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## **Ref: Prioritisation of 2023 ESMA deliverables**

Dear Mr Berrigan, *dear Sean,*

As part of its ambitious work programme, ESMA is delivering on several demanding new legal mandates in 2023, while at the same time continuing important work to promote supervisory convergence as well as high supervisory standards across all areas within its remit.

ESMA recently carried out an assessment of its tasks and commitments that were outlined in its 2023 Annual Work Programme (AWP) submitted to the European Institutions in September 2022<sup>1</sup>. As part of a wider effort to continually improve efficiency within ESMA, this prioritisation exercise aims to ensure that resources are appropriately allocated, also in light of external factors impacting on ESMA's workload since the publication of the 2023 AWP. The primary external factors affecting ESMA this year are (i) the high concentration of time-critical deliverables under Digital operational resilience act (DORA) and Markets in crypto-assets (MiCA) Regulation; (ii) ongoing crisis management linked to the measures taken following the energy crisis and recent market volatility; and (iii) overall resource constraints.

In order to ensure ESMA's ability to deliver most effectively on its 2023 work programme taking into account these factors, ESMA identified among its planned work a set of deliverables which could be deprioritised or postponed.

With this letter, and in the spirit of full transparency, I would like to bring to your attention the deprioritised deliverables which relate to ESMA's commitments vis-à-vis the European Commission. The deliverables, which are listed in Annex to this letter, consist principally of reports from ESMA to the Commission under various pieces of sectoral legislation as well as a request for technical advice on EuVECA/EuSEF and an annual peer review relating to

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<sup>1</sup> ESMA's 2023 Annual Work Programme (21 September 2022 | ESMA22-439-1055) available at: [AWP 2023 \(europa.eu\)](https://www.esma.europa.eu/press-news/esma-news/2022-09-21-esmas-2023-annual-work-programme)

supervision of central counterparties (CCP). Specific reasons for the deprioritisation of each of these deliverables are summarised in the annex.

I would like to stress that the reprioritisation of ESMA's deliverables for this year has been done after careful evaluation and with the support of the ESMA Management Board, taking into consideration the many competing priorities we are facing.

Needless to say, I remain at your disposal to further discuss these matters and answer any question you may have.

With best regards,

[signed]

Verena Ross

**Annex: Commission deliverables for 2023 which are deprioritised**

#	Description	Legal basis	EC Deadline	Proposed Delivery	Context
1	Annual reports to the Commission on CSDR implementation.	CSDR Article 74	Annual	8 out of 10 reports not delivered in 2023	ESMA is required to produce reports covering 10 topics on the functioning of CSDR each year. However, carrying out these reports on an annual basis is of limited use as many of the underlying parameters do not change frequently. This has been acknowledged in the CSDR Refit proposal published on 16 March 2022, which suggests lowering the frequency to every two or three years for most reports, and upon the Commission request for the rest. For this reason, the CSDR reports will be deprioritised in 2023 to free up resources to deliver on new mandates. In 2023, ESMA will thus only produce the reports on CSD cross-border services and passporting. In lieu of full reports on CSD settlement efficiency and internalised settlement, ESMA will compile data and indicators for discussion with the NCAs, which will also be shared with the European Commission. Based on this data, ESMA will publish a full report on these topics next year, instead of this year.
2	Annual reports on transparency waivers and the use of deferred publication arrangements.	MiFIR Article 4(4); 7(1) 3 <sup>rd</sup> subpara.; 9(2); and 11(1) 3 <sup>rd</sup> subpara.	Annual	No Reports in 2023	Due to limited observed interest in these reports relative to the resources required to produce them, ESMA has decided to postpone the reports to next year. The MiFIR review is likely to enable ESMA to get better access to data, which should increase the added value of this report in the future.
3	Annual Report on administrative and criminal sanctions and other administrative measures imposed under the Market Abuse Regulation (MAR).	MAR Article 33	Annual	No report in 2023	The last report on MAR sanctions was published in November 2022. This report seems to be of limited use for market participants. Moreover, the websites of NCAs and the ESMA website already publish the public sanctions.

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4	Annual report on the currently adopted Accepted Market Practices (AMP) under MAR.	MAR Article 13(10)	Annual	No Report in 2023	The last AMP report was published 18 January 2022. AMPs normally do not change on an annual basis so producing this report every year appears to add limited information to the public. Moreover, the ESMA report is based on information previously published for the different contracts operating under the AMPs.
5	Report on EMIR supervisory measures and penalties under EMIR.	EMIR Article 85(5)	Annual	No Report in 2023	The next report will cover the period starting from the last report in 2021, there will thus be no gap in the information covered.
6	Annual reports on interoperability.	EMIR Article 85(4)	Annual	No Report in 2023	ESMA will not provide the European Commission with a report on risk and cost of CCP interoperability as the number and nature of interoperability links have not evolved and the interoperability link assessment is covered by the supervisory convergence activities relating to each CCP.
7	Report on the publication of administrative penalties and other administrative measures.	CCP Recovery and Resolution Regulation Article 84(4)	12 August 2022	Report postponed to 2024	The report was due by 12 August 2022 but considering that most of level 2 acts under the CCP recovery and resolution regulation still need to be endorsed by the European Commission, there is no enforcement activity yet and thus ESMA will issue the report only in 2024.
8	Annual review of RTS 2 (phase-in regime).	RTS 2 Article 17(4)	Annual (by 30 July)	No review in 2023	The annual review will not be carried out in 2023 due to the ongoing MiFIR review which will significantly change the non-equity transparency framework and, specifically, very likely make the two elements to be assessed in the annual review redundant.
9	EMIR Refit report to assess: <i>the consistency of the reporting requirements... and the feasibility of further simplifying the reporting chains...</i>	EMIR Article 85(3a)	18 May 2020	As of 2026	These reports relate to technical standards which ESMA submitted to the European Commission in December 2020. However, as these technical standards were only published in the Official Journal on 7 October 2022, they will not enter into force before 29 April 2024. Hence any such assessment should be performed after acquiring experience with the new

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10	EMIR Refit reports to assess: <i>(b) the impact of Regulation (EU) 2019/834 on the quality and (c) the changes to the reporting framework...</i>	EMIR Article 85(1a)	17 June 2023	As of 2026	rules. It should be stressed that ESMA will continue performing and informing on its data quality activities in the meantime <sup>2</sup> .
11	Report on the efficiency of SFTR reporting.	SFTR Article 29(1)	11 April 2022	As of 2024	In accordance with the phase-in approach foreseen Level 1, 2022 was the first full year of SFT reporting. SFTR already included several of the EMIR Refit simplifications of reporting and ESMA understands that the efficiency of reporting should be assessed only after a longer period and that it should be assessed together with the quality of the data. It should be stressed that ESMA will continue performing and informing on its data quality activities in the meantime. <sup>2</sup>
12	Request for technical advice on the functioning of EuVECA and EuSEF.	Request from the Commission <sup>3</sup> .	15 December 2023	Cancelled	On top of ongoing work promoting supervisory convergence through peer reviews, common supervisory actions and the provision of guidance, ESMA will have to dedicate significant resources to the AIFMD and UCITS reviews <sup>4</sup> which will involve the drafting of a large number of technical standards and guidelines putting substantial strain on ESMA's resources. In order to be able to meet its legal obligations on time, and in order to maximise ESMA's impact on its core objectives of financial stability and investor protection, ESMA is forced to deprioritise additional resource-intensive requests such as these pieces of technical advice, which impact

<sup>2</sup> See for example the recently published 2022 Report on Quality and Use of Transaction Data (19 April 2023 ESMA74-427-719)

<sup>3</sup> Letter references: FISMA.C.4/IK/mp(2022)7034841 and FISMA.C.4/IK/mp(2022)7034633).

<sup>4</sup> Including an expected new and resource-intensive mandate to ESMA, see minutes of the 49th meeting of the Expert Group of the European Securities Committee 16 February 2023 (Ares(2023)1750832).

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					only a very small fraction of the market and cover topics such as taxation which lie outside ESMA's remit and expertise.
13	2023 CCP peer reviews.	EMIR Article 24a(7)(a)	Annual	No new peer review in 2023	The 2023 peer review on concentration risks will not be undertaken due to resource constraints. Instead, concentration risk issues will be covered as part of the follow-up actions related to the CCP stress test exercise which was published last year <sup>5</sup> . Data gathering with NCAs for the follow-up action has already started.

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<sup>5</sup> 4th ESMA Stress Test Exercise for Central Counterparties (5 July 2022 | ESMA91-372-2060).