

Terms of Reference

Investment Management Standing Committee (IMSC)

1. ESMA's mission is to enhance investor protection, promote orderly financial markets and safeguard financial stability, by (i) assessing risks to investors, markets and financial stability, (ii) completing a single rulebook for EU financial markets, (iii) promoting supervisory convergence and (iv) supervising specific financial entities.
2. In order to fulfil its mission the ESMA Strategy 2023-2028¹ sets out three strategic priorities: (i) fostering effective markets and financial stability, (ii) strengthening supervision of EU financial markets, and (iii) enhancing protection of retail investors and two thematic drivers: (i) enhancing sustainable finance, and (ii) facilitating technological innovation and effective use of data.
3. ESMA shall act within the powers conferred by its establishing Regulation (ESMA Regulation or ESMAR²) and among others within the scope of several acts and any further legally binding Union act which confers tasks on ESMA. These acts include among others Directive 2009/65/EC on Undertakings for Collective Investment in Transferable Securities (UCITS), Directive 2011/61/EU on Alternative Investment Fund Managers (AIFMD), Regulation No 345/2013 on European venture capital funds (EuVECA), Regulation No 346/2013 on European social entrepreneurship funds (EuSEF), Regulation 2015/760 on European long-term investment funds (ELTIF), Regulation (EU) 2017/1131 on money market funds (MMF), Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings (CBDR).
4. In order to fulfil ESMA's mission, the Board of Supervisors has established the Investment Management Standing Committee, thereafter IMSC, pursuant to Article 41 of ESMAR as a permanent internal committee. These Terms of Reference specify its tasks, responsibilities, functioning and governance.

Tasks and responsibilities

5. The IMSC contributes to ESMA's mission by:
 - developing, maintaining, and streamlining the single rulebook in the area of collective investment management and ensuring its effective and common application;

¹ https://www.esma.europa.eu/sites/default/files/library/esma_strategy_2023-2028.pdf

² ESMA Regulation No 1095/2010 of the European Parliament and of the Council

- enhancing the protection of investors in the area of collective investment management while contributing to a larger retail investor base to develop the Capital Markets Union;
 - promoting sustainable finance and long-term oriented capital markets incorporating the sustainability considerations in the single rulebook and in supervisory practices in the area of collective investment management.
6. In particular the IMSC contributes to the strategic priorities and thematic drivers of the ESMA Strategy in the following ways:
- **Fostering Effective Markets and Financial Stability**
 - Developing technical advice to the European Commission, draft technical standards and opinions on the provisions of the legislation that are relevant to its area of competence (i.e. collective investment management), inter alia on various topics in the area of investor protection and financial stability, with the view to ensuring a harmonised implementation of that legislation.
 - Maintaining and streamlining the single rulebook in the collective investment management area to reflect new developments, address identified risks (including in relation to financial stability and investor protection), and overall ensure its effective and consistent application.
 - Facilitating the early identification and analysis of financial stability risks in the collective investment management sector, including from a micro- and macro-prudential perspective, through the exchange of information and the sharing of experiences, inter alia, in the area of authorisation, conduct of business rules, systems and controls, risk management, organisational requirements and cross-border activities and enhancing the quality and availability of information at EU level for investors, market participants and regulators.
 - Developing advice to competent authorities under Article 25(7) of the AIFMD when threats to financial stability are identified.
 - **Strengthening Supervision of EU Financial Markets**
 - Contributing actively to ESMA's tasks in strengthening the supervision of the investment management sector by promoting supervisory convergence among competent authorities: assessing operational supervisory issues arising from the implementation of the relevant legislation and developing supervisory practices and guidance. Where appropriate, the analysis of individual supervisory cases should be used as an important tool for the IMSC work in this area³.
 - Focusing on bringing together supervisory knowledge and capabilities and promoting exchange of experiences and approaches to ensure effective and efficient supervision as well as a consistent understanding and application of the single rulebook in the investment management sector.

³ References to supervised entities by NCAs can be made on an anonymous basis.

- Coordinating common supervisory actions (CSAs) and participating in activities concerning peer reviews in the investment management sector.
- Enhancing protection of retail investors
 - Facilitating the identification and analysis of investor protection risks in the collective investment management sector through the exchange of information and the sharing of experiences among competent authorities.
 - Reinforcing convergence work to prevent significant consumer detriment by fostering a common supervisory culture and consistent supervisory outcomes for investors, including the co-ordination of CSAs.
- Enabling Sustainable Finance
 - Developing, maintaining and streamlining sustainability considerations on the provisions of the legislation that are relevant to the collective investment management sector and its supervisory practices, with the view of promoting high quality sustainability disclosures and hence reduce the risk of greenwashing.
 - Focusing on the consistent implementation and supervision of the sustainability related legislation in the collective investment management sector to introduce effective and common supervisory standards and guidance to the market.
- Facilitating Technological Innovation
 - Supporting the Digital Finance Standing Committee (DFSC) by providing a forum for discussions on topics to be raised by competent authorities including: (i) potential risks, emerging trends and vulnerabilities associated with technological developments and (ii) the impact of technological innovation in the investment management sector.
- Facilitating Effective Use of Data
 - Enhancing the use of the datasets available (in particular the data sets under AIFMD, and the MMF Regulation), to take a more systematic data-driven approach to regulation and supervision in the collective investment management sector. An example of the use of such data set is the calibration of the parameters of the stress tests for MMFs, under the ESMA Guidelines on MMF stress tests.
 - Supporting data-driven, evidence-based supervision in NCAs and supervisory convergence with activities such as sharing of relevant risk analysis outcomes with NCAs.

Cooperation and Coordination

7. The work of the IMSC is not expected to duplicate or overlap with the functions of the other ESMA's Standing Committees, such as the Investor Protection Standing Committee (IPSC), Sustainability Standing Committee (SSC), Risk Standing Committee (RSC), Data Standing Committee (DSC) and Senior Supervisors Forum (SSF) or the

groups reporting to the Joint Committee that will remain responsible for addressing matters in the respective areas of EU legislation that fall within their respective remits.

8. The IMSC should, however, ensure close cooperation with those Standing Committees that have a coordination role and in particular with the (i) SSC, notably on sustainable finance (ii) IPSC, notably on investor protection, (iii) RSC, notably on financial stability issues and risks related to market trends, (iv) DSC, notably on data reporting, as well as (v) SSF, notably on the risks prioritised through the annual risk assessment exercise and the Union Strategic Supervisory Priorities (USSPs), in order to achieve an aligned outcome for ESMA.
9. Cooperation with the relevant SCs/ESMA Groups may be achieved in a number of ways such as for example mutually exchanging input, information or updates in relation to workstreams and matters which are within the IMSC and relevant groups' mandates.
10. The IMSC can also discuss technical positions in the scope of the SC to ensure a coordinated EU approach when ESMA and NCAs participate in international fora.

Powers

11. In line with ESMA's product monitoring obligation under Articles 39 MiFIR and its product intervention powers under Article 40 and 43 MiFIR, the IMSC shall refer any potential threats it identifies relevant to ESMA's objectives of ensuring investor protection, orderly functioning and integrity of financial/commodity markets and to financial stability, to the relevant Standing Committee.

Composition

12. The IMSC shall be composed of one person per Board of Supervisors member as principal member and one person as an alternate, each representing that Board member. In addition, a maximum of three persons or a functional email address can be added to the e-mail distribution list. Participants to a SC meeting from the same NCA shall coordinate their positions in advance of the meeting.
13. Where responsibilities within the remit of the IMSC are split at national level between more than one competent authority and are partly entrusted to competent authorities that are not represented in the ESMA Board of Supervisors, representatives of those authorities shall appoint a member and/or an observer to the IMSC, as appropriate. Each member and/or alternate will be representing the relevant competent authority. IMSC members representing competent authorities from the same Member State shall coordinate their positions in advance of any IMSC meeting and whenever IMSC members' input is sought (for instance, in case of written procedures).
14. Members of IMSC, shall also coordinate their positions with those held by persons from the same NCA, who serve as members / alternates of sub-groups to the IMSC.
15. Furthermore, representatives of the European Commission shall be appointed as observers to the IMSC.

16. Members of the IMSC shall have an adequate level of knowledge and skill and the mandate to be able to take a position on the matters discussed.
17. A member of the SC may, when a topic for discussion in the SC so requires, be accompanied by an expert from its Competent Authority for that part of the SC meeting. The SC member shall announce this intent to the Rapporteur in advance of the meeting.

Structure and governance

18. The responsibilities of the Chair, rapporteur and members of the IMSC are as set out in the Procedures for ESMA groups (ESMA/2011/BS/236rev2), which also set out the rules concerning ESMA Group's structure, governance and working methods.
19. The IMSC may set up permanent working groups or temporary task forces or project team/drafting teams reporting to the IMSC if required by the work and in line with the Procedures for ESMA groups.
20. The IMSC has established the following permanent working group with its own terms of reference:
 - Operational Working Group (OWG) established to support the IMSC to contribute to the ESMA strategic priorities and thematic drivers of the ESMA Strategy. In particular, the OWG supports IMSC on the priority relating to 'Strengthening Supervision of EU Financial Markets' by promoting common supervisory approaches and practices across Member States and enhancing mutual understanding thereby improving convergence across the EU.
21. The IMSC will meet on a regular basis as required in order to deliver its tasks under ESMA's (multi-)annual work programme. Meetings of substructures will be organised as necessary to enable the IMSC to fulfil its tasks.

Working methods

22. The working methods will follow the Procedures for ESMA groups as described in paragraphs 31 and following of the said Procedures.

Confidentiality

23. All members of IMSC are under the obligation to respect confidentiality as per paragraph 30 of the Procedures for ESMA Groups.

Review

24. The Terms of Reference will be reviewed at least every two years by the Board of Supervisors.