

Terms of Reference

Markets Standing Committee (MSC)

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 Directive 2014/65/EU and Regulation (EU) No 600/2014 (MIFID II and MIFIR), Regulation (EU) No 648/2012 (EMIR), Regulation (EU) 596/2014 on market abuse (MAR), Regulation (EU) 236/2012 on short selling and certain aspects of credit default swaps (SSR), Regulation (EU) No 909/2014 (CSDR), Directive 98/26/EC on settlement finality (SFD), Directive 2002/47/EC on financial collateral arrangements, and any other further legally binding Union act which confers tasks to ESMA on secondary markets, post-trading market infrastructures and market integrity and market surveillance processes or operations.
4. In order to fulfil ESMA's mission and in line with the Procedures for ESMA groups, (ESMA/2011/BS/236rev2), the Board of Supervisors has established the Markets Standing Committee (thereafter MSC), 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 MSC contributes to ESMA's mission by addressing issues related to (a) the structure, transparency and efficiency of secondary markets for financial instruments and commodity derivative markets; (b) post-trading market infrastructures, processes and operations³; and (c) market integrity and surveillance. In particular, the MSC contributes to the strategic priorities and thematic drivers of the ESMA Strategy in the following ways:

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

³ It should be noted that the Board of Supervisors has established other Committees to deal with responsibilities and tasks related to CCPs, Trade Repositories and trade reporting, so these responsibilities and tasks are not in the scope of activity of the MSC. However, where needed, the rapporteur can help coordinate with these Committees where a post-trading topic could have some relevance for these Committees as well.

- Fostering Effective Markets and Financial Stability, including:
 - assessing the impact of changes in the market structure to the transparency and efficiency of trading and post-trading in relation to financial instruments;
 - monitoring the efficient implementation of the EU legislative framework when they relate to trading rules, infrastructures and microstructures of secondary markets, including commodity derivatives, and post-trade infrastructures, processes or operations, as well as to market abuse, short selling and market integrity;
 - developing technical advice and reports to the European Commission in relation to the legislative acts within the MSC's remit including the reports assessing their implementation or similar reports related to other EU legislation for matters affecting secondary markets, market integrity and post-trading issues;
 - drafting or revising technical standards under the Directives and Regulations within the MSC's remit;
 - preparing any other additional input to the European Commission where necessary;
 - coordinating issues such as settlement discipline and Target2-Securities (T2S);
 - providing information upon the implementation of the Directives and Regulation within its scope; and
 - assessing the risks to investors, markets and financial stability.
- Strengthening Supervision of EU Financial Markets and Promoting Supervisory Convergence, including:
 - facilitating co-ordinated action and contributing to the consistent application of the MAR, SSR, CSDR, EMIR, MIFID II, and MIFIR regimes and related requirements for market participants by sharing experiences gathered in the course of the supervisory or enforcing activity, discussing specific cases, including on enforcement and market surveillance, as well as submitting to the Board of Supervisors relevant material to promote supervisory convergence in those areas;
 - promoting the building of a common culture on the supervision of secondary markets, including commodity derivatives, and of market integrity and post-trading requirements, through the enhancement of supervisory convergence and the exchange of supervisory practices;
 - facilitating co-ordinated and consistent enforcement actions;

- promoting and facilitating the operational cooperation and exchange of information between national competent authorities as well as with other supervisory authorities where relevant for surveillance, investigation and enforcement purposes in relation to market abuse and short selling; and
promoting activities for developing and improving cooperation with third-country jurisdictions in matters related to market integrity investigations.
 - Enhancing protection of retail investors. By contributing to the development of the EU regulatory framework and its consistent application across the union, the MSC contributes to shaping a larger investor base to develop the Capital Markets Union and enabling long-term direct and indirect retail participation in the EU capital markets.
 - Contributing to the delivery of ESMA's strategic priority of enabling Sustainable Finance. This contribution includes, inter alia monitoring developments in the ETS market and derivatives on emission allowances and providing input to the European Commission as necessary.
 - Assisting the Digital Finance Standing Committee (DFSC) on facilitating technological innovation including:
 - analysing trends and market developments such as identifying the implications of highly automated trading, including the use of artificial intelligence, the use of innovative trading systems and the emergence of new market participants such as neobrokers;
 - fostering convergence in the regulatory and supervisory treatment of new innovative financial activities and technological innovation.
 - contributing to developing digital finance as an opportunity for market participants and regulators;
 - contributing to developing the market integrity and efficient forms of market surveillance in the crypto assets markets.
 - Facilitating the effective use of data by promoting operational cooperation and exchange of information for surveillance, investigation and enforcement purposes and promoting activities for developing and improving cooperation with third-country jurisdictions in matters related to market integrity investigations or post-trading settlement in avoidance of any cross-border implications.
6. The MSC shall liaise and coordinate with other relevant SCs reporting to the Board of Supervisors where its activities and tasks relate or are complementary to those of other SCs.

Cooperation

7. The work of the MSC is not expected to duplicate or overlap with the functions of the other ESMA's Standing Committees, in particular CCP PC and SC, DFSC, DSC, IPSC and the 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. The MSC should, however, ensure close coordination with the other relevant committees reporting to the Board, in particular the CCP PC and SC, DFSC, DSC and IPSC and the SSF, notably on topics that relate to or are complementary to those of other groups in order to achieve an aligned outcome for ESMA.
8. The MSC should also discuss technical positions related to the topics in its remit in order to ensure a coordinated EU approach, when ESMA and NCAs participate in international fora dealing with some of these topics.

Powers

9. In line with ESMA's product monitoring obligation under Article 39 MiFIR and its product intervention powers under Article 40 and 43 MiFIR, the MSC will put in place means to identify potential investor protection concerns, threats to the orderly functioning and integrity of financial/commodity markets and to the stability of the financial system and, where appropriate, assess them in accordance with the agreed methodology and procedures or refer them to another committee for such assessment.
10. In accordance with the BoS Decisions⁴ on Delegation to the ESMA Chair, the MSC is tasked with aiming at reaching consensus on (i) controversial assessments of third-country trading venues for the purposes of post-trade transparency under MiFIR, (ii) controversial assessments of third-country trading venues for the purposes of position limits under MiFID II, (iii) controversial opinions with respect to pre-trade transparency waivers for equity, equity-like and non-equity financial instruments, and (iv) controversial opinions with respect to positions limits. These documents are then approved by the ESMA Chair. Where no consensus can be reached, the documents are submitted to the Board for decision.
11. The ESMA Board of Supervisors will be consulted for ex-ante approval of any draft document relating to governance issues or issues likely to represent a new significant policy orientation.

Composition

12. The MSC 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

⁴ ESMA70-155-11210; ESMA70-155-5905; ESMA41-137-1092; ESMA70-155-6052

added to the e-mail distribution list. Participants to a Standing Committee (SC) meeting from the same NCA shall coordinate their positions in advance of the meeting.

13. Where responsibilities are split at national level between more than one competent authority or where the responsibility for one of the topics in the remit of the MSC is with a different competent authority than the Board member's authority, representatives of competent authorities that are not part of the MSC may attend as observers, at the invitation of the Board Member's authority, only for agenda items concerning their responsibilities.
14. Members of the MSC shall also coordinate their positions with those held by persons from the same NCA, who serve as members / alternates of sub-groups to the MSC.
15. Furthermore, representatives of the European Commission, shall be appointed as observers to the MSC.
16. Representatives of the European Union Agency for the Cooperation of Energy Regulators (ACER) can be invited to participate in the MSC as observers when necessary, for agenda items concerning its responsibilities.
17. Members of the MSC shall have an adequate level of knowledge and skills as well as the mandate to be able to take a position on the matters discussed.
18. A member of the MSC may, when a topic for discussion in the MSC so requires, be accompanied by an expert from its Competent Authority for that part of the MSC meeting. The MSC member shall announce this intent to the Rapporteur in advance of the meeting.

Structure and governance

19. The responsibilities of the Chair, rapporteur and members of the MSC 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.
20. The MSC has established the following permanent working groups each with their own terms of reference:
 - Secondary Markets Working Group (SMWG), established to address in particular secondary markets matters and any other Union act for which ESMA needs to be consulted thereof with the Terms of reference [ESMA 70-154-4701].
 - Commodity Derivatives Working Group (CDWG), established to address in particular commodity derivative matters and any other Union act for which ESMA needs to be consulted for these matters with the Terms of reference [ESMA70-154-469]
 - Market Integrity Working Group (MIWG), established to address in particular the promotion of market integrity of financial markets with the Terms of Reference [ESMA70-154-4708]

- Post-Trading Working Group (PTWG), established to address in particular post-trading issues regarding market infrastructures, processes or operations with the Terms of Reference [ESMA70-154-4707].
21. The MSC may set up other permanent working groups or temporary task forces or project/drafting teams reporting to the MSC if required by the work and in line with the Procedures for ESMA groups.
 22. The MSC 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 MSC to fulfil its tasks.
 23. MSC's meetings will be organised to include, where appropriate and in particular concerning issues going beyond the remit of the CDWG, MIWG, PTWG and SMWG, operational and case-specific discussions on investigation, enforcement and market surveillance, allowing for the presence of dedicated experts in both areas of discussions as needed. These discussions can be supplemented by organising ad-hoc workshops on particular technical issues of common interest.

Working methods

24. The working methods will follow the Procedures for ESMA groups as described in paragraphs 31 and following thereof.
25. In addition, the members of the MSC shall consider the following working method obligations and procedures in order to ensure that the MSC can devote sufficient time for matters of strategic relevance.
26. Documents prepared by the CDWG, MIWG, PTWG and SMWG, which require agreement or need to be raised to the attention of the MSC, and which were supported by all WG members, will be submitted to the MSC as B-items and will hence not be subject to discussion unless requested by at least one MSC member or ESMA staff.
27. Recurrent deliveries of non-strategic nature will be discussed only at Working Group level. Where those deliveries require Board approval, they will be submitted directly to the Board on behalf of the MSC. Only in cases where the Working Group in charge cannot reach consensus, or if an element is identified by the Working Group as needing to be raised to the attention of the MSC, will the issue be escalated to the MSC for decision. The following deliveries are considered as recurrent and non-strategic:
 - a. the performance of transparency calculations under MiFID II/MiFIR;
 - b. the issuance of positive and non-controversial opinions on pre-trade transparency waivers and position limits under MiFID II/MiFIR;
 - c. non-controversial assessments of third country trading venues for the purpose of transparency and position limits under MiFID II/MiFIR; and
 - d. the assessment of applications to temporary opt-out from the access provisions under Article 36(5) of MiFIR.

Confidentiality

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

Review

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