

Spotlight on Markets – July 2023

Out First consultation package under the Markets in Crypto-Assets Regulation. Have your say.

- Analysis of the cross-border investment activity of firms
- Insights into the expected sustainability disclosures in prospectuses
- Implementation of the revised Shareholder Rights Directive and areas for progress



EUR
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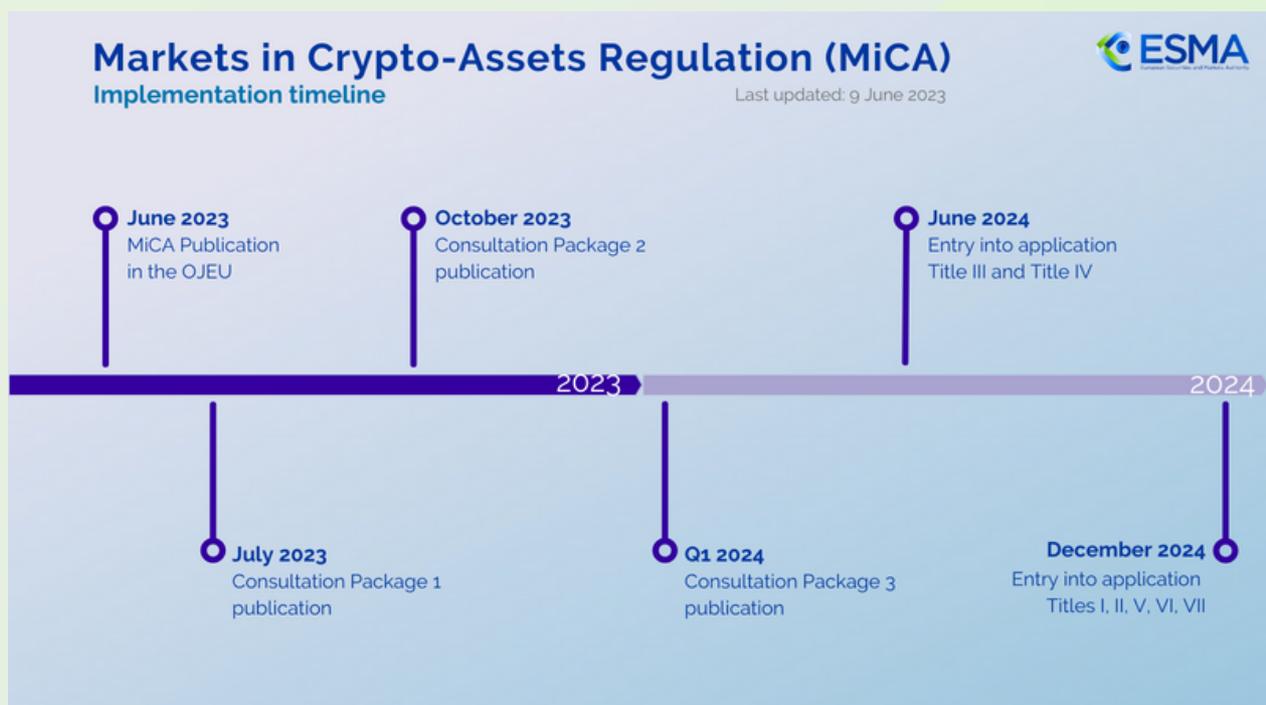
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ESMA seeks first input on detailed rules for crypto markets

The European Securities and Markets Authority (ESMA) published its **first consultation package** under the Markets in Crypto-Assets Regulation and invites comments from stakeholders by **20 September 2023**.

In this first of three consultation packages, ESMA is seeking input on proposed rules for crypto-asset service providers (CASPs), in particular related to their authorisation, identification and management of conflicts of interests and also how CASPs should address complaints.



In addition, ESMA aims to gather more insight on respondents' current and planned activities, as a fact-finding exercise to better understand the EU crypto-asset markets and their future development. These questions relate to elements such as the expected turnover of the respondents, the number of white papers they plan to publish and the use of on-chain vs off-chain trading. The input to this part of the consultation will remain confidential and will serve to calibrate certain proposals to be inserted in the second and third consultation package.

This first consultation package is an important milestone for ESMA in the implementation of the MiCA framework. It translates our ambition to set high regulatory standards in the EU for crypto-asset related activities into concrete requirements.

We are determined to ensure entities involved in crypto-asset related activities understand that the EU is not a place for forum-shopping. We also want to remind consumers that, even with the implementation of MiCA, there will be no such thing as a safe crypto-asset.

Verena Ross, *ESMA Chair*



In parallel to this consultation, ESMA will continue working on its remaining mandates with the objective to publish a second consultation package in October 2023. More information regarding the ESMA approach to MiCA implementing measures can be found [here](#).

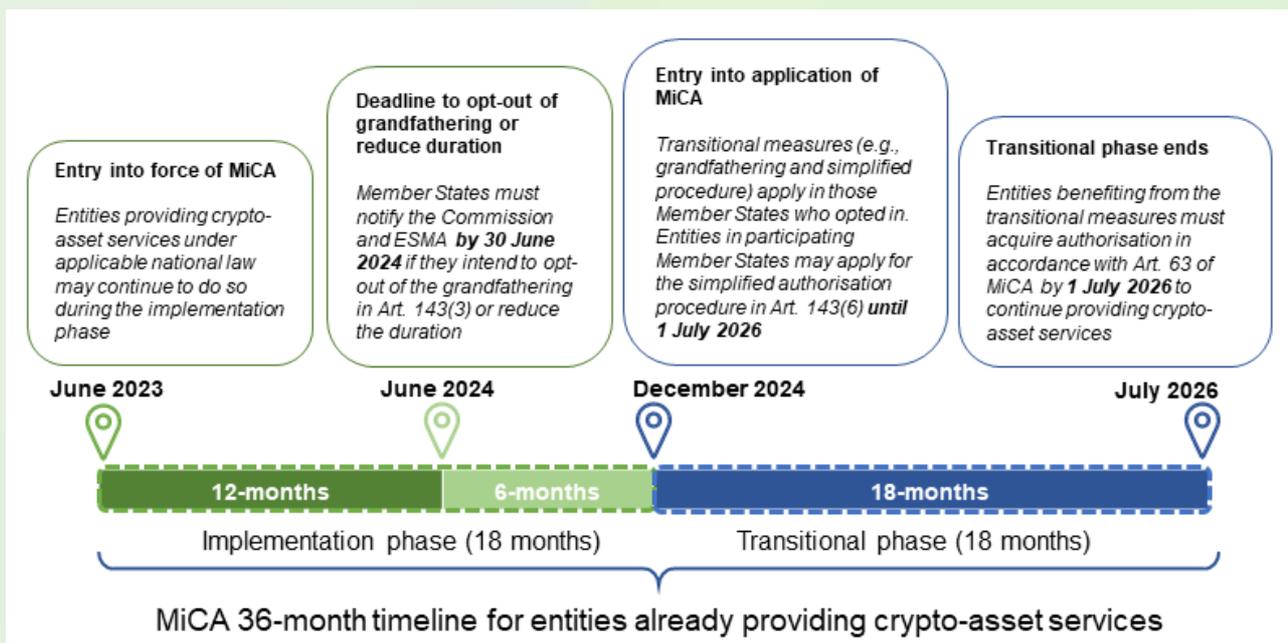
Next steps

ESMA will consider the feedback received to this consultation and expect to publish a final report and submit the draft technical standards to the European Commission for endorsement by 30 June 2024 at the latest.

More background on MiCA transitional measures

Member States will have the option of implementing 'transitional measures' (Article 143 of MiCA) that would allow entities or undertakings already providing crypto-asset services under applicable law in their jurisdictions to continue doing so during the transitional phase of MiCA (i.e., the period of 18-months after full application in December 2024). These transitional measures include:

- A 'grand-fathering' clause Art. 143 (3) – allowing entities providing crypto-asset services in accordance with national applicable laws before 30 December 2024 to continue to do so until 1 July 2026 or until they are granted or refused a MiCA authorisation.
- A simplified authorisation procedure Art. 143 (6) – for entities that were already authorised under national applicable law on 30 December 2024 to provide crypto-asset services.



Analysis of the cross-border investment activity of firms

The European Securities and Markets Authority (ESMA) and national competent authorities (NCAs) completed an analysis of the cross-border provision of investment services during 2022.

The increase in the cross-border provision of financial services has benefits for consumers and firms, as it fosters competition, expands the offer available to consumers and the market for firms. However, it also requires that NCAs intensify their efforts and focus more on the supervision of cross-border activities and cooperation to tackle the issues arising from these activities.

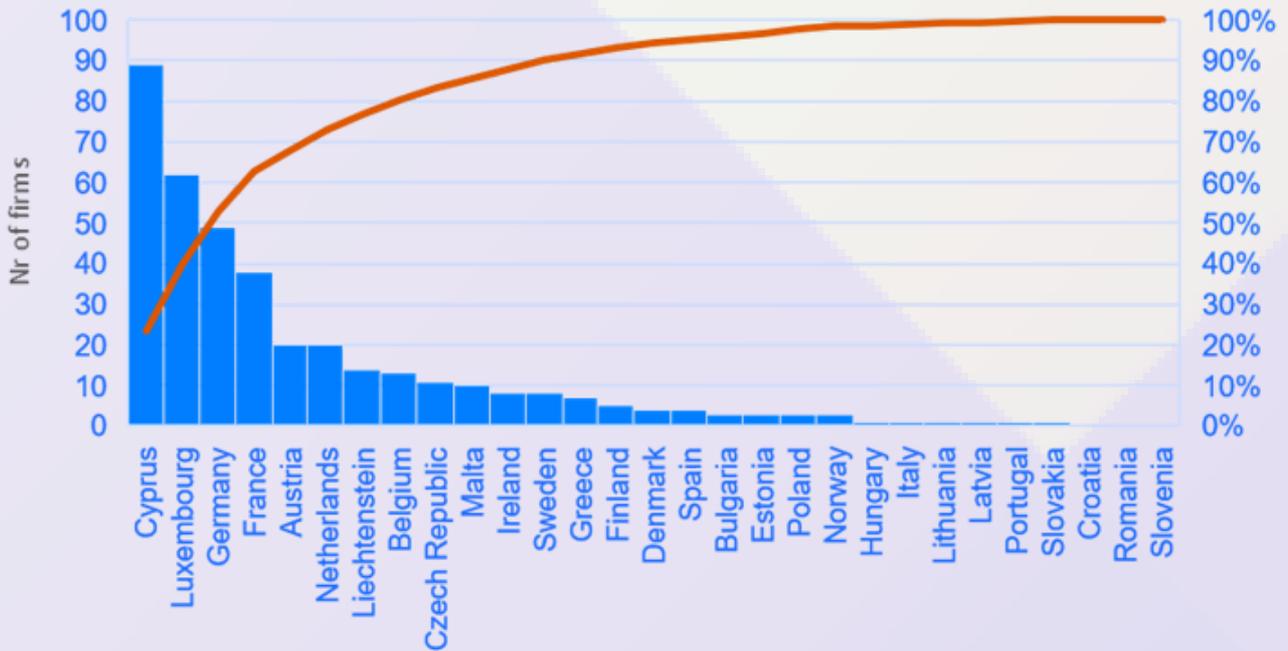
The data collected and analysed across 29 jurisdictions allows ESMA and NCAs to shed light on various aspects of the market for retail investors that receive investment services by credit institutions and investment firms established in other Member States.

Key findings of the data collection include:

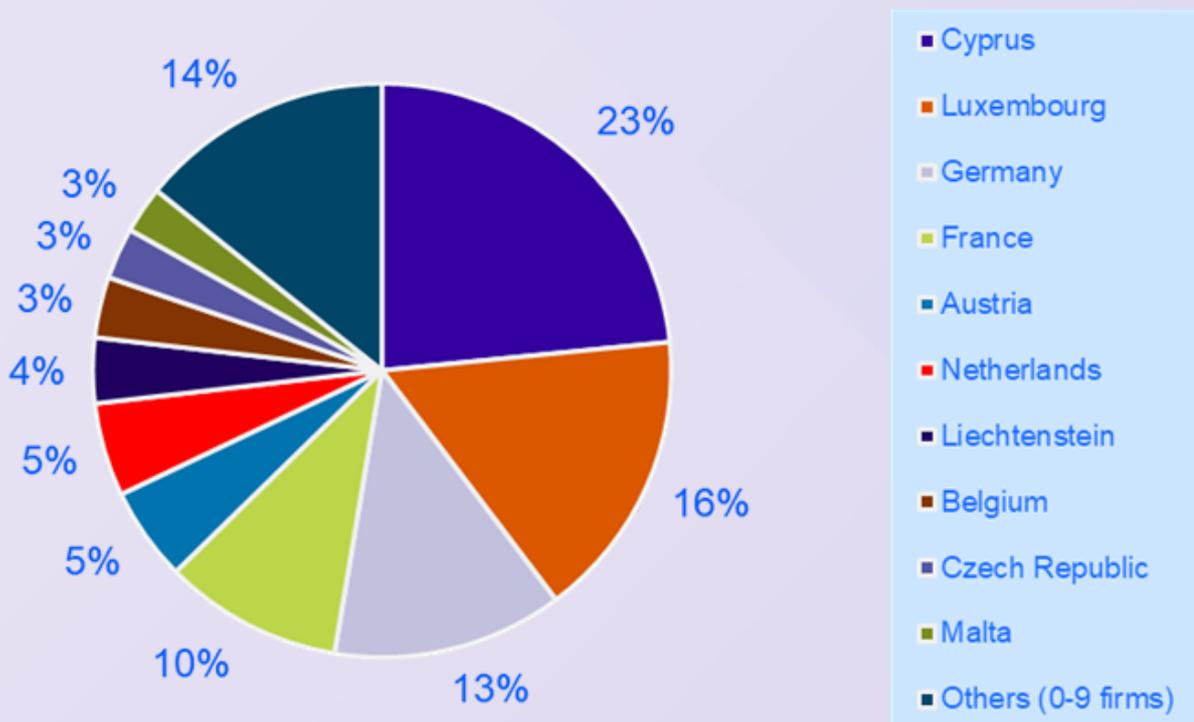
-  A total of around **380 firms** provided services to retail clients on a cross-border basis in 2022. The majority of them (59%) are investment firms, while 41% are credit institutions.
-  Approximately **7.6 million clients** in the EU/EEA received investment services from firms located in other EU/EEA Member States in 2022
-  In terms of **number of firms**, Cyprus is the primary location for firms providing cross-border investment services in the EU/EEA, accounting for 23% of the total firms passporting investment services. Luxembourg and Germany follow with 16% and 13% of all firms, respectively.

- Looking at the **number of EU/EEA retail clients** receiving cross-border investment services, more than 75% are served by firms based in three jurisdictions: Cyprus, Germany, and Sweden. Cyprus-based firms reported activity to around 2.5 million cross-border retail clients, German-based firms to around 2 million retail clients and Sweden-based firms to more than 1 million retail clients. All other firms in the scope of the exercise reported a total of around 1.8 million cross-border retail clients, accounting for about a quarter of the total number of retail clients.
- The average number of cross-border retail clients per firm varied from 189 (for the only firm in Italy) to about 140,000 retail clients (for the 8 firms based in Sweden). Overall, the average number of retail clients per firm was about 19,000.
- As **host Member States**, Germany, Spain, France and Italy are the most significant destinations (in terms of number of retail clients) for investment firms providing services cross-border in other Member States.
- Approximately 5,700 complaints were recorded by firms relating to the provision of cross-border investment services to retail clients in 2022. The number of complaints received is proportional to the number of clients served by firms providing cross-border investment services.
- The data analysis highlighted that clients of cross-border investment services primarily lodged complaints^[3] about “terms of contract/fees/charges” and about “issues pertaining to general admin/customer services”. Fewer complaints were reported on the topics of “investment products not appropriate/suitable for the client” and “market event related”.

Distribution of firms across EU/EEA Member States



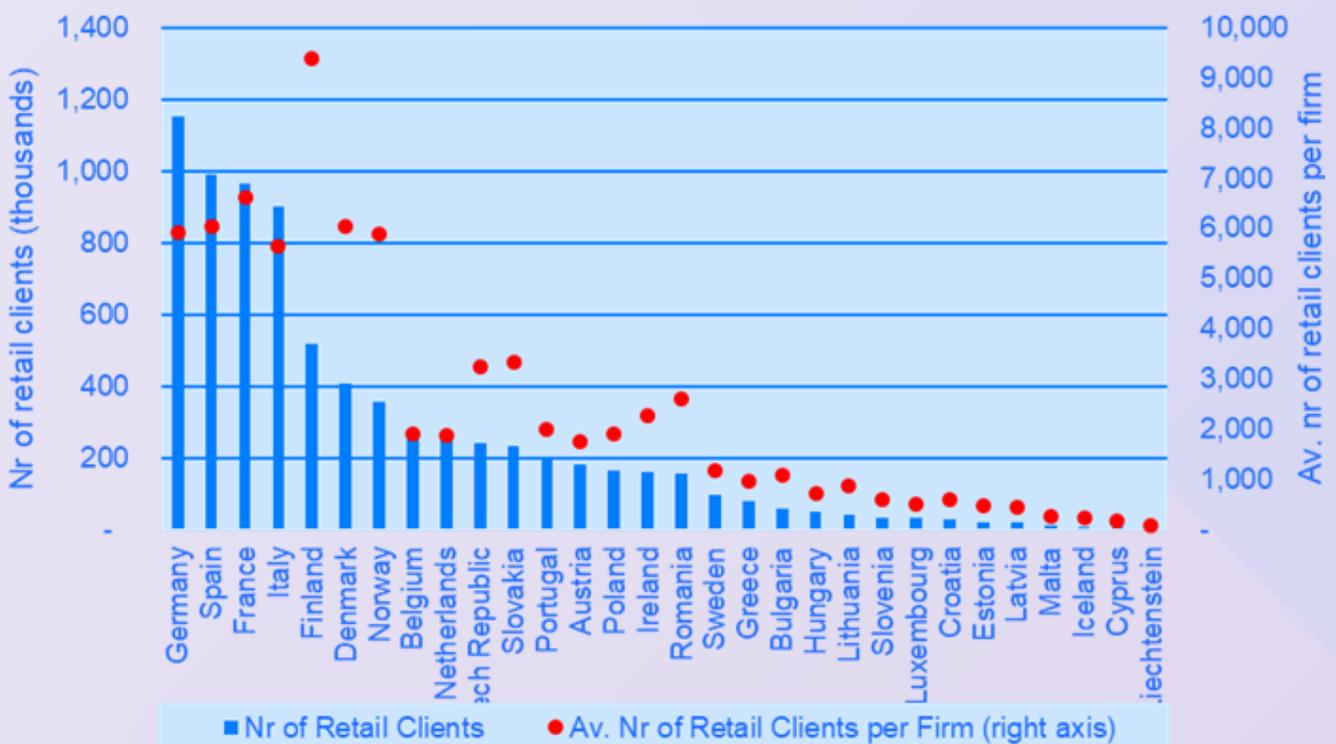
Shares of firms by home Member State



Number of clients by home Member State



Number of clients by host Member State



Insights into the expected sustainability disclosures in prospectuses

The European Securities and Markets Authority (ESMA) issued a **Public Statement** on the sustainability disclosure expected to be included in prospectuses.

The statement sets out ESMA's expectations on how the specific disclosure requirements of the Prospectus Regulation in relation to sustainability-related matters in equity and non-equity prospectuses should be satisfied considering the Environmental, Social and Governance (ESG) transition. This will help to:

- ensure that national competent authorities (NCAs) take a coordinated approach to the scrutiny of sustainability-related disclosure in prospectuses;
- provide issuers and their advisors with an understanding of the disclosure that NCAs will expect them to include in their prospectuses; and
- support investors' ability to make an informed investment decision considering the importance of disclosure relating to sustainability-related matters.



Expected ESG disclosure in prospectuses

The Statement draws attention to the **sustainability-related disclosure** necessary to satisfy the relevant provisions of the Prospectus Regulation (PR). ESMA emphasises the importance of an issuer's non-financial reporting under the Non-Financial Reporting Directive and the future sustainability reporting under the Corporate Sustainability Reporting Directive, especially because such disclosure may be material under the PR and included in an issuer's prospectus.

In addition, regarding **non-equity securities** advertised as taking into account a specific ESG component or pursuing ESG objectives, the statement clarifies the disclosure required in relation to 'use of proceeds' bonds and 'sustainability-linked' bonds.

The Public Statement also notes that sustainability-related disclosure is sometimes included in advertisements but not in prospectuses themselves and highlights that this disclosure should be included in prospectuses if it is material under the PR.

Next steps

ESMA and NCAs will continue to monitor the market to determine whether this guidance should be modified, for instance, in cases where new products are introduced to the market or there are changes in the legislation.

Implementation of the revised Shareholder Rights Directive and areas for progress

The European Securities and Markets Authority (ESMA) jointly with the European Banking Authority (EBA), published a Report assessing the implementation of the Shareholder Rights Directive 2 (SRD2). This assessment, carried out in response to a European Commission's request, identifies areas for further progress and provides detailed suggestions for policy action in relation to the Directive's effectiveness, difficulties in practical application and the appropriateness of the scope of application.

In the report, ESMA analyses the implementation of certain provisions in the SRD2 in the areas of proxy advisors and the investment chain:

- For proxy advisors the current framework has proved robust overall. Still, certain improvements could be put in place, for example in connection to conflicts of interest. In addition, ESMA proposes the introduction of a registration mechanism for proxy advisors at the EU level.
- For the investment chain, ESMA highlights the importance of making further efforts in the direction of a common definition of the term "shareholder" in line with Action 12 of the Commission's CMU Action Plan. A number of additional technical improvements to streamline communication along the investment chain are also proposed, along with a call for increased transparency in relation to disclosing charges applied by intermediaries.

Following a request from the European Commission based on corresponding provisions in the SRD2 itself, ESMA has worked with the European Banking Authority (EBA), which has analysed the implementation of the SRD2 and provided suggestions in the areas of charges applied by intermediaries and the practices of third country intermediaries.

Final Report on revised technical standards for passporting

The European Securities and Markets Authority (ESMA) published its **Final Report on the review of the technical standards for passporting under Article 34 of MiFID II**.

ESMA's proposals include targeted amendments to the existing RTS and ITS that would add new information requirements to the list of details investment firms have to provide at the passporting stage.

A new investment services and activities passport notification will also provide National Competent Authorities (NCAs) with additional information on a firm's planned or existing cross-border activities. ESMA and the NCAs observe a continued increase in cross-border activities provided to retail clients by investment firms across the EU.

This has clear benefits for consumers and investment firms, as it fosters competition, and increases the investment options available to retail investors. Cross-border activities also require NCAs to increase their supervisory focus and cooperation efforts as there is a risk of undermining investors' trust which, in the long term, has the potential to hamper the development of the single market.



Next steps

ESMA has submitted the Final Report to the European Commission (EC) and will provide further advice and technical guidance should the EC decide to proceed with the review.

Updates guidance on the definition of advice in a supervisory briefing

The European Securities and Markets Authority (ESMA) published a supervisory briefing on understanding the definition of advice under MiFID II.

ESMA reviewed and updated the CESR Q&A on Understanding the Definition of Advice under MiFID, a document that is widely used by supervisors and firms, to align it with new business models and recent technological developments.

The Q&A document is issued in the form(at) of a supervisory briefing and intended for use by the National Competent Authorities (NCAs) in their supervisory activities.

The supervisory briefing, among other topics, covers:

- The provision of personal recommendations and whether other forms of information could constitute investment advice;
- Guidance on when recommendations will be viewed as based on a view of a person's circumstances;
- Perimeter issues around the definition of personal recommendation;
- Issues around the form of communication, including use of social media posts.

The document is also intended to provide guidance to firms.

Next steps

ESMA and NCAs will continue monitoring the application of the MiFID II requirements and to make sure that investment services continue to be provided in the best interest of the client.

Areas for improvement in firms' disclosure of cost and charges

The European Securities and Markets Authority (ESMA) published a Statement on its 2022 Common Supervisory Action (CSA) and on the mystery shopping exercise regarding compliance with disclosure requirements for costs and charges under MiFID II.

Overall, firms comply with most of the elements of the ex-post cost and charges requirements under MiFID II. This level of compliance varies across Member States. The CSA exercise revealed certain shortcomings in information provided to retail clients and suggests areas for improvement regarding both disclosure format and content.

The identified shortcomings concern:

- significant differences across firms and Member States in the format and content of ex-post disclosures
- differing practices and sometimes no disclosure of information on inducements
- lack of disclosure of implicit costs to clients
- lack of consistency in the way firms illustrate the cumulative impact of the costs and charges on the return of the investment
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Concurrently with the CSA, ESMA coordinated and ran its first mystery shopping exercise on the ex-ante cost and charges information provided to retail clients. In most cases, mystery shoppers received information about costs and charges before the investment service was provided, however the quality and the timing of the information provided differed between firms.

Publications

Click to read the news items

Date

- 3 Jul** ESMA publishes second overview of national rules governing fund marketing
- 6 Jul** ESMA publishes latest edition of its newsletter
- 6 Jul** ESMA and NCAs to assess disclosures and sustainability risks in the investment fund sector
- 6 Jul** ESMA highlights areas for improvement in firms' disclosure of cost and charges under MIFID
- 7 Jul** ESMA upgrades rating data repository and publishes latest data on CRA performance
- 10 Jul** New Manual on post-trade transparency available
- 11 Jul** ESMA updates its guidance on the definition of advice in a supervisory briefing
- 11 Jul** ESMA provides insights into the expected sustainability disclosures in prospectuses
- 11 Jul** ESMA publishes Final Report on revised technical standards for passporting
- 11 Jul** ESMA issues Opinion on CNMV product intervention measures
- 12 Jul** ESMA seeks first input on detailed rules for crypto markets
- 12 Jul** ESMA does not find evidence to ban pre-hedging but warns on risks

Date

- 12 Jul** ESMA highlights risks arising from securities lending to retail investors
- 13 Jul** National regulators strengthen their supervision of the compliance function
- 13 Jul** New Q&As available
- 17 Jul** ESMA publishes Report on Suspicious Transactions and Order Reports
- 18 Jul** ESMA publishes 2022 UCITS and AIFMD sanction reports
- 19 Jul** ESMA performs an analysis of the cross-border investment activity of firms
- 19 Jul** ESMA proposes revised technical standards on anti-procyclicality margin measures
- 25 Jul** Inclusion of the United Arab Emirates on AML blacklist requires ESMA to withdraw the recognition decisions of three CCPs
- 27 Jul** ESMA and the EBA assess the implementation of the revised Shareholder Rights Directive and identify areas for progress

Speaking appearances

by ESMA Staff in September

Date

- | | |
|---------------|---|
| 1 Sep | EULEN EU law enforcement - effective and under control
- John Lynch |
| 7 Sep | AIMA's 2023 'Putting ESG into Practice' event
- Patrik Karlsson |
| 7 Sep | International Trader Forum Conference
- Carsten Ostermann Acting Head of Markets and Digital Innovation Department |
| 11 Sep | DDV-Forum 2023
- Verena Ross, ESMA Chair |
| 13 Sep | Eurofi
- Verena Ross, ESMA Chair |
| 19 Sep | EMIR Refit Forum 2023
- Joanna Lednicka |
| 20 Sep | Les 20 ans du H3C
- Natasha Cazenave, ESMA Executive Director |
| 27 Sep | ERA Annual Conference on Law and Sustainable Finance
- Salvatore Gnoni |
| 28 Sep | AFME Annual European Compliance and Legal Conference
- Iliana Lani, Head of Conduct Supervision and Convergence Department |

Consultations

Click on the consultation

Closing date

- 24 Aug** Consultation on the draft regulatory technical standards under the revised ELTIF Regulation
- 11 Sep** Consultation on the first batch of Digital Operational Resilience Act (DORA) policy products
- 15 Sep** Call for Evidence on sustainability in suitability and product governance
- 20 Sep** Consultation on the Technical Standards specifying certain requirements of MiCA (1st package)

Hearings

Have you missed the latest hearings?

6 Jun

Review of the SFDR disclosures – public event on the European Supervisory Authorities' consultation

 recording

 presentation

13 Jul

Public hearing related to the first batch of policy products under the DORA

 presentation

Open vacancies

All open vacancies can be found on [ESMA's recruitment portal](#)

Deadline

16 Aug	Head of Investigation Unit
17 Aug	Senior Officer (CCP profile)
31 Dec	Seconded National Experts (multiple profiles)
31 Dec	Traineeship Notice - Support functions profile
31 Dec	Traineeship Notice - Economics, Data and IT profile
31 Dec	Traineeship Notice - Regulation, Supervision and Policy profile

Contact info

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Press contact information

Social Media



ESMAComms



European Securities and Markets Authority (ESMA)