (AFM) | Netherlands |
| Eduard Müller | Finanzmarktaufsicht (FMA) | Austria |
| Rafał Mikusinski | Komisja Nadzoru Finansowego (KNF) | Poland |
| Luis Laginha De Sousa | Comissão do Mercado de Valores Mobiliários (CMVM) | Portugal |
| Gabriel Gradinescu | Autoritatea de Supraveghere Financiară (ASF) | Romania |
| Anka Čadež | Agencija za trg vrednostnih papirjev (ATVP) | Slovenia |
| Peter Tkac | Národná Banka Slovenska (NBS) | Slovakia |
| Armi Taipale | Finnish Financial Supervisory Authority (FSA) | Finland |
| Susanna Grufman | Finansinspektionen (FI) | Sweden |

Non-voting members of the Board of Supervisors as of 1 January 2023

| Member | Authority | Country/organisation |
|---------------------------|--|---------------------------------|
| Björk Sigurgisladottir | Central Bank of Iceland | Iceland |
| Reto Degen | Finanzmarktaufsicht (FMA) | Liechtenstein |
| Anne Merethe Bellamy | Finanstilsynet | Norway |
| Ugo Bassi | European Commission | EU |
| François-Louis Michaud | European Banking Authority (EBA) | EU |
| Fausto Parente | European Insurance and Occupational Pensions Authority | EU |
| Francesco Mazzaferro | European Systemic Risk Board | EU |
| Jonina SIGRUN LARUSDOTTIR | European Free Trade Association Surveillance Authority | European Free Trade Association |

Standing committees and working groups

ESMA's work is supported by standing committees⁴⁰, working groups and task forces, which bring together senior experts. The different ESMA standing committees are established on a permanent basis and prepare the technical work for all areas of ESMA's activities. Each committee is chaired by a board member and supported by ESMA staff. Many standing committees also have consultative working groups made up of external stakeholder representatives.

On 1 January 2023, ESMA reorganised the structure and remit of its standing committees to align it with its recently published 2023-2028 Strategy.

| Standing committee | Chair |
|--|----------------------------------|
| CCP Supervisory Committee | Klaus Löber, ESMA |
| CCP Policy Committee | Klaus Löber, ESMA |
| Risk Standing Committee (RSC) | George Theocharides, Cyprus |
| Senior Supervisors Forum (SSF) | Jos Heuvelman, Netherlands |
| ESMA Supervision Policy Committee (ESPC) | Natasha Cazenave, ESMA |
| Investor Protection Standing Committee (IPSC) | Marie-Anne Barbat-Layani, France |
| Sustainability Standing Committee (SSC) | Thorsten Pöttsch, Germany |
| Digital Finance Standing Committee (DFSC) | Carlo Comporti, Italy |
| IT Standing Committee (ITSC) | Alexandru Dincov, ESMA |
| Data Standing Committee (DSC) | Armi Taipale, Finland |
| Issuers Standing Committee (ISC) | Karen Dorte Abelskov, Denmark |
| Markets Standing Committee (MSC) | Rodrigo Buenaventura, Spain |
| Investment Management Standing Committee (IMSC) | Derville Rowland, Ireland |
| Proportionality and Coordination Committee (PCC) | Christopher Buttigieg, Malta |

⁴⁰ Standing Committees (europa.eu).

ANNEX IX – Overview of the activities of the Securities and Markets Stakeholder Group

The Securities and Markets Stakeholder Group (SMSG) was established under the ESMA regulation to facilitate consultation with stakeholders in areas relevant to ESMA's tasks. In 2022, the SMSG held seven meetings, two of which were held together with ESMA's Board of Supervisors.

In July 2022, ESMA launched a call for candidates with the intention to create a reserve list of candidates to be potentially appointed as members of the SMSG. The SMSG, during its 8 July 2022 meeting, re-elected Veerle Colaert as its Chair and Christiane Hölz and Rainer Riess as its Vice-Chairs.

The rules of procedure of the SMSG⁴¹ stipulate that ESMA include in its annual report an overview of the activities of the group, including a summary of any reports and other advice it has formulated throughout the year. In 2022, the SMSG produced the following advice and reports. These were either in response to a consultation launched by ESMA or a result of the group's own initiative. All these documents are available on ESMA's website⁴²:

- SMSG advice to the ESAs on their joint call for evidence on the European Commission mandate regarding the packaged retail and insurance-based investment products regulation (4 January 2022);
- SMSG advice to ESMA with regards to the impact of inflation on investor protection (27 April 2022);
- ESMA advice to ESMA on its consultation paper on guidelines on certain aspects of the suitability requirements of the revised markets in financial instruments directive (4 May 2022);
- SMSG advice to ESMA on the European Financial Reporting Advisory Group's consultation on sustainability reporting standards (11 July 2022);
- SMSG advice to ESMA on its consultation paper on the review of the guidelines on the product governance requirements of the revised markets in financial instruments directive (26 October 2022);
- SMSG advice to ESMA on its call for evidence on the implementation of the provisions of the revised shareholders rights directive on proxy advisors and the investment chain (2 December 2022);
- SMSG advice to ESMA on depositary receipts and geopolitical risks (2 December 2022);
- SMSG advice to ESMA on gas and nuclear energy (2 December 2022).

SMSG meetings typically commence with discussions on recent market developments. These discussions provide an opportunity for the SMSG to highlight to ESMA (and for the organizations to exchange views on) topics of general interest in the securities markets and related areas. In 2022, the presentations given at these meetings covered topics such as the following:

- a research paper on environmental, social and governance ratings in relation to the empirical evidence on disagreement across providers and effects on stock returns;
- the findings of a survey on sustainable investment in France;
- a study on the need to upgrade the suitability requirement;
- a research paper on liquidity management tools and fund performance;
- the findings from a survey carried out on the abolishment of environmental, social and governance ratings;

⁴¹ https://www.esma.europa.eu/sites/default/files/library/esma22-106-2371-smsg_rules_of_procedure_2020.pdf

⁴² https://www.esma.europa.eu/databases-library/esma-library?f_%5B0%20%5D=im_esma_sections%20%3A9&f_%5B0%5D=basic_%3A364.

- a research paper on investors' sentiment and ownership;
- research paper on the detrimental effects of trailing sales commissions ('inducements') in the retail distribution of investment products;
- research conducted on the impact of the Russian invasion of Ukraine on the commodities market; and
- research conducted on the intermediaries' implementation of the shareholder rights directive II.

ANNEX X – Provisional annual accounts for 2022

The 2022 annual accounts of ESMA are produced in accordance with its financial regulation; they are adopted by ESMA's Management Board and Board of Supervisors and are published on ESMA's website.

Disclaimer: please note that the annual accounts are provisional and at the publishing date of the annual report are awaiting observations of the external auditor of ESMA.

Balance sheet (EUR)

| | Note | 2022 | 2021 |
|--|--------|-------------------|-------------------|
| Assets | | | |
| Non-current assets | | | |
| <i>Intangible fixed assets</i> | II.1.a | | |
| Computer software | | 4 941 570 | 4 943 949 |
| <i>Tangible fixed assets</i> | II.1.b | | |
| Plant and equipment | | 17 | 96 |
| Computer hardware | | 206 063 | 339 707 |
| Furniture | | 314 883 | 379 675 |
| Other fixtures and fittings | | 3 998 132 | 4 609 386 |
| Total | | 9 460 666 | 10 272 813 |
| Current assets | | | |
| | II.2 | | |
| Current receivables | II.2.a | 662 091 | 1 249 370 |
| Sundry receivables | II.2.b | 6 079 370 | 27 357 |
| Deferred charges and accrued income | II.2.c | 2 231 443 | 1 927 829 |
| Cash and cash equivalents | II.2.d | 737 030 | 6 563 604 |
| Total | | 9 709 934 | 9 768 161 |
| Total assets | | 19 170 599 | 20 040 974 |
| Liabilities | | | |
| Non-current liabilities | | | |
| Deferred revenue | II.4 | 3 889 911 | 4 724 421 |
| Total | | 3 889 911 | 4 724 421 |
| Current liabilities | | | |
| Current payables | II.5.a | 3 237 727 | 3 687 310 |
| Sundry payables | II.5.b | — | — |
| Payables towards consolidated entities | II.5.c | 511 498 | 842 246 |
| Deferred revenue | II.4 | 1 084 555 | 1 228 486 |
| Total | | 4 833 781 | 5 758 042 |
| Total liabilities | | 8 723 692 | 10 482 463 |
| Total net assets | | 10 446 907 | 9 558 511 |

Statement of financial performance (EUR)

| | Note | 2022 | 2021 |
|---|--------------|-------------------|-------------------|
| Operating result | | | |
| Operating revenue | III.1 | | |
| Subsidy from the Member States | | 27 030 086 | 23 832 443 |
| Subsidy from EFTA countries | | 836 845 | 737 847 |
| EU balancing subsidy | | 17 065 748 | 17 574 825 |
| Fees from supervised entities | | 22 228 234 | 15 953 989 |
| NCA's contribution to IT delegated projects | | 249 178 | 2 833 732 |
| Foreign currency conversion gains | | 5 458 | 3 868 |
| Other miscellaneous revenue | | 177 107 | 12 492 |
| Total | | 67 592 657 | 60 949 196 |
| Operating expenses | III.2 | | |
| Staff expenses | III.2.a | 42 707 228 | 36 655 522 |
| Building and related expenses | III.2.b | 5 549 180 | 5 702 454 |
| Other expenses | III.2.c | 16 411 812 | 14 204 253 |
| Depreciation and amortisation | III.2.d | 2 040 562 | 2 792 499 |
| Foreign currency conversion losses | | 9 041 | 4 862 |
| Total | | 66 717 824 | 59 359 589 |
| Operating result | | 874 833 | 1 589 607 |
| Non-operating result | | | |
| | III.3 | | |
| Financial revenue | | 16 436 | 12 314 |
| Financial expenses | | 2 873 | 5 201 |
| Non-operating result | | 13 563 | 7 112 |
| Result from ordinary activities | | 888 396 | 1 596 719 |
| Result from extraordinary items | | — | — |
| Economic result for the year | | 888 396 | 1 596 719 |

EFTA, European Free Trade Association.

Cash flow statement (EUR)

| | 2022 | 2021 |
|---|--------------------|--------------------|
| Cash flow from ordinary activities | | |
| Surplus/deficit from ordinary activities | 888 396 | 1 596 719 |
| Depreciation and amortisation | 2 040 562 | 2 792 499 |
| Increase/decrease in provisions | — | — |
| Increase/decrease in receivables | (5 768 404) | (6 206) |
| Increase/decrease in accounts payable | (449 582) | (2 037 205) |
| Increase/decrease in liabilities to consolidated entities | (330 747) | (1 616 992) |
| Increase/decrease in deferred income | (978 441) | (2 083 059) |
| Net cash flow from operating activities | (5 486 613) | (2 950 964) |
| Cash flow from investing activities | | |
| Increase/decrease in fixed assets | (1 228 357) | (3 502 340) |
| Net cash flow from investing activities | (1 228 357) | (3 502 340) |
| Net increase/decrease in cash | | |
| | (5 826 575) | (4 856 584) |
| Cash at the beginning of the period | 6 563 604 | 11 420 188 |
| Cash at the end of the period | 737 030 | 6 563 604 |

Statement of changes in net assets (EUR)

| Capital | Reserves | | Accumulated equity | Economic result of the year | Total net assets |
|---|------------|-------|--------------------|-----------------------------|-------------------|
| | Fair value | Other | | | |
| Balance as at 31 December 2021 | — | — | 7 961 792 | 1 596 719 | 9 558 511 |
| Changes in accounting policies | — | — | — | — | — |
| Balance as of 1 January 2022 (if restated) | — | — | 7 961 792 | 1 596 719 | 9 558 511 |
| Allocation of the result for 2021 | — | — | 1 596 719 | (1 596 719) | — |
| Economic result for the year | — | — | — | 888 396 | 888 396 |
| Balance as of 31 December 2022 | — | — | 9 558 511 | 888 396 | 10 446 907 |

ANNEX XI – Abbreviations

| | |
|-------|--|
| AIF | alternative investment fund |
| AIFMD | alternative investment fund managers directive |
| AMP | accepted market practice |
| AWP | annual work programme |
| BaFin | German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht) |
| BMR | benchmarks regulation |
| BoE | Bank of England |
| CA | contract agent |
| CBI | Central Bank of Ireland |
| CCP | central counterparty |
| CMU | capital markets union |
| CO | clearing obligation |
| COSO | Committee of Sponsoring Organisations of the Treadway Commission |
| CRA | credit-rating agency |
| CSA | common supervisory action |
| CSD | central securities depository |
| CSDR | central securities depositories regulation |
| DLT | distributed ledger technology |
| DORA | Digital Operational Resilience Act |
| DRSP | data reporting service provider |
| DTO | derivatives trading obligation |
| EBA | European Banking Authority |
| ECA | European Court of Auditors |
| EDPS | European Data Protection Supervisor |
| EEA | European Economic Area |
| EFIF | European Forum for Innovation Facilitators |
| EIOPA | European Insurance and Occupational Pensions Authority |
| EMAS | European Eco-Management and Audit Scheme |
| EMIR | European market infrastructure regulation |
| ESAs | European supervisory authorities |
| ESEF | European single electronic format |
| ESG | environmental, social and governance |
| ESMA | European Securities and Markets Authority |
| ESRB | European Systemic Risk Board |
| FSB | Financial Stability Board |
| HR | human resources |
| IAS | Internal Audit Service |

| | |
|----------|---|
| ICT | information and communications technology |
| IFRS | International Financial Reporting Standard |
| IOSCO | International Organization of Securities Commissions |
| IT | information technology |
| KID | key information document |
| LEI | legal entity identifier |
| MAR | market abuse regulation |
| MiFID | markets in financial instruments directive |
| MiFID II | revised markets in financial instruments directive |
| MiFIR | markets in financial instruments regulation |
| MMF | money market fund |
| MoU | memorandum of understanding |
| NCA | national competent authority |
| NFC | non-financial counterparty |
| OTC | over the counter |
| PAI | principal adverse impact |
| PRIIP | packaged retail and insurance-based investment product |
| PSA | pension scheme arrangement |
| Q & A | question and answer |
| RTS | regulatory technical standards |
| SECR | securitisation regulation |
| SFDR | sustainable finance disclosure regulation |
| SFT | securities financing transaction |
| SFTR | securities financing transactions regulation |
| SMCRAs | small and medium-sized credit-rating agencies |
| SMEs | small and medium-sized enterprises |
| SMSG | Securities and Markets Stakeholder Group |
| SNE | seconded national expert |
| SR | securitisation repository |
| SREP | supervisory review and evaluation process |
| SSR | short selling regulation |
| STS | simple, transparent and standardised |
| TA | temporary agent |
| TC | third country (i.e. non-EU) |
| TR | trade repository |
| TRV | trends, risks and vulnerabilities |
| TTF | Title Transfer Facility |
| UCITS | undertakings for collective investment in transferable securities |
| USSP | Union strategic supervisory priority |

