

Terms of Reference

ESMA Supervisory Policy Committee

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 the following legislative acts:
 - Credit rating agencies (Regulation (EC) No 1060/2009).
 - OTC derivatives, central counterparties and trade repositories (Regulation (EU) 648/2012).
 - Markets in financial instruments (Regulation (EU) No 600/2014 as amended by Regulation (EU) 2019/2157, ESAs Review).
 - Transparency of securities financing transactions and of reuse (Regulation (EU) 2015/2365 on and amending Regulation (EU) No 648/2012).
 - Indices used as benchmarks in financial instruments and financial contracts & performance of investment funds (Regulation (EU) 2016/1011).
 - Securitisation (Regulation (EU) 2017/2402).
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 ESMA Supervisory Policy Committee, thereafter ESPC, 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 ESPC contributes to ESMA's mission by providing knowledge and expertise on issues related to legislative acts or proposed legislative acts that prescribe supervisory powers and responsibilities on ESMA in its role as supervisor in areas that include CRAs, Benchmark Administrators, Trade Repositories, Data Reporting Service Providers and Securitisation Repositories. The ESPC 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.

- Fostering Effective Markets and Financial Stability
 - The ESPC contributes to fostering effective markets and financial stability through the delivery of the below tasks under legislative acts³, or proposed legislative acts, which include a direct supervisory role for ESMA, including:
 - a) The drafting or revision of technical standards, technical advice, reports and any other input to the European Commission.
 - b) The drafting or revision of ESMA Guidelines or Recommendations and preparing any other additional policy or supervisory input to ESMA Board of Supervisors that may be relevant for the purposes of ESMA's direct supervisory mandates.
 - c) The assessment and ongoing monitoring of the legal and supervisory frameworks referred to in paragraph 3, including those of third countries for the purpose of third country regimes such as equivalence, endorsement or recognition.
- Strengthening Supervision of EU Financial Markets
 - The ESPC contributes to strengthening the supervision of EU Financial Markets by ensuring that supervisory or policy outputs concerning ESMA's existing, or proposed, supervisory mandates:
 - a) Deliver effective supervision that is aligned with the scope of responsibilities set out in the relevant, or proposed, legislative act.
 - b) Maintain and support a consistent approach and common supervisory culture under relevant, or proposed, legislative acts, to the extent possible.
 - c) Ensure coordination of NCA's supervisory approaches as well as the cooperation and exchange of information between NCAs and other supervisory authorities, where relevant.
- Enhancing protection of retail investors
 - The ESPC contributes to enhancing protection of retail investors by ensuring that the products and services provided by ESMA's supervised entities adhere to the requirements and regulatory safeguards set out in the relevant legislative acts.
- Enabling Sustainable Finance
 - The ESPC contributes to enabling sustainable finance by ensuring that ESMA's supervisory tasks, including policy outputs adapt to, and take into account, regulatory and market developments relating to sustainable finance, in particular:
 - a) Trends and market developments relating to benchmark labels such as the climate benchmarks. The integration of ESG factors in credit ratings by credit rating agencies and across structured finance products including securitisation instruments.

³ The term "legislative acts" here refers to the regulatory frameworks referenced in paragraph 3.

- b) The processes of external reviewers of issuances under the European green bond regulation and the development of regulatory safeguards and international cooperation in relation to “ESG” ratings.
 - c) Convergence in the regulatory and supervisory treatment of ESG disclosure requirements for products and entities across ESMA’s supervisory mandates.
- Facilitating Technological Innovation
 - The ESPC facilitates technological innovation by ensuring sufficient and timely cooperation with relevant stakeholders, including other ESMA standing committee’s, to ensure ESMA’s supervisory practices and policy outputs reflect and support technological innovation.
 - Facilitating Effective Use of Data
 - The ESPC facilitates the effective use of data by supporting the integration and development of data driven supervisory techniques within and across ESMA’s direct supervisory mandates and any policy deliverables that are relevant to those mandates.

Cooperation

6. The work of the ESPC is not expected to duplicate or overlap with the functions of the other ESMA’s Standing Committees (such as Sustainability Standing Committee (SSC), Senior Supervisors’ Forum (SSF), Market Standing Committee (MSC) or Data Standing Committee (DSC) 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 ESPC should, however, ensure close cooperation arrangements in particular with the SSC on the topics of green bonds, ESG ratings and climate/ESG benchmarks and with the DSC on matters involving an interconnection of data-related aspects within DSCs remit and supervisory policy aspects within the ESPCs remit.
7. The ESPC should ensure appropriate coordination arrangements with the Joint Committee on Securitisation Committee (JCSC) notably on the Securitisation mandate in order to achieve an outcome for the ESPC that is sufficiently aligned with that of the other ESAs.
8. The ESPC should also discuss technical positions in the scope of the ESPC to ensure a coordinated EU approach when ESMA and NCAs participate in international fora.

Composition

9. The ESPC 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 an ESPC meeting from the same NCA shall coordinate their positions in advance of the meeting.
10. 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 ESPC sits with a different competent authority than the Board member’s authority, representatives of competent authorities that are not part of the ESPC may attend as observers, at the invitation of the Board Member’s authority, only for agenda items concerning their responsibilities.

11. Members of the ESPC, shall also coordinate their positions with those held by persons from the same NCA, who serve as members / alternates of sub-groups to the ESPC.
12. Furthermore, representatives of the European Commission, and ECB/SSM, ESRB, EBA, EIOPA shall be appointed as observers to the ESPC, where appropriate.
13. Members of the ESPC shall, have an adequate level of knowledge and skills and the mandate to be able to take a position on the matters discussed.
14. A member of the ESPC may, when a topic for discussion in the ESPC so requires, be accompanied by an expert from its Competent Authority for that part of the ESPC meeting. The SC member shall announce this intent to the Rapporteur in advance of the meeting.

Structure and governance

15. The ESPC will be chaired by ESMA senior staff. The responsibilities of the Chair, rapporteur and members of the ESPC 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.
16. The ESPC shall be composed of two configurations:
 - a. Horizontal configuration to address horizontal supervisory topics or policy outputs under legislative acts, or proposed legislative acts, where ESMA has direct supervisory powers⁴
 - b. Benchmarks configuration to address policy outputs and supervisory convergence matters regarding benchmark administrators.
17. The ESPC has established a temporary task force to address issues regarding the implementation of the Securitisation Regulation with the Terms of reference [ESMA82-402-930]
18. The ESPC may set up permanent working groups or other temporary task forces or project team/drafting teams reporting to the ESPC if required by the work and in line with the Procedures for ESMA groups.
19. The ESPC 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 ESPC to fulfil its tasks.

Working methods

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

Confidentiality

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

⁴ Including CRAs, External Reviewers, Securitisation Repositories, Trade Repositories and Data Reporting Service Providers but excluding policy outputs specific to Benchmark administrators, which are discussed under configuration (b)

Review

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