European Securities and Markets Authority

Annual Report 2019

15 June 2020

ESMA20-95-1264

European Securities and Markets Authority

Annual Report

2019

Printed by Bietlot in Belgium

Photo credits: © ESMA: cover page, page 6, 10, 12, 15, 24, 42, 44, 57, 75
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Manuscript completed in June, 2020

Luxembourg: Publications Office of the European Union, 2020

Print	ISBN 978-92-95202-35-1	ISSN 2443-6739	doi:10.2856/868753	EK-AA-20-001-EN-C
PDF	ISBN 978-92-95202-34-4	ISSN 2443-6747	doi:10.2856/624103	EK-AA-20-001-EN-N

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Steven Maijoor

CHAIR
EUROPEAN SECURITIES AND MARKETS AUTHORITY

Chair's foreword

This 2019 annual report of the European Securities and Markets Authority (ESMA) allows us the opportunity to look back to a very different time to the present day. Our primary focus in the first half of 2020 has been responding to the crisis provoked by the COVID-19 pandemic. ESMA, together with the national competent authorities (NCAs), has acted swiftly, taking measures to ensure stable, orderly financial markets and the protection of investors in extraordinary times.

Actions taken by ESMA in response to this situation include issuing recommendations to financial market participants and our supervised entities clarifying their responsibilities during the pandemic; providing up to date risk assessments of the EU financial markets; and taking a number of actions to provide relief to market participants supporting their continuity of business in exceptional circumstances.

While ESMA will continue to closely monitor the continuing impact on the financial markets, this annual report is an opportunity to reflect on our key achievements in 2019. ESMA has now existed for almost a decade; however, 2019 was also a year of renewal for the organisation. Political agreement was achieved on the amended ESMA founding regulation and the European Market Infrastructure Regulation (EMIR), which will significantly strengthen and expand ESMA's mandate, including its powers and responsibilities. The past year has been as much about delivering on our existing mission – to enhance investor protection and promote stable and orderly EU markets – as about preparing for the next wave of organisational change.

ESMA has further expanded its focus to ensuring the consistent and effective implementation of the EU Single Rulebook and of supervisory practices across Member States. In that context, ESMA has conducted evidence-based analyses to support its review of legislation. For example, to review the Markets in Financial Instruments repealing Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR), we have assessed the results regarding the fair access to, and lowering the cost of, market data.

ESMA's focus on investor protection was a key driver in 2019, as we published our first statistical report on costs and past performance of retail investment products in the EU. Such reports enhance the analysis of key cost and performance indicators that retail investors should consider. In addition, product intervention measures related to binary options and contracts for difference taken by NCAs continued in 2019, with temporary measures taken by ESMA being replaced by permanent NCA measures.

ESMA's focus on investor protection will strengthen in 2020, as it is a cornerstone of the capital markets union (CMU) and as the situation provoked by the COVID-19 pandemic raises investor protection concerns. The continued focus in the EU on the CMU will result in further initiatives to strengthen the role of capital markets in the EU financial system. Looking forward, ESMA will do its part in giving retail investors the means to understand, trust and participate in financial markets, enabling a CMU to serve EU investors and firms as well.

Looking back, ESMA can also take pride in its stress-simulation framework for investment funds, to be used both by regulators to simulate stress situations for different segments of the fund industry and by ESMA itself as part of its regular risk monitoring and assessment of scenarios that could affect the robustness of the EU fund industry. The importance and value of this stress testing work has been confirmed in the current crisis.

On the risk analysis front, ESMA produced its first annual report on alternative investment funds, offering the first comprehensive view of the sector while highlighting issues needing attention to support NCAs in their supervisory work. A second annual derivatives report was also produced, this time including a novel analysis of intra-group transactions.

With the new mandates, much effort went into putting in place the tools necessary to apply ESMA's supervisory expertise to an enlarged scope of direct supervision that will eventually include securitisation repositories, securities financing transactions, critical benchmarks, data service providers and third-country central counterparties. Meanwhile, a follow-up on our thematic report on fees charged by credit-rating agencies (CRAs) and trade repositories was published, and a record fine was imposed on a group of EU CRAs following infringements of the CRA Regulation's conflict of interest requirements.

ESMA's international work saw significant advances in 2019, with a growing role in international forums and increasing cooperation with third-country authorities. Two key results of this work were the signing of the administrative agreement between ESMA and the

International Organization of Securities Commissions (IOSCO), allowing data transfers between regulators in and outside the European Economic Area, and our contribution to the IOSCO *Market fragmentation and cross-border regulation* report for the G20.

Of course, one of 2019's biggest challenges was preparing for Brexit. To deal with the uncertainty surrounding its implementation, ESMA made use of its Supervisory Coordination Network to ensure that a consistent approach to authorising and supervising firms relocating from the United Kingdom to the EU-27 was being taken by NCAs. ESMA also continued to monitor Brexit-associated risks, including planning for a no-deal scenario, and to make appropriate use of policy tools such as recognition decisions for central counterparties and central securities depositories to limit the potential stability risks for EU financial markets. This included agreeing a range of memoranda of understanding (MoUs) with UK competent authorities.

Finally, the outcome of the European Supervisory Authorities' (ESAs) review means that sustainable finance-related responsibilities will become part of ESMA's remit. To support this, ESMA has developed a sustainable finance strategy and produced pieces of technical advice on the integration of sustainability risks and factors in MiFID II, the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive and the Alternative Investment Fund Managers Directive (AIFMD), and on identifying the short-term pressures that firms face to better encourage the adoption of longer term strategies.

As always, I wish to express my heartfelt appreciation for all my colleagues in the Board of Supervisors, the Management Board and in the Joint Committee of the ESAs. It is thanks to their support and excellent cooperation that we were able to deliver on our objectives for this turning point of a year. I also want to acknowledge the excellent cooperation we have with the European institutions – Commission, Parliament and Council – and thank our stakeholders for the valuable contributions that they again made this year.

Finally, through all the changes and uncertainties that defined 2019, ESMA staff's commitment and dedication never faltered. This spirit has already proven essential in the first half of 2020 and I look forward to facing with them the ongoing challenges that this year will bring.

Steven Maijoor

Chair

Verena Ross

EXECUTIVE DIRECTOR
EUROPEAN SECURITIES AND MARKETS AUTHORITY

Executive Director’s foreword

The circumstances in which I write this foreword are very different from previous years. In line with decisions on lockdown and current guidance on physical distancing during the Covid-19 pandemic, ESMA has been working entirely remotely since 16 March 2020. These circumstances have challenged us to quickly find new ways of working and communicating with our staff and with our partners. We have made several IT and management improvements that have allowed us to continue to respond effectively to the crisis, as well as continuing smooth working on our planned activities. As I write, ESMA continues to work remotely, while preparing for a gradual return to our premises, fully respecting the new sanitary and social distancing conditions.

Looking back at the year 2019, it brought the start of significant changes to ESMA, as we were entrusted with new mandates after the review of our founding regulation and other legislative files, in particular EMIR 2.2. These new responsibilities will shift the balance within ESMA from being a largely policy-making body to taking on more direct supervision responsibilities and to focusing even more on promoting supervisory convergence between national supervisors. The second half of 2019 was therefore a time of intense preparation during which, once political agreement had been reached by the co-legislators, ESMA shifted its focus to preparing for the upcoming changes.

In particular, from an organisational point of view, the additional responsibilities required us to restructure internally to ensure that we would have the appropriate staffing structure for the coming years. The organisation’s new tasks will require new skills and different expertise from ESMA’s staff; they will also require us to recruit new colleagues to achieve the necessary capacity to deliver on our new mandates. To prepare for this, we made organisational changes in order to be able to recruit and train new staff, as well as retain and make the best use of the talents of our existing staff. With the onset of the pandemic, we have adapted our recruitment and induction processes to ensure that we can continue to welcome new colleagues in 2020, even while working remotely.

A larger staff contingent needs a larger office and so, following the procurement of our new premises lease in 2018, we moved ESMA at the end of 2019 from its old home on Paris’ left bank to its new home by the Gare de Lyon station. Although less expensive per square metre, the new premises are well situated for local public and international transport and boast the highest environmental certifications. Prior to taking up residence, we spent a large part of the year conducting fit-out works in order to provide ESMA and its many visitors with a modern, efficient and pleasant space in which to work.

The ESAs’ review and EMIR 2.2 are not the only new pieces of legislation that affect ESMA. Preparatory work for our new direct supervisory mandates under the Securities Financing Transactions Regulation (SFTR) and the Securitisation Regulation gained further momentum in 2019. We began assessing the first applications from trade repositories that wished to be registered under the new SFTR and held discussions with potential applicant securitisation repositories under the Securitisation Regulation to ensure they were aware of the expected application process.

In addition to the new mandates granted to ESMA, existing responsibilities have also been expanded. New data-reporting requirements mean that ESMA needs to continue with its ambitious IT programme, aiming to make the best use of the newly available data for financial market analysis, as well as for supervision by NCAs and by ESMA. We clearly demonstrated the utility of this new data in 2019, as we expanded our annual statistical report series, our monitoring capability of EU financial markets and our risk-based supervisory approach.

To support the increasing number of systems that ESMA maintains with ever-larger data demands, as well as its larger staff base, we began the migration of our systems to the cloud. This project began in 2018 and has continued into 2020, and it will be key to ensuring digital security, agility and innovation in a context of the continued growth of our IT needs.

In addition, with the continuing uncertainty around the UK’s withdrawal from the EU, ESMA continued taking practical preparatory measures for a no-deal scenario by publishing updated statements and measures for IT applications and databases.

In conclusion, it remains only for me to thank wholeheartedly my ESMA colleagues, who have worked so tirelessly and with positive energy throughout 2019, not only in delivering the usual planned work, but also in preparing for the exciting times ahead of us. My gratitude also for responding so effectively to the ongoing pandemic and keeping ESMA running smoothly in these extraordinary times.

I would also like to thank my colleagues in the EU competent authorities, as well as ESMA’s Board of Supervisors and Management Board, for their invaluable support and guidance throughout 2019.

Verena Ross

Executive Director

1 ESMA's mission and objectives

The European Securities and Markets Authority (ESMA) is an independent EU authority, established under the ESMA Regulation ([1]), charged with enhancing the protection of investors and promoting stable and orderly financial markets. ESMA's founding regulation was amended as of 1 January 2020 ([2]). As an independent authority, ESMA achieves its aims by assessing risks to investors, markets and financial stability, completing a single rulebook for EU financial markets, promoting supervisory convergence and directly supervising specific financial entities.

ESMA forms part of the European System of Financial Supervision (ESFS), a multi-layered system of micro- and macro-prudential authorities established by the European institutions to ensure consistent and coherent financial supervision in the EU. This system consists of the three European supervisory authorities (ESAs) and the national competent authorities (NCAs) of the Member States. ESMA, together with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), forms part of the Joint Committee of the ESAs ([3]) (hereinafter 'the Joint Committee'), which works to ensure cross-sector consistency and joint positions in the area of the supervision of financial conglomerates and other cross-sector issues. The European Systemic Risk Board (ESRB) complements the ESFS.

ESMA is accountable to the European Parliament and the European Council and works in close liaison with the European Commission (hereinafter 'the Commission').

1.1. Mission, objectives and activities

ESMA's mission, based on its regulation, is to enhance the protection of investors and promote stable and orderly markets in the EU.

Sound and effective regulation of securities markets is key to the integrity, efficiency and growth of the EU's financial markets and economy, and effective regulation and supervision is a vital factor in securing and maintaining confidence among market participants. To foster these conditions, ESMA works to improve harmonisation in both regulation and supervisory practices.

To achieve harmonised rule implementation throughout the EU, ESMA serves as a standard setter in relation to securities markets and provides technical advice to the Commission. It also has an important role in directly supervising financial players with a pan-European profile, currently credit-rating agencies (CRAs) and trade repositories (TRs). ESMA also participates in the supervision of central counterparties (CCPs) through supervisory colleges. ESMA has recently been given additional direct supervisory mandates, which will come into force in the next few years.

The annual report is an important accountability tool describing ESMA's delivery against its objectives and annual work programme ([4]).

ESMA's role can be better understood through its three objectives:

1. **investor protection**, namely to have the needs of financial consumers better served and to reinforce their rights as investors while acknowledging their responsibilities;
2. **orderly markets**, namely to promote the integrity, transparency, efficiency and orderly functioning of financial markets and robust market infrastructures;
3. **financial stability**, namely to strengthen the financial system so that it is capable of withstanding shocks and the unravelling of financial imbalances while fostering economic growth.

The three objectives are interlinked; for example, investor protection and orderly markets feed into overall financial stability. At the same time, increased financial stability supports orderly markets and investor protection.

ESMA achieves its mission within the ESFS through active cooperation with NCAs and with the EBA and EIOPA, both bilaterally and through the Joint Committee. ESMA has a unique position within the ESFS, focusing on the securities and financial markets dimension and the overarching European aspects of these objectives.

The following four activities help ESMA to achieve its mission and objectives.

1. **Single rulebook.** The purpose of completing a single rulebook for EU financial markets is to enhance the EU single market by creating a level playing field for all market participants across the EU. ESMA contributes to the single rulebook by

(**1**) ESMA Regulation 1095/2010.

(**2**) ESMA new founding Regulation 2175/2019.

(**3**) Joint Committee of the ESAs.

(**4**) ESMA/2016/1419 2017 Work Programme.

developing technical standards and by providing advice to EU institutions on legislative projects.

2. **Risk monitoring and analysis.** The purpose of assessing risks to investors, markets and financial stability is to spot emerging trends, risks and vulnerabilities and, where possible, to identify opportunities so that they can be acted upon in a timely fashion. ESMA uses its unique position to identify market developments that pose a risk to financial stability, investor protection or the orderly functioning of the European financial markets.

3. **Supervisory convergence.** This is the consistent implementation and application of the same rules using similar approaches across the EU Member States. The purpose of promoting supervisory convergence is to ensure a level playing field of high-quality regulation and supervision without regulatory arbitrage or a race to the bottom between Member States. The consistent implementation and application of rules ensures the safety of the financial system, protects investors and ensures orderly markets.

4. **Supervision.** ESMA is the direct supervisor of specific financial entities, namely CRAs and TRs. These entities form essential parts of the EU's market infrastructure. ESMA's CRA supervision supports the quality of ratings and helps to protect investors' interests, while ESMA's TR supervision is key to ensuring data quality and providing transparency on derivatives markets.

ESMA's four activities are closely linked. Insights gained from risk assessments feed into the work on the single rulebook, supervisory convergence and direct supervision, and vice versa. We consider supervisory convergence to be the manifest implementation and application of the single rulebook. ESMA's direct supervision benefits from and also feeds into our risk assessment and the single rulebook activities.

1.2. ESMA's key priorities for 2019

In 2019, ESMA focused on delivering the following key priorities that had been agreed in its 2019 annual work programme.

Supervisory convergence	• **Implementation of MiFID II/MiFIR, prospectus and securitisation**
Assessing risks	• **Data requirements of MiFID II/MiFIR**
Single Rulebook	• **Capital markets union action plan and financial technology action plan**
Direct supervision	• **Supervision of CRAs and TRs and registrations under the Securitisation Regulation and SFTR**

MiFID II, Markets in Financial Instruments repealing Directive; MiFIR, Markets in Financial Instruments Regulation; SFTR, Securities Financing Transactions Regulation.

1.3. Governance and organisation

1.3.1. Governance and management

Two decision-making bodies govern ESMA: the Board of Supervisors (BoS) and the Management Board.

1.3.2. Board of Supervisors

In addition to ESMA's Chair ([5]), whose role changed as of 1 January 2020 with the implementation of the new ESMA founding regulation, the BoS is composed of the heads of the NCAs of the 28 ([6]) EU Member States, which are responsible for securities regulation and supervision ([7]). The heads of the authorities from Iceland, Liechtenstein and Norway and the European Free Trade Association (EFTA) Surveillance Authority ([8]) are also non-voting members. Other non-voting members include the Commission, the EBA, EIOPA and the ESRB. The Executive Director attends the BoS.

The BoS guides the work of the Authority and has the ultimate decision-making responsibility regarding a broad range of matters, including the adoption of ESMA standards, opinions, recommendations and guidelines, the issuance of advice to the EU institutions, and taking authorisation and enforcement decisions. The BoS is supported by a number of standing committees and working groups that deal with technical issues.

The BoS's current members and the summaries of its 2019 meetings can be found on ESMA's website ([9]).

Since 2011, ESMA's full-time Chair is Steven Maijoor and its Executive Director is Verena Ross. Both are based at ESMA's premises in Paris and commenced their second mandate of 5 years during the course of 2016.

The Chair is responsible for preparing the work of the BoS and chairs both its meetings and those of the Management Board. He also represents the Authority externally. Anneli Tuominen of the Finnish Financial Supervisory Authority (FIN-FSA) was appointed Vice-Chair.

The Executive Director is responsible for the day-to-day running of the Authority, including staff matters, developing and implementing the annual work programme, developing the draft budget and preparing the work of the Management Board.

(**5**) Up until 2020, the ESMA Chair had no vote.

(**6**) 27 after January 2020 because of the UK's withdrawal from the EU.

(**7**) Where there is more than one national authority in a Member State, authorities will agree on which of their heads will represent them.

(**8**) EFTA Surveillance Authority website on 02/05/2017.

(**9**) BoS.

1.3.3. Management Board

In addition to the ESMA Chair, the Management Board is composed of six members selected from the BoS by its members. The Executive Director, the Vice-Chair and a representative of the Commission attend as non-voting participants (except on budget matters, on which the Commission has a vote).

The main role of the Management Board is to ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with the ESMA Regulation. It focuses, in particular, on the management and supervisory aspects of the Authority, such as the development and implementation of a multiannual work programme, as well as budget and staff resource matters.

The Management Board's current members and the summaries of its 2019 meetings are available on ESMA's website ([10]).

1.3.4. Securities and Markets Stakeholder Group

The Securities and Markets Stakeholder Group (SMSG) was established under the ESMA Regulation to facilitate consultation with stakeholders in areas relevant to ESMA's tasks. The members represent financial market participants and their employees, consumers and other users of financial services, academics, and small and medium-sized enterprises. ESMA consults the SMSG on all its draft technical standards and guidelines in order to ensure input from stakeholders.

The members of the SMSG, made up of 30 individuals, serve a term of 2.5 years. In 2019, the group was chaired by Professor Veerle Colaert. She holds the chair for financial law at KU Leuven University and is co-director of the Jan Ronse Institute for Company and Financial Law. She was, in 2019, supported by joint Vice-Chairs Christiane Hölz, representing users of financial services, and Rainer Riess, representing financial market participants. The SMSG held six meetings in 2019, two of which were held together with the BoS.

The SMSG issued advice, opinions and reports in 2019 on issues such as packaged retail and insurance-based investment products (PRIIPs), sustainability and short-termism, credit-rating disclosures, market data and consolidated tape, prospectus disclosure requirements, the performance and cost of retail investment products, Markets and Financial Instruments repealing Directive (MiFID II) compliance function, product intervention, undertakings for collective investment in transferable securities (UCITS) performance fees, the Market Abuse Regulation (MAR) review and the ESAs' review. Their reports and the summaries of the group's meetings can be found on ESMA's website ([11]).

1.4. Day-to-day management

The Executive Director and the Heads of Department are responsible for ESMA's day-to-day management and form the management team. ESMA had seven departments in 2019 and the heads of each department are responsible for the activities in their respective business areas. Planning and monitoring of activities are a crucial part of the management team's role and contribute to ESMA's internal control system.

The Chair, the Executive Director and the management team meet weekly to discuss the preparations of the Board meetings, strategic activities and cross-organisational issues.

(**10**) Management Board.

(**11**) SMSG.

2 ESMA's achievements against its 2019 objectives

2.1. Promoting supervisory convergence

ESMA takes an active role in building a common supervisory culture among NCAs to promote sound, efficient and consistent supervision throughout the European Economic Area (EEA).

Key deliveries and successes

Costs and charges

In line with ESMA's investor protection mandate, past performance and cost of investment products have always been key elements of ESMA's financial market surveillance and risk analysis activities. In January 2019, ESMA published its first statistical report on the cost and past performance of retail investment products in the EU. As presented in this report, ESMA further enhanced the analysis of what we believe are key determinants of the benefits and risks that retail investors in the EU should be considering when taking investment decisions. Clear, comprehensive and comparable information on retail investment products can help investors assess the past performance and costs of products offered across the EU. The report was also motivated by the EU agenda on the capital markets union (CMU) and its key objective of fostering the participation of retail investors in the EU capital markets.

In terms of policy and supervisory convergence activities to address some of the areas of concern that emerged in the report, ESMA worked with the EBA and EIOPA to review the PRIIPs key information document (KID), including its cost disclosure, and published a consultation paper on draft guidelines on performance fees in UCITS. ESMA also ran a call for evidence concerning the impact of the costs and charges disclosure requirements under MiFID II, including collecting information on if and how the application of the above rules varies across Member States. Finally, 12 new or updated Q&As on the topic of MiFID II costs and charges requirements were published.

Product intervention

Since 2018, ESMA has adopted product intervention measures in relation to the marketing, distribution and sale of binary options and contracts for difference to retail clients, owing to significant investor protection concerns arising from these products. The prohibitions were renewed on a 3-monthly basis until they expired on 1 July and 31 July 2019, respectively. By the expiry dates, most NCAs had taken permanent national product intervention measures that were at least as stringent as ESMA's measure. ESMA has expressed its opinion on national measures and, in the light of the wide implementation of permanent national measures across the EU, it decided not to renew its temporary measures. ESMA will, however, continue to monitor activities in relation to these and other related speculative products to determine if any other EU-wide measures may be needed.

The Commission has asked ESMA to report on its experience with product intervention powers, including the practical effects of the product intervention measures. As part of its review and renewal process of the temporary measures in relation to binary options and contracts for difference, ESMA collected significant information on the impact of its product intervention powers. It also launched a call for evidence in September 2019 to ask market participants, consumers and their associations to share any further information on the effects of the measures.

Common supervisory action on MiFID II appropriateness rules

The correct application of the MiFID II requirements on the assessment of appropriateness rules is important for ensuring the protection of investors in the case of transactions that are not accompanied by investment advice. In the second half of 2019, ESMA took an active role in building a common supervisory approach among NCAs, when it launched a common supervisory action (CSA), which participant NCAs carried out simultaneously. The supervisory activity focused on the application of the MiFID II requirements on the assessment of appropriateness by a sample of investment firms. ESMA's supervisory briefing on the same topic, which was published in April 2019, served as a starting point for the CSA. In 2020, ESMA will consider the need of any follow-up work arising from this CSA.

2.1.1. Corporate finance

Objective for 2019	Achieve measurable improvements in the level of convergence regarding the application by NCAs of the EU legislation on corporate finance matters. There will be particular focus on the development and application of practices in the prospectus, transparency and securitisation areas.

Prospectus

Following the 2018 consultation, ESMA published its final guidelines on how NCAs should review risk factors, as required by the new Prospectus Regulation. The guidelines encourage more appropriate, focused and streamlined risk factor disclosures for securities, presented in an easy to analyse, concise and comprehensible form. The purpose of including risk factors in a prospectus is to ensure that investors can assess the risks related to their investment, therefore allowing them to make informed investment decisions.

Following publication, ESMA focused on the consistency of application of the guidelines by NCAs. Consistency was promoted through, among other methods, discussions of supervisory cases.

ESMA also published a consultation paper on the guidelines on prospectus disclosure, the purpose of which is to ensure that market participants have a uniform understanding of the relevant disclosure requirements on particular topics and to assist NCAs when they assess the completeness, comprehensibility and consistency of information in prospectuses. Topics covered include historical financial information, profit forecasts and estimates, working capital statements, capitalisation and indebtedness, and pro forma financial information.

ESMA revised and republished a number of Q&As that were originally published under the Prospectus Directive, to bring them up to date with the Prospectus Regulation. In addition, ESMA published the first Q&As directly relating to the Prospectus Regulation. These Q&As should help market parties effectively manage the transition from the Prospectus Directive to the Prospectus Regulation by providing guidance on how NCAs will interpret the Prospectus Regulation.

Prospectus thresholds and report on prospectus activity

As the Prospectus Regulation introduces a new minimum threshold of EUR 1 million under which an offer does not require a prospectus, but which may be increased up to EUR 8 million by NCAs, ESMA published a list of thresholds applied in the various EU Member States. This was done to provide transparency around the different regimes adopted across the EU and to support market participants.

Finally, ESMA published its 2018 annual report on prospectus activity, which reported that, in 2018, the number of prospectus approvals across the EEA decreased by almost 5 % compared with 2017 (from 3 567 to 3 390). This decrease in prospectus approvals follows a decade-long declining trend observed since the start of the financial crisis.

Takeover bids

ESMA has also embarked on the regular discussion of supervisory cases in the area of takeover bids.

2.1.2. Corporate reporting

Objective for 2019	Increase supervisory convergence in the area of financial and non-financial reporting and alternative performance measures, as well as enhancing cooperation between accounting and auditing enforcers.

International Financial Reporting Standards

To promote and continuously support the consistent application of International Financial Reporting Standards (IFRS), as in every year since 2012, ESMA published,

in 2019, its public statement on the European common enforcement priorities that European enforcers would particularly consider when examining 2019 annual reports of listed companies. The priorities reflected the changes introduced in recent financial reporting standards and considered issues identified by NCAs through their enforcement activities in 2019. The statement included several considerations as regards non-financial reporting pursuant to the Non-Financial Reporting Directive (NFRD) with a specific focus on environmental matters and on general principles such as materiality, accessibility and completeness of information.

In its public statement on International Accounting Standard (IAS) 12 (income taxes), ESMA set out its expectations regarding the application of the requirements relating to the recognition, measurement and disclosure of deferred tax assets arising from unused tax losses in IFRS financial statements. ESMA and NCAs will continue to monitor the application of the requirements set out in IAS 12 and will pay attention to the issues highlighted in the statement when performing examinations of financial statements.

Alternative performance measures

In 2019, ESMA performed a desktop review of 2018 annual financial reports, ad hoc disclosures of annual earnings results and evidence arising from NCAs' experience regarding the application of ESMA's guidelines on alternative performance measures (APMs) in prospectuses. The report shows that there was significant room for improvement, as only a minority of issuers complied with all the principles of the guidelines in relation to all APMs used. ESMA and the NCAs therefore called on issuers to improve their disclosures regarding APMs and highlighted that they will continue to monitor the application of the APM guidelines and take appropriate actions in cases of infringement. The report will be part of ESMA's contribution to the exposure draft consultation on general presentation and disclosures of the International Accounting Standards Board (IASB).

European Single Electronic Format

In 2019, ESMA published for the first time in March, and then updated in December, taxonomy files to facilitate the implementation of the requirements set out in the draft regulatory technical standards (RTS) on the European Single Electronic Format (ESEF). These electronic files provide a structured representation of IFRS financial information. They will be amended on a yearly basis to reflect updates to the IFRS taxonomy published by the IFRS Foundation.

Following feedback from market participants, ESMA published in July 2019 a revised version of the ESEF reporting manual, to provide updated guidance on issues commonly encountered when generating Inline XBRL reports in compliance with the ESEF Regulation.

Annual report on enforcement activities

To deepen convergence in the enforcement of financial information, ESMA published a report on the enforcement and regulatory activities of EU accounting enforcers in 2018. In 2018, particular focus was given to the harmonisation of the application and enforcement of the new IFRS 15 (revenue from contracts with customers) and IFRS 9 (financial instruments). ESMA also published the 23rd extract from its confidential database of enforcement decisions on financial statements from the period December 2016 to December 2018. The topics covered included the presentation of the statement of cash flows, impairment of financial and non-financial assets, and the accounting treatment of leased-out property acquired for redevelopment.

2.1.3. Investment management

Objective for 2019	Achieve greater convergence and consistency of NCAs' supervisory approaches and practices in relation to the EU legislation on investment management, with a particular focus on the UCITS Directive and Alternative Investment Fund Managers Directive (AIFMD).

Supervisory sanctions for UCITS

The UCITS Directive is a detailed, harmonised framework for investment funds that can be sold to retail investors throughout the EU. This means that funds authorised in one Member State can be marketed in another Member State using a passporting mechanism. Under the UCITS Directive, NCAs can impose sanctions for infringements of its provisions, such as on management companies and depositaries, as well as information provided to investors. NCAs submit data on the use of sanctions to ESMA, which forms the basis of the annual aggregated report. Reporting on the sanctions provides greater transparency and clarity to market participants on behaviour considered to be infringing the UCITS Directive. The first year when ESMA issued this report was 2019 and therefore the report covered 2016 to 2018.

Benchmark disclosure questions and answers

At the end of March 2019, ESMA published new benchmark disclosure Q&As aimed at clarifying the UCITS key investor information document (KIID) benchmark and past performance disclosure obligations. The Q&As recommend that UCITS should clearly indicate, in the KIID, whether their strategy is active or passive and provide investors with an indication of how actively managed the UCITS is compared with its reference benchmark index. The Q&As also provide examples of when UCITS are deemed to be managed in reference to a benchmark and recommend that past performance should be disclosed against the target index, even though the comparator is not named 'benchmark'. ESMA expects that the Q&As will raise the bar significantly in respect of enhancing investor protection and disclosure in UCITS. In addition, the reduced level of discretion allowed to fund managers in terms of when to disclose performance against a benchmark is likely to reduce the possibilities of adopting closet indexing strategies.

Performance fees in UCITS

In 2019, ESMA ran a consultation on performance fee guidelines for retail funds. Performance fees are a key feature for funds. However, different practices exist, creating undue risks of regulatory arbitrage and inconsistent levels of investor protection. ESMA's draft guidelines aimed to further clarify the provisions that require Member States to ensure that a management company acts honestly and fairly in conducting its business activities in the best interests of the fund it manages and the integrity of the market. This includes the prevention of undue costs being charged to the fund and its unit holders. The guidelines will be finalised in 2020.

Liquidity stress tests for investment funds

ESMA published guidance regarding liquidity stress tests of investment funds – applicable to both alternative investment funds (AIFs) and UCITS. Fund managers will need to apply a comprehensive set of guidelines when designing the scenarios, policies and frequency of liquidity stress tests for the funds they manage. The common requirements will allow convergence in the way NCAs supervise liquidity stress testing across the EU. The guidelines will become applicable on 30 September 2020 and are supplementary to the requirements on liquidity stress testing, which are enshrined in the AIFMD and UCITS Directive and are already applicable.

Money market fund stress tests

Money market funds (MMFs) offer high liquidity at lower risk than other funds, contributing to the funding of banks, governments and corporates. However, owing to their important role in the money market, any disruption affecting MMFs may have an impact on financial stability. Stress testing is therefore an important tool to assess and mitigate potential stability risks. ESMA issued two sets of guidelines regarding the stress testing of MMFs and reporting on MMFs to NCAs. The guidelines on stress testing establish common reference parameters of the stress test scenarios that should be included in stress scenarios. The guidelines on reporting provide guidance on how to fill in the reporting template on MMFs that managers of MMFs will transmit to competent authorities from 2020 onwards.

2.1.4. Investor protection and intermediaries

Objective for 2019	Promote consistent application of MiFID II/Markets in Financial Instruments Regulation (MiFIR) and coordination between NCAs in the area of investor protection and intermediaries.

Supervision of non-EU branches of EU firms

To allow EU NCAs to appropriately monitor firms providing investment services or activities on an ongoing basis, firms should provide the NCA of their home Member State with relevant information on any new non-EU branch that they plan to establish. To assist NCAs in their supervision of the establishment by EU firms of branches in non-EU countries, ESMA published a MiFID II supervisory briefing. The supervisory briefing also provided market participants with indications on the implementation of the MiFID II provisions and of the recommendations expressed in the ESMA opinion on investment firms.

Guidelines on MiFID II compliance function requirements

The compliance function is a crucial function within firms, responsible for identifying, assessing, monitoring and reporting on firms' compliance risk. Strengthening the compliance function under MiFID II represents an important step forward, as a strong compliance function reduces risk and helps competent authorities to exercise their powers effectively. ESMA launched a consultation on guidelines in this area aimed at helping firms to increase the effectiveness of the compliance function, as well as enhancing clarity and fostering convergence on the expanded role of the compliance function under MiFID II. The final report will be published in 2020.

Call for evidence on inducements and costs and charges disclosure requirements

Article 90 of MiFID II provides that the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on, inter alia, the impact of the inducements disclosure requirements under MiFID II. ESMA therefore ran a call for evidence concerning the impact of the costs and charges disclosure requirements under MiFID II, including collecting information on if and how the application of the above rules varies across Member States. The information gained through this call for evidence will be used to finalise advice to the Commission in 2020.

Transparency on sanctions and measures imposed under MiFID II

From the entry into force of MiFID II on 3 January 2018, NCAs have been required to provide ESMA with aggregated information on all sanctions and measures imposed annually. Greater transparency around sanctions and measures made by NCAs will act as a deterrent by clarifying, for market participants, the behaviour considered as infringing MiFID II and will promote better compliance among market participants. ESMA published its first report concerning the sanctions and measures in July 2019 and, in addition to this annual report, will continue to provide information on public sanctions and measures issued by NCAS via its website.

2.1.5. Market integrity and market data

Objectives for 2019	Implement the data strategy following the enactment of the Securities Financing Transactions Regulation (SFTR), European Market Infrastructure Regulation (EMIR) and MiFIR reporting regimes. Improve supervisory convergence on MAR implementation, the Short Selling Regulation (SSR) and the Benchmarks Regulation (BMR), including on the treatment of third-country and critical benchmarks, as well safeguarding retail contracts referencing major interest rate benchmarks.

Benchmarks

In Q2 2019, ESMA, as a member of the relevant benchmark college, participated in the authorisation of the European Money Markets Institute (EMMI) as the administrator of the euro interbank offered rate (Euribor) under the BMR by the Financial Services and Markets Authority (FSMA), thus allowing EU supervised entities to continue using Euribor also after the end of the applicable BMR transitional period. Similarly, in Q4 2019, ESMA participated in the authorisation of EMMI as the administrator of the euro overnight index average (EONIA) under the BMR by the FSMA. Both decisions were reflected in the ESMA register of administrators and third-country benchmarks. Euribor and EONIA are critical benchmarks at the European level.

At the end of the year, information on pending authorisation/registration applications by EU-based administrators had been made publicly available to market participants. Thanks to this action, users of benchmarks were able to assess if they were allowed to continue to use a number of EU benchmarks also after the end of the applicable transitional period on 31 December 2019.

Following the Commission's recognition of Australia's legal and supervisory framework, ESMA signed a memorandum of understanding (MoU) with the Australian Securities and Investments Commission (ASIC), setting out cooperation arrangements in respect of Australian benchmarks. This allowed benchmarks declared significant by ASIC to be used in the EU by EU-supervised entities and these were added to the ESMA register of administrators and third-country benchmarks.

In December, ESMA issued a briefing on the recognition regime under the BMR addressed to benchmarks' administrators located outside the EU. The briefing aims to clarify the means to determine the Member State of reference and the instances in which cooperation arrangements between EU and third-country competent authorities are needed. In relation to the recognition regime, in 2019, six third-country administrators were added to the ESMA register of administrators as recognised third-country administrators. For each of these recognition procedures, ESMA issued an advice to the NCA regarding the benchmarks provided by the third-country administrator.

Finally, ESMA continued its participation in the Working Group on Euro Risk-Free Rates. This is an industry group that was established by ESMA, the European Central Bank (ECB), the Commission and the FSMA to identify and recommend risk-free rates that could serve as an alternative to current interest rates. In the course of 2019, the focus of the working group was on recommendations aimed at enhancing contractual robustness, notably the guiding principles for fallback provisions in new contracts for euro-denominated cash products, the EONIA to the euro short-term rate legal action plan and the high-level recommendations for fallback provisions in contracts for cash products and derivatives transactions referencing Euribor. These recommendations deal with the BMR requirement of including fallback clauses in contracts referencing benchmarks.

Market abuse

In December, ESMA published an annual report concerning administrative and criminal sanctions, as well as other administrative measures issued by NCAs under MAR. ESMA also issued an annual report on the application of accepted market practices (AMPs) in accordance with MAR. The latter report provides an overview on the establishment and application of AMPs in the EU, including those established under the Market Abuse Directive that remained applicable afterwards. AMPs are a defence against allegations of market manipulation. In particular, dealings in financial markets that are carried out for legitimate reasons and in conformity with an established AMP will not constitute market manipulation.

ESMA has also contributed to fostering supervisory convergence by issuing Q&As on the application of MAR to UCITS.

Market integrity

At the end of 2018, ESMA published a report on its preliminary findings on multiple withholding tax reclaim schemes, following a European Parliament request. ESMA found that, while these schemes do not necessarily imply breaches of the market abuse or short-selling regime, they may affect the integrity of securities markets and individual firms.

This year, ESMA followed up by launching a formal inquiry to gather further evidence from NCAs on those schemes and the supervisory practices adopted in that respect by the NCAs across the EU. ESMA's formal inquiry is still ongoing.

ESMA published a peer review report on the supervision and handling of suspicious transactions and order reports under MAR by all 31 EEA NCAs. More detail on the peer review and findings is set out in Section 2.1.8 on cross-cutting supervisory convergence themes. In February, ESMA issued an opinion agreeing to an emergency short position ban put into place by the Bundesanstalt für Finanzdienstleistungsaufsicht (the German Federal Financial Supervisory Authority –

BaFin) in regard to Wirecard AG, indicating that the proposed measure was appropriate and proportionate to address the threat to German financial markets.

Market data

In 2019, ESMA updated its Q&As to provide further clarifications regarding various market data-reporting topics including, but not limited to, the requirements for submission of reference data under MiFIR relating to the reporting of the legal entity identifier (LEI) of issuers to the Financial Instruments Reference Data System (FIRDS) in cases where the issuer of the instrument has (a) branch(es) that has/have an LEI; the reporting maturity, expiry and termination dates to FIRDS; the method for operators of trading venues for the reporting of instrument reference data; and the reporting obligations for financial instruments without a definite expiry date.

In respect of EMIR, ESMA, among other initiatives on derivative data reporting, continued to carry out the data quality action plan – a voluntary self-assessment exercise based on annually agreed assessment criteria, undertaken by NCAs and ESMA, to improve the quality of certain EMIR data. In 2019, the data quality action plan was complemented by the peer review into supervisory actions aiming at enhancing the quality of data reported under EMIR. The peer review final report (further mentioned under Section 2.1.8) also outlines short-term and long-term supervisory and policy recommendations to improve EMIR data quality.

ESMA undertook extensive work in the preparation for the launch of the SFTR reporting regime in 2020. In particular, it prepared and finalised the guidelines on reporting, XML reporting schemas and the associated sets of validation rules.

2.1.6. Post-trading

Objectives for 2019	Contribute to the consistent application of EMIR and to the convergence of supervisory practices for CCPs by initiating, coordinating and conducting an EU-wide stress test and a peer review on CCP supervision. Provide guidance to market participants and NCAs on the application of EMIR and the Central Securities Depositories (CSD) Regulation.

EMIR Refit

Through a public statement, ESMA addressed certain issues around the EMIR Refit implementation, in particular the challenges faced by some small counterparties in knowing if, when and how the clearing and trading obligations would start to apply for their category of counterparties, as well as the clarifications needed on the backloading requirement for reporting entities.

EMIR requirements and the introduction of fallbacks

The ESAs jointly issued a statement clarifying that amendments made to outstanding uncleared over-the-counter (OTC) derivative contracts for the sole purpose of introducing benchmark fallbacks and increasing contract robustness should not create new obligations under EMIR on these legacy contracts. Therefore, while further legal certainty is expected on this via a legislative change, the ESAs have indicated that they do not expect competent authorities to prioritise their supervisory actions towards margining and clearing requirements arising as a result of the introduction of fallbacks in legacy uncleared OTC derivative contracts. Instead, the ESAs recommended that competent authorities generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner.

Annual report on supervisory measures and penalties under EMIR

ESMA published its second report on supervisory measures and enforcement actions undertaken in 2018 by NCAs and looked into their powers and the interactions between authorities and market participants in relation to certain EMIR requirements. Notably, requirements regarding the clearing obligation for OTC derivatives, the reporting obligation of derivative transactions, non-financial counterparties' obligations and risk-mitigation techniques for non-cleared OTC derivatives.

The findings in the report note that some of the supervisory areas are highly harmonised, such as competences of the authorities in the different EU countries and the sources used to monitor EMIR compliance. It was also apparent that some other areas still represent a supervisory challenge and could benefit from coordinated approaches, e.g. the supervision of the use of the hedging exemption by non-financial counterparties or the cooperation between authorities to supervise clearing thresholds where entities in the group are in different countries.

Finally, the report collected information on the different actions launched by national authorities: around 10 % of the authorities issued warning letters to market participants and different investigations were conducted (18 regarding reporting requirements, 8 into risk-mitigation techniques, 6 into the clearing obligation and 4 into non-financial counterparties). No new sanctions were reported for the period covered.

Central Securities Depositories Regulation

ESMA published its final report on the guidelines on standardised procedures and messaging protocols. These guidelines set out the arrangements that investment firms are expected to set up with their professional clients to ensure the timely communication of the necessary settlement information through confirmations and allocations, in order to limit the number of settlement fails. In 2019, ESMA also ran public consultations to prepare two sets of guidelines under the Central Securities Depositories Regulation (CSDR): guidelines on settlement fails reporting and guidelines on standardised procedures and messaging protocols used between investment firms and their professional clients.

In addition, ESMA updated its Q&As regarding the implementation of the CSDR several times. This served to clarify, in particular, aspects regarding the provision of services by CSDs in other Member States, internalised settlement reporting and the settlement discipline regime (on cash penalties and buy-in).

As of July 2019, settlement internalisers have started submitting quarterly reports to the CSD competent authorities, which are then sent by the NCAs to ESMA. ESMA has developed technical guidance for settlement internalisers on report validation rules, as well an ISO 20022 XSD message for reporting internalised settlement information. ESMA also organised a workshop addressed to NCAs on the process of submission of internalised settlement reports by NCAs to ESMA.

European Union central counterparties

As mandated by EMIR, ESMA launched in April its third EU-wide CCP stress test exercise with the publication of the methodology for this new and expanded stress test exercise. Having built on its knowledge acquired from its two first exercises, ESMA included a new concentration risk-related component to its framework on this occasion. The execution of this third exercise is due to be completed in Q2 2020.

ESMA also published its annual peer review report on the overall supervision of EU CCPs by NCAs. The review focused on the effectiveness of NCAs' supervisory practices to assess CCPs' compliance with EMIR requirements on collateral and funding arrangements. Overall, the review found that NCAs' supervisory activities on CCPs' collateral and funding arrangements were satisfactory. However, the review also noted that the use by NCAs of quantitative metrics to assess the liquidity and low market risk of collateral was quite limited. Although, regarding funding arrangements, the degree of convergence on the basic conditions that identify committed credit and repo lines is, in general, high, different supervisory practices apply for pre-arranged funding arrangements involving repos and liquidity generation from outright sales of securities. The report also identified several best practices and considerations to further enhance supervisory convergence with respect to CCPs' collateral and liquidity arrangements.

In addition, following the default in September 2018 of a physical person acting as a clearing member at a European CCP, ESMA conducted a range of follow-up actions and analysis, in particular with respect to CCPs' membership criteria and due diligence. This event highlighted the importance of membership criteria as a first line of defence for CCPs to control counterparty credit risk. In particular, this led ESMA to update its Q&As regarding the implementation of EMIR, clarifying whether or not an individual can be a clearing member at EU CCPs.

2.1.7. Secondary markets

Objectives for 2019	Provide guidance and promote consistent implementation of MiFID II/MiFIR to allow markets to become more transparent. Coordinate to ensure supervisory convergence against the backdrop of the UK's withdrawal from the EU.

Market structure

In 2019, ESMA updated its Q&As on market structures and transparency issues under MiFID II and MiFIR. Those Q&As provided clarification on the following topics: the conversion of large-in-scale and size-specific-to-the-instruments thresholds in lots, member preferencing and pre-arranged transactions, and the scope of Commission Delegated Regulation (EU) 2017/584 (RTS 7).

Under MiFIR, ESMA is required to monitor the application of pre-trade transparency waivers and deferred trade publication. Therefore, ESMA published, for the first time in October 2019, a report analysing the waivers received in the course of 2017 and 2018 and for which ESMA issued an opinion to the competent authority before 31 December 2018. The report also included an overview of the deferral regimes applied across the Union.

In June 2019, ESMA published a supervisory briefing on pre-trade transparency requirements for commodity derivatives. The aim of the supervisory briefing was to provide guidance to NCAs on supervisory and enforcement actions to ensure compliance with pre-trade transparency requirements for negotiated trades in commodity derivatives under MiFIR.

Finally, ESMA also published an opinion on frequent batch auctions (FBAs) and the double volume cap (DVC) mechanism. This opinion followed the call for evidence launched in 2018 and aimed at ensuring consistent application of the pre-trade transparency requirements by FBA systems, and provided clarification on the price determination process of FBA systems.

Commodity derivatives

Over the course of 2019, ESMA issued 24 opinions on individual position limits on commodity derivative contracts set by NCAs under MiFID II. In these opinions, ESMA assessed if the limits set by NCAs were consistent with the objectives established in MiFID II and the methodology developed for setting those limits.

In March 2019, ESMA updated its Q&As on commodity derivatives. These Q&As provided clarification on issues related to the MiFID II/MiFIR regime for commodity derivatives, including on position limits, position reporting and ancillary activity. Finally, in May 2019, ESMA published an updated opinion on ancillary activity calculations. This updated opinion provided the estimation of the market size of commodity derivatives and emission allowances for 2018. ESMA prepared these estimations based on data collected from trading venues and data reported to TRs under EMIR.

Transparency calculation

Over the course of 2019, ESMA published the DVC results on a monthly basis.

ESMA also published the updated results of the annual equity transparency calculations, which, among other things, have an impact on the average daily number of transactions on the most relevant market in the EU, determining the tick size to be applied for trading on European markets. ESMA issued the annual transparency calculations, which are valid from 1 April 2019 to 31 March 2020.

ESMA also published an update of the systematic internaliser calculations, covering equities, equity-like instruments and bonds, by computing the total volume and number of transactions executed in the EU in order to help market participants in the performance of the test.

Moreover, ESMA updated the bond market liquidity assessments every quarter. ESMA's liquidity assessment for bonds is based on a quarterly assessment of quantitative liquidity criteria, which include the daily average trading activity (trades and notional amount) and percentage of days traded per quarter.

MiFIR alignment following the entry into force of EMIR Refit

On 12 July 2019, ESMA published a public statement addressing the misalignment between the scope of counterparties subject to the EMIR clearing obligation and those subject to the MiFIR derivatives trading obligation (see Section 2.1.6). On 27 November, ESMA published the responses to a consultation on possible amendments to the trading obligation under MiFIR following the introduction of EMIR Refit in order to align the obligations that arise from each piece of legislation.

2.1.8. Cross-cutting supervisory convergence themes

Objective for 2019	Promote coordination and convergence among NCAs in supervisory and enforcement matters, strengthen the common understanding of the risk-based supervisory approach and conduct peer review assessments.

Peer reviews

ESMA published a peer review report on how NCAs handle suspicious transactions and order reports (STORs) under MAR. The ESMA peer review assessed all 31 EEA NCAs in six areas to evaluate the effectiveness of their STOR supervision. Overall, ESMA found that

NCAs are performing well in the analysis of suspected market abuse reported in STORs, but it also identified areas for improvement and called for strengthened supervision. For example, ESMA recommends that NCAs should ensure that all financial players subject to the STOR requirements, including wholesale market participants such as asset managers, are complying with the STOR requirements. In addition, NCAs should enhance their focus on suspected non-reporting/poor reporting of STORs including, where appropriate, enforcing and sanctioning non-compliance.

ESMA also published its final report on the peer review into supervisory actions aiming to enhance the quality of data reported under EMIR. The report assessed the supervisory practices of six NCAs (Cyprus, France, Germany, Ireland, the Netherlands and the UK). ESMA, too, was included as part of the peer review, as it has an important role to play in improving data quality as the supervisor of TRs. The peer review assessed the following three areas: the general supervisory approach to EMIR data quality, the integration of EMIR into the overall supervisory approach, and the access to, assessment of and analysis of EMIR data. The peer review presented a mixed picture of the six NCAs in each of the three assessment areas. The peer review identified that some NCAs have progressed further in terms of their supervisory journey to enhance the quality of data reported under EMIR. The peer review identified ESMA as performing well in each assessment area. To encourage all NCAs and to further improve supervisory actions to improve data quality, the peer review identified a range of short- and long-term supervisory and policy initiatives to achieve this objective [12]. In addition, the report lists the good practices that were encountered.

Compliance with ESMA guidelines

By the end of 2019, ESMA had published 38 sets of guidelines, for which the overall level of compliance by EU-28 NCAs was as follows: 86 % declared compliance (an increase from 77 % in the previous year), 9 % reported intention to comply (a decrease from 17 % in the previous year) and 2 % recorded non-compliance (no change compared with the previous year).

A significant number of non-compliance notifications was observed for the *Guidelines on the exemption for market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps* published in 2013 (i.e. for eight NCAs (which was an increase from five NCAs in 2018): Denmark, France, Germany, Ireland, Italy, Spain, Sweden and the UK) [13] and for the *Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU* (i.e. for five NCAs: Germany, France, Latvia, Lithuania and Sweden).

Regarding the NCAs, the highest numbers of instances of non-compliance status are reported by Germany (for four sets of guidelines) and Denmark (for three sets of guidelines) [14].

(**12**) ESMA maintains an overview table on its website of the compliance statuses declared by NCAs on the application of ESMA guidelines in their jurisdictions (https://www.esma.europa.eu/convergence/guidelines-and-technical-standards).

(**13**) Concerning the guidelines on market making, the peer review report confirmed that non-compliance was reported owing to different interpretations of the SSR resulting in different practices among NCAs. The report concluded that these interpretation issues should be addressed when the SSR is reviewed. No further action has therefore been proposed for these non-compliance cases.

(**14**) Germany: *Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders*, *Guidelines and Recommendations on remuneration policies and practices (MiFID)*, *Guidelines on exemption for market making activities and primary market (SSR)* and *Guidelines on enforcement of financial information (transparency directive (TD))*. Denmark: *Guidelines on exemption for market making activities and primary market (SSR)*, *Guidelines on sound remuneration policies under the AIFMD (AIFMD)* and *Guidelines on sound remuneration policies under the UCITS Directive (UCITS)*.

Risk-based approach to supervision

ESMA encouraged the building of a common understanding on the application and the impact of risk-based supervisory models by NCAs and ESMA. Such data-driven supervision relies on a robust and comprehensive methodology for the collection and use of market data and regulatory data by NCAs. Making steps in developing such a mutual understanding of risk-based supervision is key, given the finite resources available to NCAs, such as human resources, IT capacities, time and money. Supervisors focused on questions around the calibration of risk-based models according to the risk appetite and tolerance, on the selection of suitable supervisory measures and on methods of following and reacting to current trends, risks and developments in the supervised market sector.

Voluntary supervisory colleges

ESMA established, as part of its supervisory convergence toolkit, a framework to set up voluntary supervisory colleges (VSCs) for the different types of business models falling under the remit of securities supervisors and in particular for large broker-dealers. VSCs are designed to be practical tools to enhance the supervision of groups of financial market participants operating in the EU. As convergence tools, VSCs are set up as flexible cooperation forums among NCAs to share information between participants, reduce supervisory fragmentation and foster the exchange of experience of best practices within the VSC and across VSCs. ESMA's role is to foster a common supervisory culture among the participating supervisors.

Enforcement Network

The Enforcement Network continued to facilitate closer dialogue and the exchange of practices among NCAs. Based on practical case experiences, members have exchanged good practices in key enforcement-related areas such as cases against natural persons, the publication of sanctions decisions and on-site inspections as part of enforcement. Given the importance of financial penalties as a means to deter misconduct, the network developed best practices for determining financial penalties. In addition, recognising the need, in some instances, to obtain evidence or hear witnesses in other jurisdictions, the network developed knowhow to further facilitate cooperation in cross-border enforcement investigations.

Complaints handling and investigations

The ESMA Regulation provides for the possibility of opening an investigation when a competent authority has not applied relevant Union law or has applied it in a way that appears to be a breach of Union law. Should such an investigation confirm the existence of a breach, ESMA addresses a recommendation to the competent authority with the aim of correcting it. Through the assessment of complaints, ESMA and NCAs may also detect market trends and identify potential issues of investor protection across the EU.

In 2019, ESMA received 148 complaints about potential violations of EU acts. The majority of the complaints were inadmissible because they concerned the acts or omissions of private persons and they failed to refer to an NCA to which the alleged breach of Union law could be attributed. The 35 admissible complaints consisted of allegations of potential breaches of MAR, the AIFMD, MiFID II, the Transparency Directive, the Prospectus Directive and the Listing Directive.

To carry out its preliminary investigation and determine whether or not an investigation under Article 17 of the ESMA Regulation should be opened into the matter, ESMA requested information from three NCAs in 2019. In addition, when ESMA has concerns regarding compliance with Union law, it undertakes informal interactions with the relevant NCAs to discuss those concerns and try to solve them in an amicable manner. These bilateral interactions will become a compulsory step as a result of the ESAs' review, which requires ESMA to try and reach an agreement on actions necessary to comply with Union law before issuing a formal recommendation under Article 17 of the ESMA Regulation.

Regulatory information technology projects

As part of its supervisory convergence activity, ESMA works with the NCAs and other stakeholders to develop IT systems that are mandated by EU legislation. The following projects are at different stages of scoping, development and implementation.

Regulatory information technology projects completed in 2019

Sub-activity	Project	Description
Supervisory convergence		
Post-trading	CSDR – Article 9	According to the CSDR, Article 9, settlement internalisers have to submit quarterly reports to the NCAs, which, in turn, have to submit them to ESMA, and have to inform ESMA of any potential risks resulting from the internalised settlement activity. The quarterly reports cover the aggregated volume and value of all securities transactions, split by types of financial instruments, types of transactions and types of clients, that settlement internalisers settle outside securities settlement systems, including data on settlement fails. ESMA has developed a dedicated IT system to facilitate the submission of internalised settlement reports by NCAs (as received from settlement internalisers) to ESMA, and to centralise the received data. ESMA has also developed an ISO 20022 XSD message for reporting internalised settlement information. The ESMA CSDR 9 IT project became operational in July 2019.
Investor protection and intermediaries	Registration and publication of third-country firms (MiFIR, Article 46)	The registration and publication of third-country firms is allowed in order to provide investments services and activities in the EU.
Horizontal services	Brexit	This includes the analysis, design and development of Brexit-related changes on ESMA IT systems and data and making all ESMA IT systems ready for Brexit. The relevant changes were not rolled out in 2019, but they ensure that ESMA is ready for the end of the transition period.
Direct supervision		
Direct supervision	Risk assessment framework tool	This involves further development and enhancement of the supervisory risk assessment tool based on data collected from supervised entities (CRAs and TRs).
Delegated projects		
Single interface to TRs	TRACE phase 3 – new EMIR reports	This is an extension of the TRACE project to cover additional EMIR reports provided by the TRs to the NCAs and central banks.

Regulatory information technology projects in progress in 2019 that will continue in 2020

Sub-activity	Project	Description
Supervisory convergence		
Corporate finance	Expansion of the prospectus register (new Prospectus Regulation)	The prospectus register was updated in the light of the new Prospectus Regulation (including passporting). It will extend the current prospectus register portal with the collection of more metadata on EU prospectuses, the central publication of all collected prospectuses and the exchange of the information necessary for prospectus passporting between the NCAs.
	Securitisation Regulation	The regulation requires the following different IT deliverables. - ESMA must maintain, on its website, a public register of all securitisations fulfilling the simple, transparent and standardised (STS) criteria, including a notification template that explains how each criterion is met. These notifications should be transmitted to ESMA directly by securitisation originators/sponsors/issuers. - ESMA is mandated to develop the details related to the disclosure templates to be used by entities reporting to securitisation repositories. - ESMA must maintain a securitisation sanctions register.
Investment management	MMF Regulation	A central database with aggregated reports collected from the MMF managers (like the AIFMD reporting).
Post-trading	CSDR – Article 7	According to the CSDR, Article 7, CSDs are required to send settlement fail reports to the NCAs and relevant authorities (central banks). Once Commission Delegated Regulation (EU) 2018/1229 enters into force, CSDs will have to start sending monthly and annual settlement fail reports to the NCAs and relevant authorities, and the NCAs will have to share those reports with ESMA. The reports will cover the aggregated volume and value of settled transactions and settlement fails (split by type of financial instruments, types of transactions and other criteria) for each securities settlement system operated by a CSD, including the measures envisaged by CSDs and their participants to improve settlement efficiency. ESMA has started developing a dedicated IT system to facilitate the submission of settlement fail reports by NCAs (as received from CSDs) to ESMA, and to centralise the data received. ESMA has also started developing ISO 20022 XSD messages for reporting settlement fails information, to be finalised in 2020.
Delegated projects		
Single interface to TRs	TRACE phase 3 – new SFTR reports	This is an extension of the TRACE project to cover SFTR reports provided by the TRs to the NCAs and central banks.

2.2. Assessing risks to investors, markets and financial stability

Assessing risks to investors, markets and financial stability is one of ESMA's central tasks. Risk monitoring and analyses are core ESMA activities, which include regulatory impact assessments and topical studies for single-rulebook measures, stress-testing methods and analyses, as well as risk metrics for supervisory convergence work and the regular EU-level monitoring through our trends, risks and vulnerabilities (TRV) reports. Our analysis covers all risk types across the markets in ESMA's remit, with specific attention to financial innovation and retail investor concerns.

Importantly, ESMA's risk assessment draws on data and statistics sourced and managed through an integrated approach, ensuring high-quality, efficient management and effective use of data, especially of the proprietary data ESMA collects. To this effect, ESMA has created a series of annual statistical reports (ASRs). The ASRs provide EU-wide overviews of markets in ESMA's remit and EU-harmonised risk indicators available for use at the ESMA level as well as by NCA supervisors. Granular results are shared with NCAs. Therefore, these reports will also support NCAs in their supervision activities and further strengthen supervisory convergence throughout the EU.

In our analytical work, we cooperate closely with and contribute to the work at the EU institutions, the NCAs, the other ESAs and the ESRB. By publishing important parts of our monitoring and analytical findings and by providing public access to relevant databases and registers, we promote transparency and investor awareness.

Key deliveries and successes

ESMA annual statistical report series

In the course of 2019, ESMA published three ASRs, covering EU retail investment markets, EU AIF markets and EU derivatives markets. These reports provide EU-wide overviews of markets in ESMA's remit and also support NCAs in their supervision activities through the availability of EU-harmonised risk indicators and, thus, further strengthen supervisory convergence throughout the EU.

In January 2019, ESMA published its first ASR on the cost and past performance of retail investment products in the EU (see 'Key deliveries and successes' under Section 2.1).

In March 2019, ESMA published the first ASR on EU AIF markets. ESMA's analysis of the data collected from AIFs gives a first comprehensive overview of this important sector. The report finds that the EU AIF sector in 2017, as measured by net asset value, amounted to EUR 4.9 trillion or nearly one third of the total EU fund industry. ESMA has also highlighted issues requiring further attention such as the issue of fund classification, while the liquidity mismatches identified in the real-estate funds sector, with its important share of retail investors, indicate potential risks for investors.

ESMA's second ASR on EU derivatives markets, published in December 2019, provides a comprehensive market-level view of the EU's derivatives markets in 2018, which had a total size of EUR 735 trillion gross notional amount outstanding, an increase of 11 % on 2017. For the first time, this report includes an analysis of intra-group transactions, showing that transactions in products subject to mandatory clearing are dominated by intra-group trading between UK and third-country legal entities in the same group, with the UK serving as an entry point to EU markets.

Stress-simulation framework for investment funds

ESMA has developed a framework to be used for stress simulations in the investment fund sector. The stress-simulation framework is a key element of ESMA's stress-testing strategy, which also includes guidelines on liquidity stress testing and on MMF stress testing (see Section 2.1.3). ESMA has applied the stress-simulation framework to the UCITS bond funds sector. The results show that, overall, most funds are able to cope with extreme but plausible shocks, as they have enough liquid assets to meet investors' redemption requests. However, pockets of vulnerabilities are identified, especially for high-yield bond funds.

Granular results of the stress simulations are shared with NCAs and the method described in the economic report can be used by regulators to simulate stress situations for different segments of the fund industry. Therefore, the fund stress simulation will be an important tool for supervisors to assess risks in the asset management industry and further strengthen supervisory convergence throughout the EU. ESMA will use this stress-simulation framework as part of its regular risk monitoring to identify risk and assess possible adverse scenarios that might affect the EU fund industry.

Data management and statistics

ESMA worked in coordination with EU and national supervisors in ensuring high-quality and punctual reporting of regulatory data. The data reported are used to support all ESMA activities to, among other things, execute timely publication of MiFID reference, transparency and DVC calculations and to monitor the quality and produce the relevant statistical support in other areas such as EMIR, the AIFMD, the Credit Rating Agencies Regulation (CRAR), etc.

2.2.1. Data management and statistics

Objective for 2019	Improve data quality, integration and usability to support ESMA's activities through data management and statistical analyses.

As defined in its data strategy 2018–2022, ESMA works towards an increased use of the data by further improving its quality and promoting its use to support ESMA, the NCAs and the public. Furthermore, the forthcoming data-reporting regimes, originated by the ESAs' review and sectoral regulation, required preparations to be made for single rulebook work, data system developments, and data quality and statistical activities. This has been complemented with the update of the ESMA internal policy on data activities, to further reinforce the coordination and cooperation among ESMA staff throughout the whole life cycle of the data. Given the horizontal nature of the work on data and the significant support it provides to all ESMA activities, most of the deliverables are represented in other sections of this document, but this section contains several highlights.

Support for the Single Rulebook, supervisory convergence and direct supervision

Statistical analyses have been used to support the annual review of RTS 2 (see Section 2.3.6) and the consultation on the transparency regime for equity, the DVC mechanism and the trading obligation for shares (published in 2020). In addition, work has been undertaken on the design of reporting regimes relevant to third-country investment firms (MiFID II, Article 46), and proposals have been issued regarding the use of LEIs and International Securities Identification Numbers (ISINs) in the context of the review of the Benchmark Regulation.

ESMA maintained its leadership on IT matters regarding EU-wide access to data by the public and financial authorities, for both new and reviewed data-reporting regimes. In that context, ESMA worked towards the technical materialisation of the regulatory regimes outlined in the Prospectus Regulation, MMF Regulation, Securitisation Regulation and CSDR.

Promoting high quality in the data reported to NCAs is part of ESMA's supervisory convergence activity and a precondition for any use of the data. In that respect, ESMA and NCA staff worked closely to detect quality problems and apply remedial actions for all the main reporting regimes, including MiFID II/MiFIR (whose results regulate the day-to-day activities of market participants), EMIR, the AIFMD (including the approval of the first data quality framework) and the CSDR.

In the area of supervisory convergence, evidence-based input was further used during 2019 to support ESMA's work on the MiFID transparency and systematic internalisers publications and updated opinion on ancillary activity calculations (see Section 2.1.7) and analysis on the shares trading obligation (see Section 2.1).

In the context of ESMA direct supervisory mandates, the internal use of data was further supported by both quality analyses and key indicators mainly in the areas of CRAR, EMIR and securitisation (see Section 2.4).

All previously mentioned activities were negatively affected by the Brexit process, in particular the possibility of a no-deal Brexit, which diverted ESMA and NCAs' resources into ensuring adequate preparations for that scenario (see Section 2.6.1 for further details). Despite not being applied during 2019, those preparations for a no-deal Brexit scenario may be applicable if this risk materialises at the end of the transitional period.

Risk assessment

The use of regulatory and commercial data continuously supports the risk assessment function of the Authority, as described in detail in Sections 2.2.2 and 2.2.3. ESMA continued its work to increase the internal use of data and the use of data combinations across different sources by developing internal operations to create master data sources on the entities available. In addition, access to commercial data, where relevant to complement regulatory proprietary data, was ensured through relevant procurement processes.

2.2.2. Risk monitoring and analysis

Objective for 2019	Identify financial market risks and report on these risks to the relevant institutions.

European securities markets and investors

ESMA's TRV report contributes to promoting financial stability and enhancing consumer protection by regularly looking into cross-border and cross-sector TRVs, at both the wholesale and retail levels.

In the first TRV report of 2019, ESMA highlighted the high risks in European securities markets and infrastructures and to investors, with the following as key drivers of risk in the second half of 2018: increasing market nervousness and sensitivity amid global trade tensions, weakening growth prospects, reduced global monetary policy stimuli and heightened political uncertainty in the EU related to Brexit. This environment manifested itself through volatility in equity and sovereign bond markets, equity price decreases, repricing in corporate and sovereign bond markets, and regional developments with localised sell-offs and increased short-selling activity. On the investment fund side, this translated into significant outflows, amid negative performance across almost all asset classes in a context of reduced risk appetite.

In the August 2019 edition of the TRV report, ESMA renewed its concerns regarding political and event-driven risks, as well as subdued growth prospects. The TRV report also noted risks due to high asset valuations and the ongoing deterioration of the corporate debt credit quality. Liquidity risk was high, with isolated events highlighting pockets of risk in the asset management industry.

Regulatory and supervisory technologies

In the February 2018 TRV report, ESMA provided analysis of current developments regarding regulatory technologies (RegTech) and supervisory technologies (SupTech). New automated tools in areas such as fraud detection, regulatory reporting and risk management are available for firms, while potential applications of new tools for regulators include greater surveillance capacity and improved data collection and management. With appropriate implementation and safeguards, RegTech and SupTech may help improve a financial institution's ability to meet regulatory demands in a cost-efficient manner and help regulators to analyse increasingly large and complex datasets.

Market impacts of the MiFID II double volume cap mechanism

In the same TRV report, ESMA provided evidence on the impact of MiFID's DVC mechanism on European equity markets in the first 6 months of its application. The DVC mechanism introduces limits on the amount of transactions executed in dark pools and aims to protect the price discovery process in equity markets. We find that market liquidity impacts are mixed. For equities banned by the DVC mechanism, market liquidity in lit markets improved in terms of tightness, breadth and depth, while it worsened when measured by the turnover ratio and average trade size.

Retail alternative investment funds: heterogeneity across the EU

In the first 2019 TRV report, ESMA presented the first EU-wide analysis of the structure of the retail AIF market, drawing from data collected under the AIFMD. Overall, the net asset value of AIFs sold to retail investors accounted for 18 % of the EUR 5 trillion AIF market in 2017. The report also describes the heterogeneity across the EU regarding the distribution of retail AIFs that fall under national law.

Exposure of the EU fund industry to collateralised loan obligations

Recent years have seen a significant pickup in the issuance of leveraged loans and collateralised loan obligations in the USA and the EU, creating supervisory concerns. In its September 2019 TRV report, ESMA provided an overview of the leveraged loans and collateralised loan obligation markets in the EU. In particular, we assessed exposures of the EU fund industry to leveraged loans and collateralised loan obligations, which remain limited at the current juncture at EUR 130 billion (less than 1 % of EU fund industry net assets).

Net performance of active and passive EU equity UCITS

In the same TRV report, ESMA analysed the cost and performance of actively and passively managed EU equity UCITS funds and equity exchange-traded funds. In particular, ESMA investigated the gross and net relative performance of actively and passively managed funds with respect to their prospectus benchmark. Active equity funds have in past years underperformed, in net terms, in comparison with both passive equity funds and equity exchange-traded funds, as well as with their own benchmarks.

Use of derivatives by UCITS equity funds

In the second 2019 TRV report, ESMA also analysed the use of derivatives by EU UCITS equity funds, based on regulatory data on derivatives collected under the EU EMIR framework. Cash inflows and currency risk seem to have a significant influence, which suggests that derivatives are used for transaction cost- or risk-reduction purposes. The analysis does not find indications that derivatives are primarily used for speculative or window-dressing purposes by UCITS equity funds.

2.2.3. Financial innovation and product risk analysis

Objectives for 2019	Achieve a coordinated approach to the regulation and supervisory treatment of new or innovative financial activities and provide advice to present to the EU institutions, market participants or consumers. Implement the framework for the use of the product intervention powers provided by MiFIR.

Crypto-assets

ESMA clarified the existing EU rules applicable to crypto-assets that qualify as financial instruments in a piece of advice sent to the EU institutions on initial coin offerings and crypto-assets. It also provided ESMA's position on any gaps and issues in the current EU financial regulatory framework for consideration by EU policy-makers. ESMA worked with NCAs on analysing the different business models of crypto-assets, the risks and potential benefits that they may introduce, and how they fit within the existing regulatory framework. Based on this work, which included a survey of NCAs in 2018, ESMA identified a number of concerns in the current financial regulatory framework regarding crypto-assets, falling into two categories: those qualifying as financial instruments and those that do not qualify. The advice allows the EU institutions to consider possible ways in which the noted gaps and issues may be addressed.

Licensing regimes of financial technology firms

Based on two surveys conducted by ESMA since January 2018, which gathered evidence from NCAs on the licensing regimes of financial technology (FinTech) firms in their jurisdictions, ESMA published, in 2019, a report on the status of licensing regimes of FinTech firms across the EU. The surveys confirmed that NCAs do not typically distinguish between FinTech and traditional business models in their authorisation and licensing activities, as they authorise a financial activity and not a technology. The report addressed one of the five action points of the Commission FinTech action plan, namely ESMA's mandate 'to map current authorising and licensing approaches for innovative FinTech business models in Europe'. ESMA concluded that, at present, most innovative business models can operate within the existing EU rules and did not make additional recommendations for changes in EU regulation at this stage.

Technological innovation

ESMA, in cooperation with the EBA and EIOPA, published two pieces of joint advice in the area of cybersecurity (see Section 2.5.6).

Regarding the need for legislative improvements, in developing the joint advice, the objective was to ensure that every relevant entity be subject to clear general requirements on governance of ICT, including cybersecurity, to ensure the safe provision of regulated services. Guided by this objective, the proposals presented in the advice aim to promote stronger operational resilience and harmonisation in the EU financial sector by applying changes to their sectoral legislation. Furthermore, the advice calls for aspects of the incident-reporting frameworks to be streamlined across the financial sector and suggests that a legislative solution for an appropriate oversight framework to monitor the activities of critical third-party service providers should be considered.

Regarding the costs and benefits of a coherent cyber-resilience-testing framework, the advice recognises the clear benefits of such a framework, but also that there are significant differences across and within financial sectors as regards the maturity level of cybersecurity. In the short term, the advice proposes that the focus be on achieving a minimum level of cyber-resilience across the sectors and that an EU-wide coherent testing framework be established on a voluntary basis together with other relevant authorities, taking into account existing initiatives and with a focus on threat-led penetration testing.

In its FinTech action plan, the Commission invited the ESAs to explore the need for guidelines on outsourcing to cloud service providers. A task force reporting to the Financial Innovation Standing Committee and mandated to write guidelines on outsourcing to cloud service providers was established in November 2019. ESMA also launched, in 2019, an internal project on technological innovation in the context of the ESAs' review to prepare ESMA for including technological innovation in all of its activities.

Report on regulatory sandboxes, innovation hubs and the European Forum for Innovation Facilitators

ESMA published a joint report with the EBA and EIOPA on innovation facilitators (regulatory sandboxes and innovation hubs). The report sets out a comparative analysis of the innovation facilitators established to date within the EU. The report also sets out best practices for the design and operation of innovation facilitators and identifies a need for action to promote greater coordination and cooperation between innovation facilitators to support the scaling up of FinTech across the single market.

Following the publication of the report, ESMA, the EBA and EIOPA established the European Forum for Innovation Facilitators (EFIF), which provides a platform for supervisors to meet regularly to share experiences from engagement with firms through innovation facilitators (regulatory sandboxes and innovation hubs), to share technological expertise and to reach common views on the regulatory treatment of innovative products, services and business models, overall boosting bilateral and multilateral coordination. EFIF was set up under the control of the Joint Committee (see Section 2.5.6).

2.3. Completing a single rulebook for EU financial markets

Key deliveries and successes

Sustainable finance

ESMA has made it a priority to place sustainability at the core of its activities by embedding environmental, social and governance (ESG) factors in its work.

Technical advice on sustainable finance

In 2019, ESMA published its technical advice on sustainable finance initiatives as a response to the mandates received from the Commission in its sustainability action plan. The two final reports contain technical advice to the Commission on the integration of sustainability risks and factors, relating to environmental, social and good governance considerations with regard to investment firms and investment funds, into MiFID II (investment services), the AIFMD and the UCITS Directive (investment funds).

Short-termism

ESMA published its findings on potential undue short-term pressures in securities markets in response to the mandate received from the Commission, as part of its action plan on 'financing sustainable growth', to investigate potential sources of undue short-termism on corporations and provide advice on areas that regulators should address. The report recommended action in key areas, such as the disclosure of ESG factors by issuers, including amending the NFRD, promoting a single set of international ESG disclosure standards and requiring the inclusion of non-financial statements in annual financial reports. It also recommended actions on institutional investor engagement, including a review of the 'White List' under the Takeover Bids Directive, a potential shareholder vote on the non-financial statement and monitoring the application of the revised Shareholder Rights Directive.

Benchmarks

In the first half of the year, ESMA actively contributed to the technical expert group on sustainable finance set up by the Commission, and in particular to the subgroup on benchmarks, which is mandated to deliver technical advice to the Commission that will be used as a basis for the delegated acts to complement the Benchmarks Regulation. In September 2019, the technical expert group published its final report on climate benchmarks and benchmarks' ESG disclosures.

Coordination Network on Sustainability

In May 2019 ESMA's Board of Supervisors established the Coordination Network on Sustainability (CNS), composed of NCA representatives and the Commission. The CNS was created to foster coordination of NCAs' work on sustainability. Considering the EU's envisaged shift towards a more sustainable financial system in the medium to long term, the CNS will be responsible for taking a strategic view on issues related to integrating sustainability considerations into financial regulation.

Environmental, social and governance disclosures

The ESAs commenced work on six technical standards to be developed under the regulation on sustainability-related disclosures in the financial services sector (SFDR). This work was carried out under the Joint Committee (see Section 2.5.2).

Consolidated tape and cost of market data

MiFID II/MiFIR, which has been in application since 3 January 2018, aims to ensure fair and non-discriminatory access to pre- and post-trade market data and to lower the cost of market data. Moreover, MiFID II established the legal framework for the provision of a consolidated tape (CT), consolidating post-trade information in a real-time data stream.

MiFID II provides that the Commission, following consultation with ESMA, will review the MiFID II provisions on market data and the CT for equity instruments. Following a public consultation, ESMA submitted its review report on the cost of market data and the equity CT to the Commission in December 2019. The review report concluded that, to date, MiFID II has not delivered on its objective to reduce the cost of market data. Owing to the mixed achievements of the market data provisions, ESMA proposed a mix of legislative changes and supervisory guidance to improve transparency, thereby allowing market data users to more easily understand and compare market data offers, and to ensure that market data are provided on a reasonable commercial basis.

Furthermore, the ESMA report assessed why no equity CT had materialised so far, noting in particular limited commercial rewards for operating a CT, a restrictive regulatory framework, competition from non-regulated entities and shortcomings in the quality of OTC data. ESMA recommended, in the report, the establishment of an EU-wide real-time CT for equity instruments to remedy the fragmentation of EU markets, in order to create a real single market and thereby contribute to the establishment of the CMU. To deliver the successful establishment of a CT, the report set out a number of key factors that ESMA considered essential: high data quality, a mandatory contribution by trading venues and approved publication arrangements to the CT, and a contribution from users to the funding of the CT and the operation of the CT on an exclusive basis combined with a strong governance framework.

As a follow-up to its report, in 2020 ESMA will, in close consultation with market participants, work on supervisory guidance on market data and towards improving the quality of OTC data.

Facilitating international convergence in the implementation of the global framework for the requirement to exchange collateral for non-cleared derivatives

The authorities in the Basel Committee on Banking Supervision (BCBS) and International Organization of Securities Commissions (IOSCO) have considered a number of implementation questions and decided, in 2019, to issue some clarifications and to extend by a year the phased implementation calendar for the initial margin requirements. In line with how the first draft RTS were developed, the ESAs continue to believe it is important to implement the globally agreed BCBS and IOSCO framework and to facilitate, as far as possible, consistent implementation internationally.

Taking into account the clarifications and changes introduced by the BCBS and IOSCO in 2019, as well as the level of progress in the implementation of the framework across jurisdictions, the ESAs then developed jointly a number of draft amendments to the Delegated Regulation on bilateral margining (see Section 2.5.8).

Specifically, the final report deals with the extension of the phasing-in of the initial margin requirements, with the clarification on whether or not counterparties below the 50 million initial margin exchange threshold would be required to have all the relevant operational and legal arrangements in place, and with the treatment in the EU regulatory framework of physically settled foreign exchange forward and swap contracts, intra-group contracts and equity option contracts.

2.3.1. Corporate finance

Objective for 2019	Contribute to the development of level 2 measures in relation to the revised prospectus regime.

Under the Prospectus Regulation, issuers may offer/admit securities in connection with takeovers, mergers or divisions without publishing a prospectus, provided that a document is made available to investors describing the transaction and its impact on the issuer. ESMA published technical advice on the minimum information content of such documents describing a takeover, merger or division. The technical advice will form the basis for the delegated acts to be adopted by the Commission.

2.3.2. Corporate reporting

Objective for 2019	Contribute to the set-up of high-quality accounting standards by providing enforcers' views on new pronouncements and endorsement advice. In addition, ESMA will contribute to the implementation of the Council work plan to tackle non-performing loans in Europe.

International Financial Reporting Standards

In 2019, ESMA actively contributed to the accounting standard setting and endorsement in the EU of the IFRS through its observer role at the European Financial Reporting Advisory Group, where ESMA presented its views on the enforceability of proposed standards. ESMA also contributed to the IASB's work by providing comments relating to the enforceability of the IFRS to its consultations on a variety of topics. Finally, through the Financial Institutions Task Force, ESMA reinforced its cooperation with prudential regulators (the EBA and the Single Supervisory Mechanism) regarding the interaction of the application of IFRS 9 in the 2018 annual financial statements and the supervisory guidance on non-performing loans.

Sustainable finance: non-financial reporting by issuers

ESMA responded to the Commission's consultation on the update of the non-binding guidelines on non-financial reporting with the introduction of a specific supplement addressing climate-related disclosures. Building on NCAs' experience enforcing non-financial statements, ESMA highlighted some areas for improvement relating to the NFRD while noting that, without an increase in the specificity of the requirements in the NFRD, any amendment to the guidelines, even if helpful, is unlikely to result in a significant shift towards more consistent and enforceable non-financial reporting.

Audit

ESMA continued to actively participate in the Committee of European Audit Oversight Bodies (CEAOB) by providing the perspective of the securities regulator. ESMA chaired the subgroup on equivalence and adequacy assessments of public oversight systems of third countries. In 2019, following the technical assessment of the subgroup, the Commission adopted the positive adequacy decision of the competent authorities of the People's Republic of China. ESMA furthermore contributed to the work of the CEAOB on the audit of the ESEF, providing technical expertise on the ESEF Regulation and support to the development of the non-binding guidelines on the audit of the ESEF.

2.3.3. Investment management

Objective for 2019	Frame and implement technical standards and technical advice.

PRIIPs level 2 review

The ESAs have considered changes to the key information document for PRIIPs and issued a consultation paper on amendments to existing rules underpinning the KID for PRIIPs. This work was carried out under the Joint Committee (see Section 2.5.1).

European long-term investment funds

ESMA ran a public consultation regarding draft supervisory RTS under the European Long-Term Investment Fund Regulation. Considering that the draft RTS depend to a large extent on the cost section of the PRIIPs KID, which is currently being revised in the context of the review of the delegated acts of PRIIPs, ESMA decided to postpone the finalisation of the draft RTS until the new PRIIPs delegated acts have been published. Therefore, at the end of 2019, ESMA published a report providing a feedback statement summarising the responses received to the consultation. Upon finalisation of the review of the PRIIPs, ESMA will assess the most appropriate way to finalise the draft European long-term investment fund RTS.

Cross-border distribution of collective investment undertakings

Under the regulation on facilitating cross-border distribution of collective investment undertakings, in 2019, ESMA started to develop implementing technical standards (ITS) on standard forms, templates and procedures in relation to information contained in the databases to be developed by ESMA on (1) national provisions governing marketing requirements for AIFs and UCITS, (2) supervisory fees and charges for the cross-border distribution of funds and (3) marketing activities of funds across the EU.

2.3.4. Market integrity and market data

Objectives for 2019	
	Work on technical advice to be sent to the Commission on a potential review of MAR. Review the third-country regimes for data providers. Provide MiFIR reports on the assessment of the reporting requirements. Transpose internationally adopted codes into EU legislation via revised RTS.

Market integrity

ESMA issued a set of RTS on the application of MAR that cover cooperation arrangements between NCAs and their counterparts in third countries for the purpose of efficiently exchanging information and enforcing the obligations related to market abuse.

In addition, in view of an upcoming review of MAR, ESMA was mandated by the Commission to draft a piece of technical advice on a wide range of MAR-related issues.

In particular, ESMA published a consultation paper on the scope of MAR in relation to benchmark provisions, collective investment undertakings and whether or not spot foreign exchange contracts should be brought within the scope of MAR. In addition, the consultation paper addressed issues related to buyback programmes, the definition of inside information and its disclosure obligation, market soundings, the insider list and managers' transactions. Finally, ESMA also considered the possibility of establishing an EU framework for cross-market order book surveillance, the cross-border enforcement of sanctions and the issue of Cum/Ex and multiple withholding tax reclaim schemes.

ESMA will publish a final report in 2020.

Market data

In 2019, ESMA carried out the necessary work to launch and advance the preparation of a consultation document to respond to the following mandates from EMIR Refit: ITS on the reporting of derivatives to the TRs, ITS and RTS on the registration of TRs, RTS on the procedures to be applied by the TRs to reconcile and validate the data, and RTS on the publication and provision of data by the TRs to the relevant authorities. In addition, ESMA looked into revising certain aspects of reporting to the TRs in order to align the reporting requirements in the EU with the global guidance on harmonisation of OTC derivative data elements reported to TRs, as developed by the Committee on Payments and Market Infrastructures and the IOSCO working group for the harmonisation of key OTC derivative data elements.

2.3.5. Post-trading

Objectives for 2019	
	Review/update the EMIR framework. Develop the relevant reports on post-trading matters.

Third-country central counterparties

ESMA published three consultation papers in relation to the technical advice to be provided to the Commission under EMIR 2.2 on tiering, comparable compliance and fees. The first paper details the different indicators that can be used to specify the criteria ESMA has to consider in the assessment of a third-country CCP's application for recognition (or review) to determine if that third-country CCP is (or is likely to become) systemically important for the financial stability of the Union or of one or more of its Member States. The second paper discusses what ESMA should assess to apply comparable compliance, and how ESMA should go about this assessment, and proposes the minimum elements to be considered in this assessment, as well as the modalities and conditions to carry out this assessment. Finally, the third paper examines the determination of one-off recognition fees and the fees for tier 1 and tier 2 third-country CCPs, in addition to how comparable compliance will be reflected in the annual fees. It also clarifies the applicable budgeting approach.

Following the consultation, the three pieces of technical advice were finalised and published in November, taking into account the feedback received.

EMIR Refit FRANDT

EMIR Refit introduced measures including the requirements under which the commercial terms for providing clearing services must be fair, reasonable, non-discriminatory and transparent (FRANDT). In this context, ESMA published a consultation paper specifying some requirements that technical advice to the Commission could contain to ensure that the commercial terms used in providing clearing services to clients are FRANDT compliant. Responses to the consultation were published in December 2019 and the advice is scheduled be provided to the Commission in 2020.

2.3.6. Secondary markets

Objective for 2019	Deliver MiFID II/MiFIR review reports ([15]).

Indices and recognised exchanges under the Capital Requirements Regulation

In December 2019, ESMA issued a final report on draft amendments to Implementing Regulation (EU) 2016/1646, specifying the main indices and recognised exchanges under the Capital Requirements Regulation (CRR) relevant to credit institutions and investment firms subject to prudential requirements and trading venues. ESMA introduced these amendments to ensure that the most relevant criteria are applied to specify the main indices, and that the list of recognised exchanges is updated to reflect legislative changes and changes in market structures. The amended ITS provide for a new methodology to ensure that the main indices captured comprise instruments that are sufficiently liquid and therefore can serve as adequate eligible collateral.

Owing to the uncertainty about the date when the UK would leave the EU, ESMA included two versions of the amended ITS in the final report: one including the UK exchanges and one without.

Annual review of regulatory technical standards 2

ESMA has responded to the Commission regarding the annual review of RTS 2, which requires ESMA to submit annual reports to the Commission assessing the operation of some transparency thresholds for bonds and derivatives. The letter outlines that ESMA and the Commission agree that it is not advisable to perform the annual review of RTS 2 in the course of 2019 owing to the remaining uncertainties around a potential no-deal Brexit (previously, ESMA had raised concerns that including or excluding UK data from the assessment would have a fundamental impact on the results). ESMA reiterated, however, its intention to perform the annual review of RTS 2 by 30 July 2020.

(**15**) For the MiFID II/MiFIR review reports, please refer to the key deliverables at the start of this section.

2.4. Direct supervision of and enforcement against specific financial entities

Key deliveries and successes

Fines for Fitch UK, Fitch France and Fitch Spain

ESMA fined three CRAs belonging to the Fitch Group a total of more than EUR 5 million and issued supervisory measures against the three CRAs, in the form of public notices. The fines related to a series of infringements in which the CRAs negligently failed to comply with requirements of CRAR related to conflicts of interest.

ESMA found the three Fitch CRAs to have infringed conflict of interest requirements through rating activities conducted between 2013 and 2015, with regard to rated entities of which a Fitch shareholder was a board member, and owing to a lack of adequate procedures and internal controls implemented by one of the CRAs with respect to conflicts of interest.

ESMA considered measures voluntarily taken by the three Fitch subsidiaries to ensure similar infringements could not be committed in the future and applied, when applicable, both mitigating and aggravating factors provided by CRAR, which are reflected in the amounts of the fines.

Sustainability in the credit-rating market

ESMA published its technical advice on sustainability considerations in the credit-rating market and its final guidelines on disclosure requirements applicable to credit ratings. Having assessed the level of consideration of ESG factors in both specific credit-rating actions and the credit-rating market in general, ESMA found that, while CRAs do consider ESG factors in their ratings, the extent of their consideration can vary significantly across asset classes, depending on each CRA’s methodology.

Instead of amending CRAR to explicitly mandate the consideration of sustainability characteristics in all rating assessments, ESMA proposed that the Commission should assess if there are sufficient regulatory safeguards in place for other products that will meet the demand for pure sustainability assessments. CRAs also need to harmonise the disclosure of ESG considerations. To this end, the guidelines provide detailed guidance on what CRAs should disclose when they issue a credit rating, and they require greater transparency on whether or not ESG factors were a key driver of the credit-rating action.

Follow-up to the thematic report on fees

ESMA published a follow-up to the thematic report on the fees charged by CRAs and TRs, which highlights good practices implemented in the areas of fee transparency, fee setting and costs monitoring.

ESMA found that CRAs should further improve the transparency of their pricing and their fee-setting process, and the recording of costs and their monitoring practices. ESMA also found that CRAs need to improve the access to and usability of the credit ratings published on their websites and that they should remain responsible for overseeing the distribution of the credit ratings they produce.

ESMA found that TRs should ensure that their pricing policy is in line with EMIR requirements and ESMA’s expectations. They should carefully assess fee caps for delegated reporting and also conduct regular, documented cost reviews to ensure cost-related fees.

Both CRAs and TRs should further enhance their control frameworks with a more active involvement of control functions, such as compliance and internal audit.

ESMA also identified several good practices among CRAs and TRs, which are described in further detail in the report. ESMA will continue to monitor how supervised firms develop their practices and assess whether or not their implementation is compliant with the regulatory requirements on fees. ESMA will also carry out further work to improve access to and use of credit ratings.

2.4.1. Credit-rating agencies

Objective for 2019	Continue to supervise CRAs, ensuring lasting impacts of supervisory activities at the individual CRA level.

In 2019, ESMA registered two new CRAs under CRAR: Beyond Ratings SAS and Inbonis SA. In the same year, ESMA withdrew the CRA registration of three CRAs: Moody's Investors Service EMEA Limited, Beyond Ratings SAS and DG International Ratings SRL (previously Dagong Europe Credit Rating Srl; DG International). Industry dynamics remained largely the same over the course of 2019, as the industry remains concentrated around the three large CRAs. ESMA continued to actively monitor developments related to Brexit. To ensure no market disruption after Brexit, ESMA finalised all the pending actions and monitored the implementation of CRAs' contingency plans. Furthermore, ESMA met with senior management and the independent members of the Board of Directors of CRAs on a regular basis to discuss their strategic direction and governance.

Quality of the rating process

In 2019, one of the main priorities for ESMA related to the improvement of the quality of the rating process. In this respect, ESMA (1) concluded its investigation into the processes that CRAs followed to assign credit ratings on individual debt instruments and established appropriate remedial actions, (2) launched a thematic review on the processes that CRAs follow in assigning credit ratings to collateralised loan obligations and (3) clarified its expectations on the minimum standards that CRAs should maintain during their rating reviews.

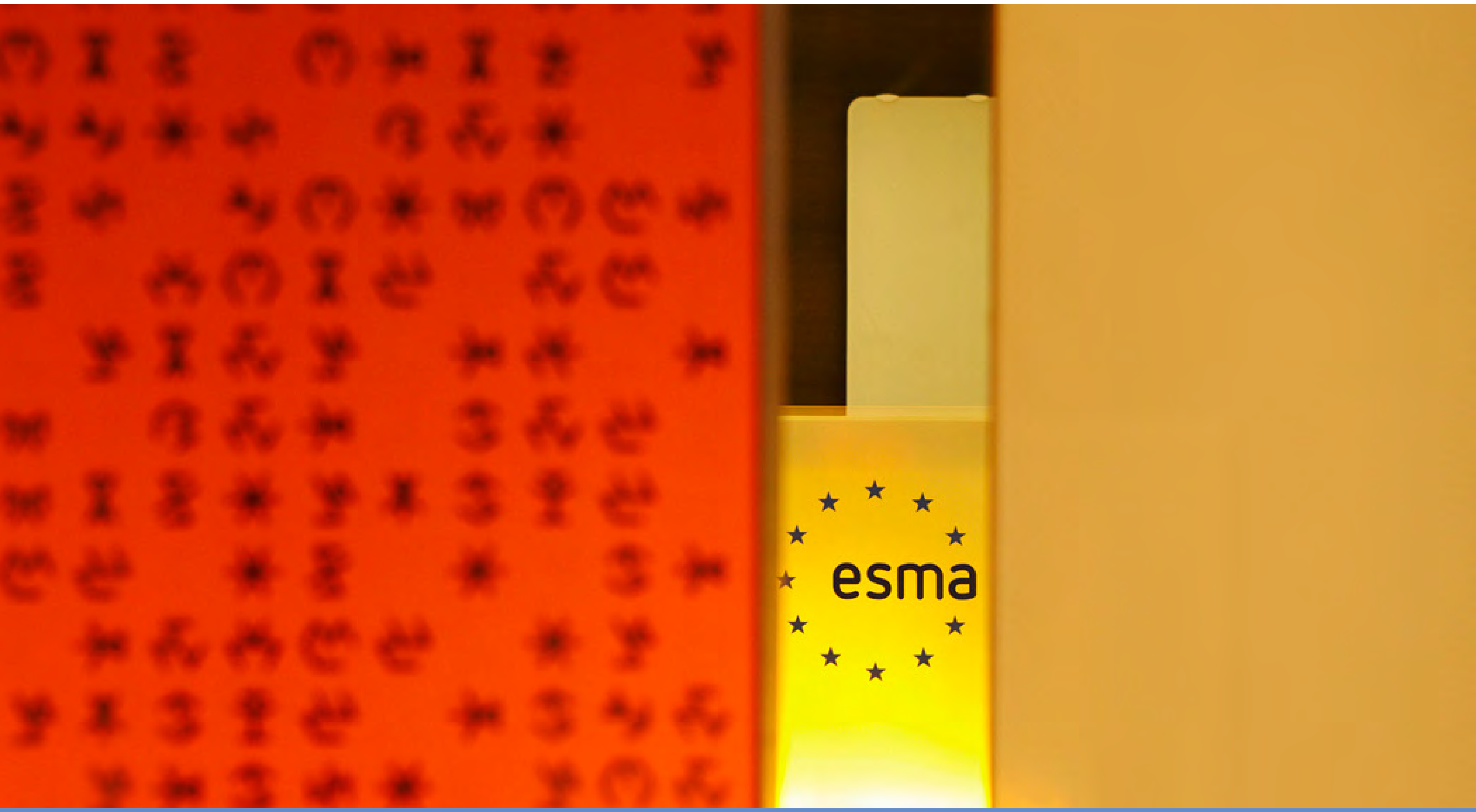
Information technology, information security and internal controls

Following the high levels of risk identified in the 2018 risk assessment for IT, information security and internal controls, ESMA met with key staff, assessed periodic information and incidents reported by CRAs, and monitored the implementation of remedial action plans.

Enforcement decisions

Following a decision by the Board of Appeal of the ESAs (BoA), ESMA published amended enforcement decisions regarding Nordea Bank, Svenska Handelsbanken, SEB and Swedbank in July.

In June 2018, ESMA had fined five banks EUR 495 000 each and issued five public notices for negligently infringing CRAR by issuing credit ratings without being authorised by ESMA to do so. Four of the five banks appealed to the BoA against ESMA's decisions



in 2018. In February 2019, while upholding all the infringements, the BoA accepted the banks' claim that they had not acted negligently, given the very unusual circumstances of the case ([16]).

Based on this decision, ESMA decided that the only appropriate supervisory measure in the four banks' cases were public notices regarding the banks' infringements and that no fine would be imposed.

Guidelines on supervisory reporting for credit-rating agencies

ESMA revised its 2015 guidelines on the reporting of periodic information to ensure that the guidelines continue to support ESMA's supervisory processes in an efficient and effective manner. The main goal of the guidelines is to streamline the information that is reported on a periodic basis by CRAs to ESMA, ensuring that the information is fully aligned with ESMA's supervisory processes. A secondary goal of the guidelines is to increase the predictability of ESMA's supervisory interactions with CRAs, with respect to the requests for information that ESMA asks CRAs to reply to.

Guidelines on disclosures for credit ratings

In July, ESMA published its guidelines on disclosure requirements applicable to credit ratings. The purpose of these guidelines is to provide detailed guidance on what CRAs should disclose when they issue a credit rating to ensure a better level of consistency in terms of the critical information included in CRAs' press releases. In addition, the guidelines require greater transparency on whether or not ESG factors were a key driver of a credit-rating action. This will ensure that the users of ratings are better able to determine when ESG factors are affecting credit-rating actions.

Guidelines on internal controls for credit-rating agencies

In December, ESMA began a consultation on the proposed guidelines on internal controls for CRAs, which set out the systems and controls that CRAs should have in place to meet the requirements of CRAR on internal controls. The proposed guidelines provide clarity to CRAs on what ESMA's expectations are in this area, promoting a more consistent approach to internal controls among registered CRAs and setting the standard for new entrants to the industry. The guidelines set out the criteria that CRAs should have in place, focusing on their internal controls framework and functions, to demonstrate to ESMA that adequate and effective internal control systems exist to ensure the accuracy and integrity of the credit-rating process.

(16) https://www.esma.europa.eu/sites/default/files/library/board_of_appeal_-_27_february_2019_-_decisions_2019_01_02_03_04_-_final.pdf.

2.4.2. Trade repositories

Objective for 2019	Continue to supervise TRs under EMIR, ensuring lasting impacts of supervisory activities at the individual TR level.

In 2019, ESMA registered two TRs under EMIR: DTCC Data Repository (Ireland) PLC and UnaVista TRADEcho B.V. Both registrations were part of the group's strategy for a possible no-deal Brexit.

Following the official notification by Bloomberg of its intention to renounce its TR registration under the conditions set out under EMIR, ESMA withdrew the registration of Bloomberg Trade Repository Ltd (UK).

Furthermore, in July, ESMA fined REGIS-TR S.A. EUR 56 000 and issued a public notice for negligently failing to provide regulators with direct and immediate access to details of derivative contracts as required under EMIR. ESMA found that the TR had failed to put in place systems capable of providing regulators with direct and immediate access to trade terminations, trade modifications, trade valuations and collateral updates from the start of the EMIR reporting obligation to October 2016. In calculating the fine, ESMA considered both aggravating and mitigating factors provided for in EMIR.

Finally, ESMA published in May a consultation paper on guidelines setting out the information that should be periodically submitted by TRs to ESMA. The final report will be published in 2020.

2.4.3. Securities financing transactions

Objective for 2019	Continue to supervise TRs under the SFTR, ensuring lasting impacts of supervisory activities at the individual TR level.

Under the SFTR, both parties to a securities financing transaction need to report new, modified or terminated securities financing transactions to a registered or recognised TR, including the composition of the collateral.

To this end, in 2019, ESMA undertook a consultation on the draft guidelines on how to report securities financing transactions, seeking stakeholders' views on key elements of future ESMA guidelines on reporting under the SFTR, which will complement the SFTR technical standards and ensure the consistent implementation of the new SFTR rules. The guidelines include general principles that apply to securities financing transaction reporting and provide clarity on and a harmonised approach to different reporting aspects. The final guidelines were published in January 2020 and will contribute to the reduction of costs along the complete reporting chain: the counterparties that report the data, the TRs that put in place the procedures to verify the completeness and correctness of the data, and the authorities that use the data to supervise risks to financial stability.

During 2019, ESMA continued preparations for this new direct supervisory mandate. ESMA started engaging with pre-applicants and assessing the first applications for registration and continued to prepare the implementation of the supervisory framework in order to be ready for the start of the reporting requirement in 2020.

2.4.4. Securitisation

Objective for 2019	Register securitisation repositories and set up their ongoing supervision.

Securitisation is an important technique for lenders that seek to raise funding for providing credit to the economy. Securitisations also help investors to gain direct exposure to a number of asset classes that they would not normally have access to. The development of an STS securitisation market constitutes a building block of the CMU. The Securitisation Regulation confers several mandates on ESMA to achieve these goals. In 2019, ESMA continued working on the implementation of the securitisation regulatory framework.

As investors, originators, sponsors, original lenders and securitisation special purpose entities can be established in different Member States and supervised by different competent authorities, close cooperation between competent authorities and the ESAs is critical to achieve an effective system of supervision for securitisation transactions in the Union. Therefore, ESMA issued draft RTS setting out the general cooperation obligations, the information to be exchanged and the common notification procedures in the event of infringements of the Securitisation Regulation. Once fully implemented, these RTS will contribute to delivering a regulatory rulebook for the European securitisation market.

To help identify all the designated competent authorities under the Securitisation Regulation, ESMA's website also hosts the list of competent authorities responsible for supervising the compliance of institutional

investors, originators, sponsors, securitisation special purpose entities, original lenders and third parties. In addition, to help investors to identify securitisation instruments, ESMA also hosted the register for securitisations, complying with the STS criteria set out in the Securitisation Regulation. As of 31 December 2019, ESMA had registered 143 STS notifications. The register acts as a public information hub and also provides assistance to NCAs in charge of the supervision of STS notifications.

2.4.5. Third-country central counterparty recognition

Objective for 2019	Recognise third-country CCPs providing clearing services in the Union.

ESMA has had direct responsibilities regarding the recognition of third-country CCPs since EMIR entered into force in 2012.

Throughout 2019, ESMA continued its third-country CCP work, which included the monitoring of compliance with recognition conditions by third-country CCPs and assessing, reviewing or taking new recognition decisions. In particular, ESMA recognised three new third-country CCPs and withdrew the recognition of another third-country CCP.

In addition, as developed in a separate section of this report, ESMA worked on the recognition of the three UK CCPs in the context of the withdrawal of the UK from the Union, for the scenario of a no-deal Brexit.

2.5. Joint Committee

In 2019, the Joint Committee under the chairmanship of EIOPA continued to have a central role in the coordination and exchange of information between the ESAs, the Commission and the ESRB. Progress continued on work on important cross-sectoral areas such as enhancing consumer protection, monitoring financial innovation and cybersecurity, and combating money laundering and terrorist financing. The ESAs continued their preparation for the withdrawal of the UK from the EU.

2.5.1. Safeguarding consumer protection across financial services and monitoring financial innovation

Consumer protection and financial innovation figured prominently once again on the Joint Committee's agenda. In February 2019, the ESAs published their final recommendations following a consultation on targeted amendments to the delegated regulation covering the rules for the KID for PRIIPs. Having taken into account the feedback received and considering, in particular, the implications of a possible decision by the European co-legislators to defer the application of the KID by certain types of investment funds beyond 2020, the ESAs decided to not propose targeted amendments at that stage and instead to initiate a more comprehensive revision of the PRIIPs Delegated Regulation. To this end, the ESAs contributed to a consumer-testing exercise conducted by the Commission, and a public consultation on the PRIIPs KID was launched in October 2019, followed by a consumer-testing exercise. The feedback on the consultation and the results of the consumer-testing exercise will be taken into account when final proposals are published in 2020.

Furthermore, the ESAs issued a supervisory statement regarding the PRIIPs KID performance scenarios to promote consistent approaches and improve the protection of retail investors prior to the conclusion of the ongoing PRIIPs review.

In accordance with the PRIIPs Regulation, competent authorities must report to the ESAs on administrative sanctions or measures that they impose under the regulation and the ESAs must publish this information in their annual report. Since the implementation of PRIIPs at the start of 2018 (covering 2018 and 2019), no administrative sanctions or measures have been reported to the ESAs.

In July 2019, the Joint Committee published a report on the cross-border supervision of retail financial services. In this report, the ESAs identified the main issues that NCAs face when supervising financial institutions that provide cross-border retail financial services within the EU and made recommendations to both NCAs and EU institutions on how to address them.

The seventh Joint ESAs Consumer Protection Day 2019 took place at the end of June in Dublin, Ireland. The focus of the well-attended event was (1) the ESAs and their financial education mandate – which way forward?, (2) the PRIIPs 2019 review – the challenges and opportunities ahead and (3) the integration of consumers' sustainability preferences in the distribution of financial products.

2.5.2. ESAs commence work on enhancing sustainable finance disclosures

The SFDR sets out ESG disclosure requirements for a broad range of financial market participants, financial advisers and financial products. The SFDR empowers the ESAs to deliver, through the Joint Committee, six technical standards, of which five are due by the end of 2020. These technical standards will cover both adverse impact reporting at the entity level and pre-contractual, website and periodic product disclosure. Against this background, the Joint Committee Standing Committee on Consumer Protection and Financial Innovation decided to set up a new subgroup on ESG disclosures in order to develop these draft technical standards. In 2019, this group had worked on a consultation paper which was published on 23 April 2020. After the on-going consultation which was extended due to the corona crisis, the subgroup plans to finalize the RTS by the end of 2020 / Jan 2021 and also to work on reporting templates. In 2019, this group had worked on a consultation paper which was published on 23 April 2020. After the on-going consultation which was extended due to the corona crisis, the subgroup plans to finalize the RTS by the end of 2020 / Jan 2021 and also to work on reporting templates.

2.5.3. Cross-sectoral risks and overseeing market developments and vulnerabilities

The Joint Committee continued as an important forum for discussions on market developments and in-depth analyses of emerging risks, and for identifying the main areas of supervisory concern across the EU in its biannual cross-sectoral risk reports.

The spring risk report highlighted several risks as potential sources of instability, namely a sudden repricing of risk premia, continued uncertainties around the terms of the UK's withdrawal from the EU, and cyberattacks. The report also reiterated the ESAs' warning to retail investors investing in virtual currencies and raised awareness of risks related to climate change and the transition to a lower-carbon economy.

In its autumn risk report, the Joint Committee highlighted the risk of persistently low interest rates, which continue to put pressure on the profitability and returns of financial institutions and caused a return of search for yield behaviour. The report further highlighted the need for a transition to a more sustainable economy and ESG-related risks, leading to possible challenges to the viability of business models with high exposures to climate-sensitive sectors. Finally, the report continued to encourage institutions to prepare contingency plans for Brexit.

2.5.4. Anti-money laundering and countering the financing of terrorism

The focus of the Joint Committee in the area of anti-money laundering (AML) and countering the financing of terrorism (CFT) was on the implementation of the Council's AML action plan published in December 2018. The Council action plan put an emphasis on the enhancement of supervisory cooperation between AML/CFT supervisors and also between AML/CFT and prudential supervisors. Therefore, the Joint Committee took forward its work on developing own-initiative guidelines on supervisory cooperation, which were published in December 2019. With these guidelines, the ESAs have developed a formal framework for supervisors to cooperate and exchange information in respect of firms operating on a cross-border basis within AML/CFT colleges.

Furthermore, in October 2019, the Joint Committee issued its second joint opinion on the money laundering and terrorist financing risks affecting the EU financial sector. Drawing on data and information provided by national AML/CFT competent authorities, the ESAs found that the monitoring of transactions and suspicious transactions reporting still raise concerns, particularly in sectors where a financial institution's business model is based on frequent transactions. This opinion aimed to develop a better understanding of money laundering and terrorist financing risks within the EU and thus strengthen the EU's defences against these risks.

In addition, the ESAs continued their review of the risk factors guidelines, which was necessary to ensure that these guidelines were brought in line with the fifth AML Directive (which had to be transposed by the Member States by 10 January 2020) and to address risk factors in sectors that were not yet covered by these guidelines. The consultation on the amended guidelines commenced in February 2020.

Finally, following the ESAs' review and changes introduced to the ESAs Regulations, as of January 2020, the EBA became the responsible ESA for AML/CFT matters. While the work related to AML/CFT is no longer within the scope of the Joint Committee, EIOPA and ESMA will remain closely involved in the AML/CFT work related to their sectors.

2.5.5. Monitoring of financial conglomerates

In 2019, the Joint Committee published its annual list of financial conglomerates showing that, for 77 financial conglomerates, the head of group was located in the EU/EEA area and, for another three financial conglomerates, the head of group was in Switzerland, Bermuda and the United States, respectively. In addition, the Joint Committee published a consultation paper on proposed draft ITS for reporting templates for conglomerates on intra-group transactions and risk concentration.

2.5.6. Innovation and FinTech

Under the umbrella of the Joint Committee, the ESAs set up EFIF, following the publication in January 2019 of the joint ESA report on regulatory sandboxes and innovation hubs. The report identified a need for action to promote greater coordination and cooperation between innovation facilitators to support the scaling up of FinTech across the single market. EFIF provides a platform for supervisors to meet regularly to share experiences from engagement with firms through innovation facilitators (regulatory sandboxes and innovation hubs), to share technological expertise and to reach common views on the regulatory treatment of innovative products, services and business models, overall boosting bilateral and multilateral coordination.

Furthermore, in April 2019, the ESAs published two pieces of joint advice in response to requests made by the Commission in its FinTech action plan: one on legislative improvements relating to ICT risk management requirements and another on a coherent cyber-resilience-testing framework. The ESAs' objective is to ensure that every relevant entity is subject to clear general requirements on the governance of ICT, including cybersecurity, to ensure the safe provision of regulated services.

2.5.7. Coordination on securitisation

In 2019, the new Joint Committee Securitisation Committee began its work in aiding EU competent authorities to coordinate their duties under the Securitisation Regulation by serving as a forum to discuss practical/operational issues related to their supervision and enforcement duties, thereby ensuring cross-sectoral consistency and promoting supervisory best practices.

2.5.8. Other relevant cross sectoral Joint Committee work

In May 2019, the Joint Committee published a second amendment to the ITS on the mapping of credit assessments of external credit assessment institutions for credit risk under the CRR. The amendment reflects the outcome of a monitoring exercise on the adequacy of existing mappings. The ITS on the mapping of external credit assessment institutions under Solvency II was consulted upon in 2019 and will be published in the first quarter of 2020.

In November 2019, the Joint Committee published the final report with draft RTS proposing to amend the Commission Delegated Regulation on the risk mitigation techniques for OTC derivatives not cleared by a CCP (bilateral margin requirements) under EMIR. The draft RTS propose, in the context of the UK's withdrawal from the EU, to introduce a limited exemption in order to facilitate the novation of certain OTC derivative contracts to EU counterparties during a specific time window. The amendments will apply only if the UK leaves the EU without the conclusion of a withdrawal agreement – a no-deal scenario. The draft RTS complemented the similar proposal published by ESMA on 8 November with respect to the clearing obligation.

2.5.9. Board of Appeal

The ESAs provided secretarial support to the BoA. In 2019, there were two appeal cases, one brought against ESMA and another brought against the EBA.

In March 2019, the BoA issued its decision on the appeals brought by four Swedish banks against decisions of ESMA's BoS. ESMA's BoS found that CRAR had been negligently infringed by the banks by including 'shadow ratings' in their credit research reports. ESMA adopted supervisory measures in the form of public notices and fines of EUR 495 000 on each bank. In deciding the appeals, and in summary, the BoA upheld the decision of ESMA's BoS on the central question, which was whether or not the banks' credit research reports fell within CRAR, but the BoA held that the banks had not acted negligently.

In October 2019, the BoA published another decision in the appeal by the CRA German Creditreform AG against the EBA. Creditreform AG appealed, challenging the adoption by the Joint Committee of certain draft ITS proposed for endorsement by the Commission. The BoA dismissed the appeal as inadmissible, in accordance with settled case law of the Court of Justice of the EU, finding that acts having a preparatory nature, such as draft ITS, are not subject to an autonomous judicial or quasi-judicial review, but instead are subject to review through a check of the legitimacy of the final act adopted by the Commission.

2.6. ESMA as an organisation

ESAs' review and EMIR 2.2

The new regulations founding the ESAs and, in particular, ESMA, as well as EMIR 2.2, are applicable as of 1 January 2020.

The legislative package of the ESAs' review has an important impact on the governance of ESMA and its tasks regarding supervisory convergence, investor protection and equivalence. In addition, ESMA needed to embed three core topics in its activities: technological innovation, sustainable finance and proportionality. Furthermore, ESMA will assume new supervisory mandates regarding data service providers and EU-critical and third-country benchmarks in 2022. At the same time, EMIR 2.2 has introduced a new approach to the supervision of EU and third-country CCPs.

To prepare for the changes resulting from the revised ESMA Regulation, EMIR 2.2 and key sectoral legislation including MiFIR, a number of projects were set up across ESMA, together with a dedicated programme team to coordinate the different workstreams.

Among the key deliveries for 2019 were the **governance changes** required to adapt ESMA's organisation to the new tasks and powers. To this end, ESMA, among other preparations, revised its internal organisational structure, and a new organisation chart was published on ESMA's website in January 2020 ([17]). A key change brought about by EMIR 2.2 is the set-up of the CCP supervisory committee, which carries out ESMA's responsibilities regarding the recognition and direct supervision of third-country CCPs and the promotion of supervisory convergence among NCAs on the authorisation and supervision of EU CCPs. The committee is composed of a Chair and two independent members, the competent authorities of the Member States where there is a CCP and, where applicable, the central banks of issue of EU currencies. ESMA launched the recruitment process for the Chair and independent members, who will be ESMA staff members, in November 2019.

ESMA also adapted the rules of procedure for its BoS and Management Board (further strengthening, among other things, ESMA's conflict of interest policy and providing the ESMA Chair with a right to vote), adopted a strategy regarding sustainable finance and made important changes to its single rulebook, supervisory convergence and investor protection processes.

In the field of **supervisory convergence**, the framework of peer reviews has been enhanced. The changes required that the governance of the peer review process be upgraded, in which ad hoc peer review committees are now chaired by ESMA staff and the Management Board is granted a new driving role to ensure consistency among peer reviews. As a result, the independence of the process has been reinforced. In 2019, ESMA agreed on the direction for implementation and further works, in cooperation with the other ESAs, including the revision of the peer review methodology. The ESAs' review also resulted in further supervisory convergence improvements, such as enhancements to the Q&A process and the establishment of Union strategic supervisory priorities.

The ESAs' review also reinforced ESMA's role in **international cooperation and on equivalence-related tasks**, and work was undertaken to prepare for these new tasks. As a result, as of 2020, in addition to its existing competences to advise the Commission in equivalence assessments, ESMA will also embark on monitoring regulatory and supervisory frameworks in those non-EU jurisdictions that have been granted positive equivalence decisions. Moreover, ESMA assumes a stronger role in contributing to a single European voice in international policy-making activities.

In addition, ESMA established **new committees in the areas of innovation and consumer protection and on proportionality**. The new advisory committee on consumer protection and financial innovation brings together the members of the existing ESMA committees with expertise and competence in these two topics. The committee will contribute to ESMA's mission by discussing strategic questions commonly affecting these two areas and will help ensure that the Board strategic view is efficiently implemented. The new advisory committee on proportionality will be formed of NCA and ESMA staff. It will advise ESMA on how measures should take account of differences in nature, scale, risks, business models and practices, and size of financial institutions and markets. The committees will begin their work in 2020.

Finally, in 2019, ESMA began preparing for the **new supervisory mandates** to ensure that ESMA will be ready to undertake the direct supervision of critical and third-country benchmarks and of data-reporting services providers as of 1 January 2022.

(**17**) https://www.esma.europa.eu/about-esma/esma-in-short/esma-organigramme.

2.6.1. UK withdrawal from the European Union

Objective for 2019	Provide strategic lead, coordination and consistency across all Brexit-related workstreams within ESMA's remit.

No-deal Brexit preparations

The year 2019 was particularly challenging, as both 31 March and 31 October 2019 were potentially dates when the UK could have left the EU without a deal in place. To address this risk, ESMA undertook several measures to prepare for a no-deal Brexit.

ESMA and the European securities regulators agreed MoUs with the Financial Conduct Authority of the UK in February 2019. The MoUs formed part of the authorities' preparations in case the UK left the EU without a withdrawal agreement. The MoUs were intended to take effect only in the event of a no-deal Brexit scenario and were similar to those already concluded on the exchange of information with many third-country supervisory authorities.

Supervisory convergence in the context of Brexit

In 2019, supervisory convergence in the context of the uncertain timing of the UK's withdrawal from the EU was a key priority. To give timely information to market participants and with the aim of mitigating the risks of a no-deal Brexit, ESMA took action prior to 31 March and then 31 October 2019 by issuing a number of statements relevant for market participants.

ESMA aimed to address arbitrage risks arising in the Brexit context through facilitating supervisory coordination and convergence between the EU-27 NCAs. The Supervisory Coordination Network on Brexit continued to monitor NCAs' authorisation activities in relation to relocation of business and activities to the EU-27 and discussed over 100 cases. This entailed peer challenge among NCAs on their handling of relocation cases, information exchange, sharing of good practices and in-depth discussion of key issues such as firms' governance, minimum substance and outsourcing/delegation arrangements. The Supervisory Coordination Network also discussed different themes, such as the approach to enforcement against non-authorised activities, the preparedness of firms, tied agent distribution models and national contingency measures.

UK central counterparties and UK central securities depository

To limit the risk of disruption in central clearing and to avoid any negative impact on the financial stability of the EU, ESMA provided clarification that three CCPs established in the UK – LCH Limited, ICE Clear Europe Limited and LME Clear Limited – would continue to be recognised as CCPs to provide their services in the EU in the event of a no-deal Brexit.

In addition, ESMA clarified that the CSD established in the UK – Euroclear UK and Ireland Limited – would be recognised as a third-country CSD to provide its services in the EU in the event of a no-deal Brexit.

ESMA also published a statement on its approach to the application of some key MiFID II/MiFIR and BMR provisions should the UK leave the EU under a no-deal Brexit.

UK data in ESMA databases

With regard to the use of UK data in ESMA databases, ESMA issued a statement aiming to inform stakeholders of its approach to all its IT applications and databases under a no-deal Brexit. A complementary statement on the use of UK data was published in March, related to the following systems: FIRDS, the Financial Instrument Transparency System (FITRS), the DVC system, transaction reporting systems and ESMA's registers and data. The statements and measures on no-deal Brexit scenario preparations were kept updated throughout 2019.

Share-trading obligation

To provide additional clarity and certainty on the application of the trading obligation for shares under Article 23 of MiFIR in a no-deal Brexit context, ESMA published a statement in May 2019 clarifying that, in the absence of a Commission equivalence decision with respect to the UK, EU-27 ISINs would have to be traded on EU-27 trading venues and systematic internalisers, while EU-27 investment firms would continue to be able to trade all shares with UK ISINs on UK trading venues.

As was already the case in the previous ESMA statements regarding the share trading obligation and, in particular, the statement published in 2017 before the application start date of MiFIR, ESMA aimed with this new guidance to reduce the potential impact created by a no-deal Brexit, while striking a balance with the need to find a way for a consistent application of EU law.

Credit-rating agencies

In March, ESMA clarified the endorsement of UK credit ratings in the case of a no-deal Brexit by issuing a statement that sets out the implications for CRAs based in the UK.

Other areas

ESMA issued three Q&As regarding the Prospectus Directive and the Transparency Directive to clarify the application of certain provisions in these directives in case the UK withdrew from the EU with no withdrawal agreement in place (a no-deal Brexit). These Q&As were to apply only in the event of a no-deal Brexit. The purpose of the Q&As was to promote common supervisory approaches and practices in the application of the Prospectus Directive and Transparency Directive in the case of a no-deal Brexit.

2.6.2. Corporate affairs

Objective for 2019	Provide support to ESMA in its communications and stakeholder relations activities; governance, strategic planning and reporting; and assurance and accountability.

European Union institutions

This was a year of change for two key EU institutions in view of the elections to European Parliament in May 2019, and subsequently the new Commission taking office in December 2019.

In particular, Q1 2019 was a very intense period for the European Parliament, the Council and the Commission, with them needing to effectively use the final months before the end of the parliamentary mandate and concluding a number of legislative projects of significant impact for ESMA, including the ESAs' review, EMIR 2.2, EMIR Refit and the investment firm review, but also a large part of the sustainable finance action plan (legislative proposals on disclosures and benchmarks). In the second half of the year, the EU institutions also made progress on the sustainable finance taxonomy file and in formulating priorities for the next legislature's mandate, which will also include new measures for the boosting of the CMU. ESMA has closely monitored these developments and provided views to the EU institutions on the potential impact of certain policy choices on the EU capital markets, but also on ESMA as an organisation.

Throughout the year, ESMA has worked closely with the EU institutions to ensure its accountability in the process of developing implementing measures. In particular, ESMA's Chair conducted the annual hearing by the Economic and Monetary Affairs (ECON) Committee and reported on ESMA's activities in the previous year.

International organisations and non-EU regulators

In several important areas related to, inter alia, financial stability, market-based finance, credit-rating policy and the regulation of financial benchmarks, ESMA has continuously contributed to the international dialogue at the IOSCO and Financial Stability Board levels.

In particular, ESMA was instrumental in the finalisation of the IOSCO–ESMA administrative arrangement, which will allow a continuous and General Data Protection Regulation-compliant transfer of personal data between EEA regulatory and supervisory authorities for securities markets and their non-EEA counterparts, including the transfers made under the IOSCO multilateral MoU. This administrative arrangement was approved by the IOSCO Board in spring 2019 and by the end of 2019 already included over 50 signatories worldwide.

Moreover, ESMA has substantially contributed to IOSCO's report to the G20 entitled *Market fragmentation and cross-border regulation*, which focused on the use of various regulatory and supervisory tools, including the EU equivalence and recognition regimes.

Furthermore, ESMA has played a critical role in assessing the equivalence of third-country supervisory regimes on a range of topics within its area of competence, including establishing required cooperation agreements (i.e. MoUs) with third-country supervisory authorities. With a view to enhancing the equivalence regimes in some specific areas, and in the context of new ESMA powers in relation to third-country market participants, including CCPs and benchmark administrators, ESMA has begun to step up its bilateral engagement with its international counterparts. In this bilateral context, ESMA also contributed to the regulatory dialogues that the EU has established with key third-country jurisdictions.

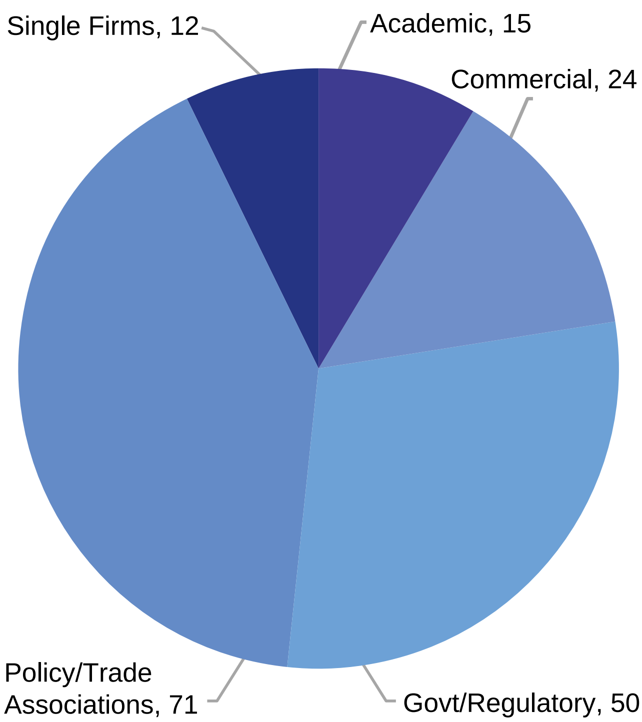
Finally, the legislative text of the ESAs' review sets out new tasks regarding equivalence monitoring and reconfirms tasks regarding equivalence assessments and ESMA's role within the international organisations. To this end, ESMA established an internal project to implement those tasks in a swift and efficient manner and to subsequently commence equivalence-monitoring activities with the entry into force of the revised ESMA Regulation.

External communications and stakeholder engagement

In 2019, ESMA's external communications work was dominated by Brexit and the finalisation of the ESAs' review. ESMA promoted its work through a variety of channels, including news publications, media interaction and its website. ESMA continued to expand its use of new media channels such as social media, where it significantly expanded its audience on LinkedIn and through infographics and audiovisual material, and self-produced several training videos for stakeholders on ESEF reporting.

ESMA continued its policy of prioritising appearances at events aimed at reaching the broadest stakeholder audience at events organised by governmental, institutional and regulatory authorities, EU-focused trade associations and regulatory bodies, and spoke at 172 such events in 2019.

Accepted Organiser Types



ESMA held a total of 322 meetings with non-institutional stakeholders at the staff level. A large number of meetings were also held with institutional stakeholders, such as other regulators, supervisors and European institutions. In addition, ESMA senior management held a total of 230 meetings with both market and institutional stakeholders. The meetings related to a multitude of different topics under ESMA's remit, with a high proportion concentrated on Brexit-related matters and various aspects of MiFID II, EMIR 2.2 and AIFMD in particular.

In 2019, ESMA arranged:

- three separate roundtables on market data issues and the consolidated tape providers for equity instruments;
- a workshop on cyber-/cloud computing with NCAs and a few market participants;
- two workshops for market participants and investor representatives to discuss ESMA's work on advice regarding short-termism in the economy;
- a workshop on the ESAs' work on investors' ESG disclosures;
- a workshop on 'speed-bumps' high-frequency trading.

Internal communications

ESMA's internal communications work in 2019 continued to focus on the organisation's culture by promoting, and embedding in staff's working lives, the values of being European, effective, cooperative and transparent.

In addition to the core activity of providing information to staff on internal and external developments affecting their working lives, this involved providing support on a number of key projects, including:

- building the organisation – promoting internal mobility and cross-team working;
- a follow-up to the 2018 staff survey;
- ESMA's relocation to the new iBox;
- the change projects associated with the ESAs' review.

2.6.3. Legal

Objectives for 2019	Enhance the legal drafting and soundness of legal acts adopted by ESMA. Provide clarity on the Authority's legal toolbox and easy access to all applicable acts prepared by ESMA.

In 2019, ongoing legal advice was provided on deliverables in all relevant areas under ESMA's remit, including Brexit-related issues, institutional issues arising out of the ESAs' review, supervisory and enforcement activities, and internal matters related to access to documents, staff and ethics matters.

All draft RTS and ITS prepared for submission to the Commission in 2019 by different ESMA departments were reviewed in accordance with the legal sign-off procedure. The most impactful level 3 instruments, in particular all 53 ESMA opinions on national product intervention measures and all opinions on accepted market practices and on short-selling measures, were subject to a legal review.

As regards requests for access to documents submitted by EU citizens pursuant to Regulation (EC) 1049/2001, ESMA dealt with a larger number of requests than in previous years, replying to 21 initial requests and four confirmatory applications (Annex I); where appropriate, it consulted third parties. On one occasion, the European Ombudsman opened an enquiry following a complaint against ESMA's refusal to grant access to certain documents. The procedure was closed with a suggestion that ESMA indicate in its information for the public if detailed records of its meetings with external stakeholders exist. ESMA is working on the implementation of this suggestion.

In addition, ESMA updated its Interactive Single Rulebook, including all level 2 and level 3 measures related to the provisions of MiFID II and MiFIR, and launched new Interactive Single Rulebooks for the Transparency Directive and the CSDR.

2.6.4. Facility management

Objective for 2019	Provide proactive support to ESMA by ensuring the smooth running of the facilities of the Authority and the acquisition of goods and services, in accordance with the EU public procurement rules and procedures, and ensuring the health and safety of ESMA staff and visitors.

ESMA's new premises

ESMA successfully concluded the multiannual programme initiated in 2017 to find new premises for ESMA, with the move, in November 2019, from the '103 Grenelle' building to a building called 'iBox' on time and on budget. This project was driven by two main elements: the expiry of ESMA's 9-year lease contract on 31 December 2019 and the need to prepare for the future growth of the Authority owing, in particular, to the new tasks stemming from the new 2019 legislations (ESAs' review and EMIR 2.2). Brand new, with the highest environmental certifications, the new premises offer the required space for ESMA to grow in accordance with its new mandates and, in addition, are also less expensive per square metre than the previous premises. They are also more easily accessible than the previous premises, notably by public transport, by the external visitors that ESMA receives every year from all over Europe.

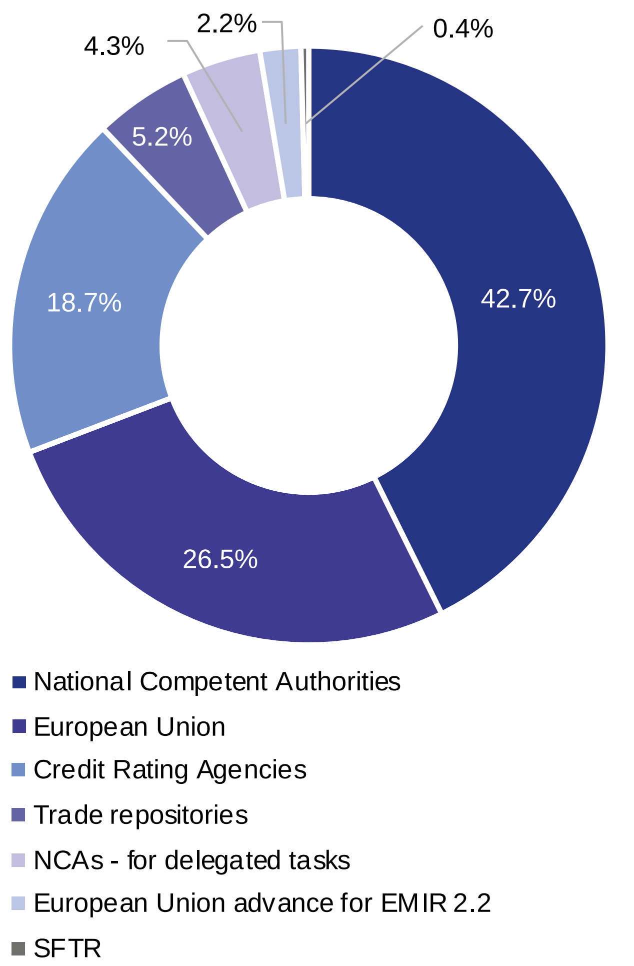
During the year, ESMA organised 670 missions for its staff members, a 15 % decrease compared with 2018, while the number of ESMA staff increased by 1 % compared with 2018 thanks to the continuous encouragement to use audio- and video-conferencing whenever possible to reduce business travel costs and the carbon footprint.

ESMA also organised 658 meetings and workshops within its premises, namely 13 % fewer than in 2018, and received 8 416 external participants at these meetings, namely 1 % more than in the previous year.

2.6.5. Finance and procurement

Objective for 2019	Further align the financial and procurement function to the ESMA strategy by continuously enhancing the efficiency of financial and procurement processes.

ESMA's 2019 core budget was EUR 45.2 million (in 2018 it was EUR 41.9 million). ESMA was financed in 2019 by seven streams of income, as shown in the following figure.



The budget execution in 2019 was 99.95 %, as in 2017 and 2018.

For the fourth year in a row, a growing budget was managed with fewer overall transactions. This was the result of continuous effort to further simplify and optimise finance transactions.

The team continued to benefit in 2019 from the full digitalisation of all financial and procurement processes achieved in 2017 with the introduction of a paperless system.

In 2019, 15 procurement procedures were managed (14 in 2018), of which 13 were completely finalised (10 in 2018). Several were linked to the move to new premises in 2019.

Service-level agreements concluded

ESMA formalised 22 service-level agreements/MoUs with other EU organisations in order to join procurement procedures or services in a cost-efficient manner.

2.6.6. Human resources

Objectives for 2019	Deliver human resources services, enable ESMA to attract, deploy and retain the talent required to achieve its objectives, and ensure efficient human resources administration while at the same time fulfilling the regulatory requirements of an EU authority.

ESMA deploys significant efforts to attract, develop and retain the human talent necessary to achieve its objectives, notably through employer branding, external and internal communication, clear missions and values, an international and employee-focused culture, cutting-edge recruitment tools, skills development, technical and non-technical training, internal mobility and regular monitoring of staff satisfaction.

For example, ESMA constantly develops its presence on social media and the visibility of its vacancy notices. Staff members are systematically involved in recruiting activities, which are key to select the appropriate talent, and the satisfactory onboarding and integration of newcomers is a priority. The organisation also offers an attractive and eco-friendly work environment in Paris that is easily accessible by public transport, with a wellness centre and healthy catering options in its building. Moreover, it allows flexible work schedules and develops teleworking to facilitate a satisfying work–life balance.

A staff satisfaction survey is conducted independently every 2 years by an external company with expertise in this field to monitor, over time and across the organisation (by department), the engagement and the level of satisfaction of its staff members over a wide variety of dimensions and topics. It allows the identification of the areas in which satisfaction is the highest but also those in which improvement remains possible. The results of this survey are discussed by the management team and lead to a detailed action plan; they are also shared at an ESMA-wide level with all staff. The most recent survey, conducted in 2018, led to a satisfaction rate of 67 % (a good satisfaction rate is considered to be above 60 %). It will be repeated in 2020.

Overview of staff data in 2019

ESMA employs different categories of staff:

- temporary agents (TAs) ([18]),
- contract agents (CAs),
- seconded national experts (SNEs).

At the end of 2019, ESMA employed 223 statutory staff members: 155 TAs and 68 CAs. This was six more statutory staff members than at the same time the previous year (a 3 % increase).

In addition, at the end of 2019, 10 SNEs were working at ESMA (versus 14 at the end of 2018), bringing the total number of ESMA staff (TAs, CAs and SNEs) to 233, versus 231 staff members at the end of 2018 (a 1 % increase), after an increase of 3 % the year before.

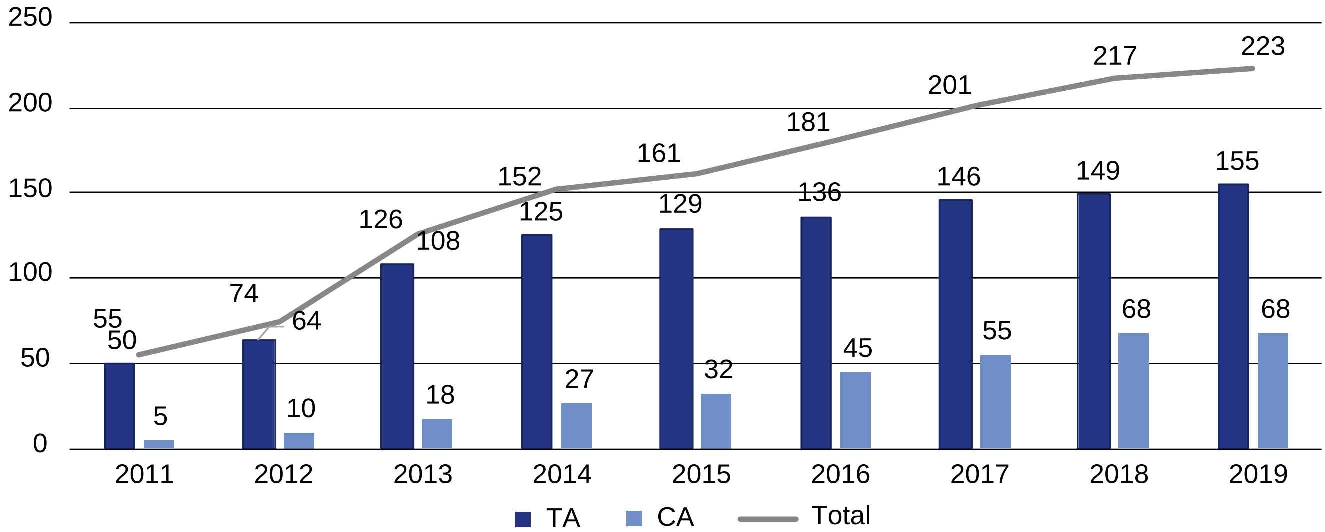
Staff by nationality

At the end of 2019, among ESMA staff (TAs, CAs and SNEs) there were 22 different EU nationalities and one EEA national (Norway).

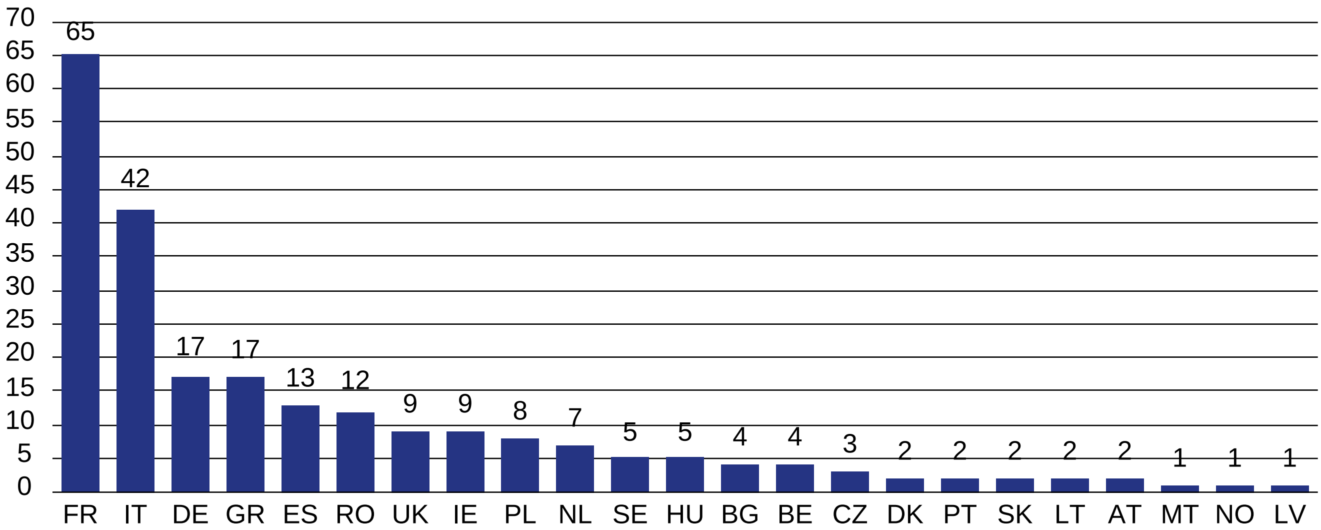
The following chart shows, in decreasing order, the distribution of nationalities of ESMA staff (TAs, CAs and SNEs) at the end of 2019.

([18]) Posts for TAs are listed in the establishment plan of ESMA and in the EU budget.

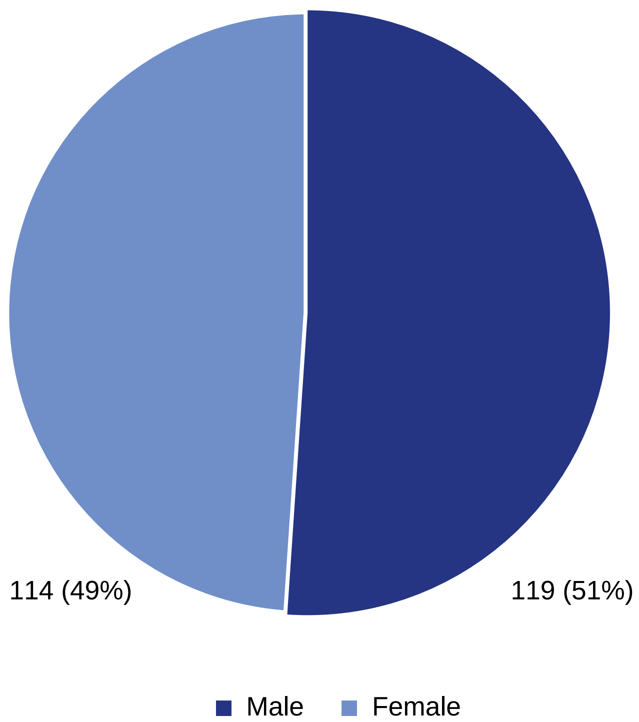
Statutory staff population (TA & CA) - year-end view



ESMA nationalities



Gender distribution at ESMA



Staff by gender

The global gender balance among ESMA staff (TAs, CAs and SNES) is shown in the figure below. This compares with a global gender balance in 2018 of 52 % male and 48 % female.

The evolution of the gender balance (in all staff groups) over the last 8 years indicates that the proportion of female staff members has progressively increased from 37 % in 2012 to 49 % in 2019.

With regard to the legislative change of ESAs' review and ESMA's reorganisation, throughout 2019, ESMA regularly organised staff information sessions and meetings with ESMA's managers and change leaders with the aim of helping staff (including management) to understand and adopt the organisational change, achieving buy-in among staff and guiding staff through the change.

2.6.7. Information and communication technologies

Objectives for 2019	Provide effective and proactive support to staff. Manage resources in a flexible and efficient way.

Information technology projects

ESMA's ICT activity is split into two main categories:

- support to ESMA as an organisation;
- EU IT projects, aiming to support supervisory convergence, risk analysis and exchange of financial data among NCAs and between NCAs, ESMA and the public.

Information technology

ESMA continued to upgrade its workplace tools, benefiting fully from the deployment of the collaboration tool Skype for audio- and video-conferencing. In its new premises, Skype for Business became the only tool for audio- and video-conferencing, simplifying users' experience and reducing costs.

In 2018, ESMA had performed an assessment of the potential impact of Brexit on these IT systems. The organisation and its systems were therefore fully prepared and ready for the UK's withdrawal.

In 2019, ESMA also started to implement its migration to the cloud (Azure – Office 365), which had been studied the previous year, a key project with the aim of reinforcing customers' experience, workforce enablement, and digital security, agility and innovation in the context of the continued growth of its IT needs.

Support to ESMA as an organisation

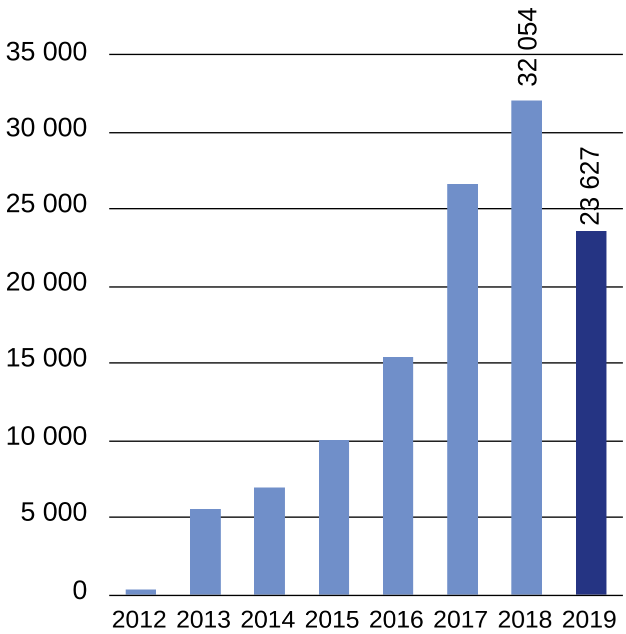
At the end of 2019, ESMA was managing 40 applications (like at the end of 2018) and 338 virtual servers (21 % more than 1 year before).

At the same date, there were 1 691 users of ESMA's systems, an increase of 8 % compared with 2018. A large majority of them (around 1 400) were external active users, coming from NCAs, trading venues, CRAs, TRs, etc.

In 2019, ESMA's ICT helpdesk continued to face a heavy workload, managing 23 627 tickets (i.e. requests for support), although this number decreased by 26 % compared with 2018 thanks to a much lower number of incidents (45 %, as 2018 was the year when all MiFID systems were launched). The average time of closing incidents reached 3.25 days, versus a target of 3 days.

The chart below shows the annual evolution of the total number of tickets managed by the unit since 2012:

IT helpdesk
Number of requests for support



Cybersecurity

The year 2019 was marked by continued actions in the field of cybersecurity surveillance and intelligence for ESMA as an organisation. Continuous (24/7) analysis of cyber-incidents and the security response was fully implemented in 2019. In-depth 'red team' exercises (white hat hacking from inside ESMA) were executed. Such exercises serve to proactively test information security defences in the same manner as a real attacker (e.g. a hacker) would do having taken control of the computer of an employee. Its results are being used to enhance the overall security system.

In the context of the move to its new premises, ESMA also improved its security policies and executed three security audits in December 2019.

2.7. Management

2.7.1. Follow-ups on audits and evaluations

ESMA has put in place arrangements to ensure that all recommendations made by the internal and external auditors are promptly and adequately addressed within the agreed deadlines through dedicated action plans. ESMA follows up on all findings and recommendations and reports to the Management Board on a quarterly basis.

European Court of Auditors

ESMA is audited every year by the European Court of Auditors (ECA). The audit provides a statement of assurance on the reliability of the accounts of the Authority and the legality and regularity of the transactions underlying them.

The 2018 statement of assurance indicated that the accounts of the Authority for the year ended 31 December 2018 presented fairly, in all material respects, the financial position of the Authority at 31 December 2018, the results of its operations, its cash flows and the changes in net assets for the year then ended, in accordance with its Financial Regulation and with accounting rules adopted by the Commission's accounting officer. It also stated that the revenues and payments underlying the annual accounts for the year ended 31 December 2018 were legal and regular in all material respects.

The 2018 ECA statement of assurance included observations related to:

- the risk of Brexit to ESMA's budget,
- the need to continue discussions with the Commission to solve issues in the regulation of fees and the need to avoid cross-financing of fees-related activities,
- the risk of consultants for IT services to be considered as interim staff,
- weaknesses in the procurement process, including the missing opportunity of tendering the new premises together with the EBA.

All recommendations and observations from previous years were closed.

The ECA audit of the 2019 annual accounts is ongoing. The draft report will be available by mid-2020.

Internal Audit Service

ESMA is also audited by the IAS of the Commission. In 2019, the IAS finalised an audit on IT security and related governance processes. The IAS concluded that, overall, ESMA had put in place controls that were adequately designed and effective in managing the implementation of the governance, management and control processes put in place for its information security.

The IAS made six recommendations for the improvement of the process, although none of them was critical or very important. Action plans for their implementation are followed up and reported to the Management Board on a quarterly basis.

Neither critical nor very important IAS audit recommendations were open as of 31 December 2019.

In 2019, the IAS also performed a risk assessment and defined the IAS strategic internal audit plan for 2020–2022 for ESMA. The strategic internal audit plan included the following prospective topics, subject to annual review and possible changes:

- human resources management,
- data management,
- tools for supervisory convergence.

2.7.2. Follow-up of observations from the Discharge Authority

On 26 March 2019, the European Parliament voted positively on the discharge of ESMA's 2017 accounts (the discharge report). This is the final approval of the budget implementation for 2017, and the decision is based on a review of the annual accounts and the ECA annual report.

In particular, ESMA has been working on the following key points that were included in the 2017 discharge report.

- ESMA has already put significant efforts into conducting its work, with particular attention to the European Parliament's recommendations in relation to the application of the principle of proportionality (see paragraph 8 of the discharge report). Looking ahead, and in line with the legislative changes to the ESMA Regulation stemming from the ESAs' review, ESMA will further strengthen its approach and establish in 2020 a dedicated proportionality advisory committee to monitor the important aspects of proportionality across all of ESMA's activities.

- ESMA has already put significant efforts into conducting its work, with particular attention to the European Parliament's recommendations in relation to the application of the principle of proportionality (see paragraph 8 of the discharge report). Looking ahead, and in line with the legislative changes to the ESMA Regulation stemming from the ESAs' review, ESMA will further strengthen its approach and establish in 2020 a dedicated proportionality advisory committee to monitor the important aspects of proportionality across all of ESMA's activities.

- In July 2019, ESMA sent to the European Parliament, and published, its preliminary findings on multiple withholding tax reclaim schemes. In addition, following a European Parliament request, ESMA launched a formal inquiry to gather further evidence from NCAs on the supervisory practices regarding those schemes across the Union. ESMA will further report on the results of this formal inquiry to the European Parliament in due course (see paragraph 11 of the discharge report).

- The actions arising from the IAS audit on peer reviews of NCAs have all been closed.

Finally, Brexit was one of ESMA's main priorities in 2019. Given this, developments were monitored to ensure timely mitigation of organisational risks. In addition to a wider risk assessment and targeted mitigation actions with regard to the impact of the UK leaving the EU on European financial markets, ESMA also conducted a detailed analysis on the operational impact of Brexit on ESMA as an organisation.

2.7.3. Environment management

ESMA is putting in place an environmental management system and, in 2019, continued working towards being registered with the Eco-Management and Audit Scheme. It has conducted an environmental review to determine its significant environmental aspects and to ensure compliance with EU, as well as the applicable national and local, environmental requirements. ESMA's environmental policy, adopted on 13 June 2017, sets the following objectives to reduce the environmental impact of its work and to improve its environmental performance:

- minimise the consumption of energy, water, paper and other resources;
- encourage the prevention of waste and environmental pollution by maximising the recycling and reuse of items and by optimising their disposal;

- take the necessary measures to reduce carbon dioxide emissions and minimise the impact of mobility and travel;
- comply with relevant environmental legislation, administrative regulations and other requirements.

To achieve these objectives, ESMA has been working with its staff and suppliers to reduce waste, improve recycling and reduce travel (e.g. by making better use of technology to work towards a paperless office and to make greater use of video-conferencing). In addition, ESMA's new premises (from 2019) have High Quality Environmental (HQE) certification, which is France's standard for green buildings, based on the principles of sustainable development, for its construction, conception and operation.

In 2019, ESMA recycled 21.9 tonnes of paper versus 20.3 tonnes in 2018, which represented a saving of 373 trees, 180 039 litres of water and 2.9 tonnes of carbon dioxide, and an increase of 8 % in paper being recycled compared with 2018; the increase 1 year ago was 14 %. This increase is due to the move to ESMA's new premises, where staff were encouraged to recycle some of their paper archives, which are now digitalised.

2.8. Internal control

2.8.1. Effectiveness of the internal control system

In November 2018, the ESMA Management Board adopted the new internal control framework, replacing the previous internal control standards, which had been adopted on 5 December 2012. The internal control framework supplements the Financial Regulation and other applicable rules and regulations with a view to aligning ESMA standards with the highest international standards set by the Committee of Sponsoring Organisations of the Treadway Commission (COSO) framework ([19]).

The COSO framework was reviewed in 2013 to move from a compliance-based to a principle-based system with the aim of ensuring robust internal control through consistent assessment, while providing the necessary flexibility to allow it to be adapted to specific characteristics and circumstances in different businesses. To keep up with these recent changes in international best practice, it was appropriate to update ESMA's internal control framework accordingly.

(**19**) The COSO 2013 internal control integrated framework.

The new ESMA internal control framework consists of five internal control components, which are built on 17 principles, based on the COSO 2013 internal control integrated framework and further supported by a number of characteristics.

ESMA performed the first annual assessment of the effectiveness of the implementation of the internal control principles according to the new framework during Q1 2020, to assess the status of the internal control system in 2019.

The main objective of the self-assessment is to assess in detail if all the internal control principles are present and functioning in the organisation. To do so, ESMA developed 78 internal control indicators, covering all internal control principles, as primary source of information. In addition, ESMA analysed secondary sources of information, including audit reports, security risk logs and the analysis of exceptions.

This information as a whole allowed ESMA to identify the main strengths and deficiencies of each principle and finally assess each principle and component. In total, ESMA identified 24 deficiencies, most of which were minor and none of which called into question the presence and proper functioning of the principles. ESMA concluded in its self-assessment that the internal control system is present and functioning well. Some improvements are needed, mainly in the control environment and control activities components, as well as in the information and communication component.

2.8.2. Risk management

ESMA operates in an ever-changing environment with many uncertainties. ESMA has developed an annual process of identification and assessment of risks to assist in the mitigation of those risks that could threaten the delivery of its mission. The annual organisational risk assessment is performed as a combination of a bottom-up and a top-down approach: the bottom-up aspect involves identifying risks at the department level and the top-down approach involves a management assessment and evaluation of strategic risks considering the input from departments. Significant risks are then reviewed by the ESMA Management Board, which endorses the risks and action plans.

Top risks identified during the assessment are summarised and included in the ESMA programming document. The top risks identified in 2019 in relation to the 2020 work programme were:

- uncertainties deriving from EU legislative proposals that would have a major impact on ESMA's mandate and organisation (ESAs' review and EMIR 2.2),
- the potential negative consequences of Brexit on EU securities markets and on ESMA as an organisation,
- the data availability and quality at ESMA, NCAs, supervised entities and/or other stakeholders, including the necessary availability, resilience and scalability of ESMA IT systems,
- potential unexpected consequences of MiFID implementation and the impact on investors.

None of the risks identified was considered critical.

2.8.3. Ethics and anti-fraud measures

In 2011, ESMA adopted a code of good administrative behaviour, including general rules for dealing with the public and a decision on professional secrecy. Their accessibility to all staff, together with the Staff Regulations, ensures the availability of a practical guide on ethical conduct and reporting of irregularities.

ESMA adopted its first anti-fraud strategy in 2015, following the guidelines provided by the European Anti-Fraud Office (OLAF) to the EU Agencies at the beginning of 2014. In September 2018, the ESMA Management Board adopted the ESMA anti-fraud strategy 2018–2021, which had three main objectives:

- to enhance an anti-fraud culture underpinned by high levels of awareness, integrity, impartiality and transparency at all levels of ESMA;
- to strengthen measures for detection of suspicious behaviours and deterrence;
- to maintain an efficient system for internal reporting of suspected fraud or irregularities.

To promote and strengthen the principles and practice of ethics and organisational values among its staff, ESMA has appointed three staff members as ethics officers and deputies, respectively. This allows the development of strong in-house expertise and a prompt response and reaction to ethics issues. The IAS of the Commission identified this organisational set-up as best practice.

The status of implementation of the anti-fraud strategy is followed up annually.

2.8.4. Management of conflict of interests

Since 2015, ESMA has had a policy in place on conflict of interests for non-staff, covering the members of the BoS, the Management Board and the BoA. The policy will be reviewed in 2020 to reflect changes in ESMA's founding regulation as a result of the ESAs' review. The curriculum vitae and declarations of interest of all Board members and senior management of ESMA are published on ESMA's website.

ESMA's policy on conflict of interest for staff was adapted from the existing ethics guide published in 2015 and provides clear guidance on conflict of interest and on contact with stakeholders, among others. As required, in 2019, all staff members filled in an annual declaration regarding potential conflicts of interest and, where needed, require clearance for dealing with financial instruments.

Specific measures for avoiding conflicts of interest are taken during recruitment procedures and procurement selection panels.

Concerning the collaboration with OLAF, and as required by the ESMA Regulation, ESMA has had in place, since 2011, a decision concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Union's interest. ESMA is also part of the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF.

ESMA has developed a whistleblowing procedure for the internal reporting of cases of fraud or serious misconduct, as well as rules on conducting administrative enquiries and disciplinary procedures, and has also set up a disciplinary board.

2.9. Declaration of assurance

2.9.1. Review of the elements supporting assurance

The reasonable assurance is the personal judgement of ESMA's Executive Director and the authorising officers by delegation, based on all information at their disposal. This information can be structured around pillars or building blocks of assurance.

The main building blocks of the Executive Director's declaration of assurance are:

- the Executive Director's own knowledge of the management and control system in place,

- the observations of the ECA known at the time of the declaration,
- the observations of the IAS known at the time of the declaration,
- the declarations of assurance made by the authorising officer by delegation to the Executive Director,
- the result of the assessment of the internal control system,
- the *ex ante* and *ex post* controls,
- the validation of the accounting systems,
- the analysis of the list of recorded exceptions,
- the summary of OLAF activities relevant for ESMA.

In support of the annual activity report, all authorising officers and heads of department are asked to sign a declaration of assurance for their areas of responsibility. The purpose of these declarations is to confirm, on the basis of the facts in their possession, that the information contained in the report gives a true and fair view – except if otherwise specified in any reservations related to defined areas of revenue and expenditure – and that the resources assigned have been used for their intended purpose and in accordance with the principle of sound financial management.

The heads of department and authorising officers by delegation confirmed their reasonable assurance that, overall, suitable controls are in place and working as intended and that identified risks are being appropriately monitored and mitigated. Given the control system in place, the information obtained from the building blocks above and the lack of critical findings from the ECA and the IAS at the time of the declaration, there is no reason to question the efficiency and effectiveness of the control system in place.

2.9.2. Reservations

Based on the assurance provided by the control system in place, the Executive Director sees no reason that would justify or require a reservation.

Materiality criteria used

In line with the suggestion of the guidelines on the preparation of the annual activity report, ESMA used the qualitative and quantitative materiality criteria described below to assess if the issues identified merited a reservation.

Qualitative criteria used

ESMA would consider significant any weaknesses in the internal control system that fell under the following qualitative criteria:

- significant errors detected during the control exercises;
- a significant weakness in the control system;
- situations in which ESMA does not have sufficient evidence from internal control systems or audit coverage to be confident in providing the necessary assurance;
- situations in which a major issue has been outlined by the ECA or the IAS of the Commission (critical audit recommendations for underlying weaknesses) relevant to the area covered by the declaration of assurance that are not adequately addressed by other internal controls and for which the materiality threshold is exceeded;
- situations revealed through own control work or audits in which significant risks remain unmitigated;
- a significant reputational risk.

Quantitative criterion used

In according with the Commission guidelines on the preparation of annual activity reports, the ECA uses a 2 % materiality threshold. ESMA has therefore set the quantitative criterion of materiality at 2 % of its total budget.

2.9.3. Overall conclusions on assurance

Taking into account the review of the elements supporting assurance, the Executive Director is of the opinion that the management and control systems in place at ESMA are working as intended, risks are being appropriately monitored and mitigated, and necessary improvements and reinforcements are being implemented.

Based on all the facts presented in the report and in the light of the opinions expressed by the ECA on the reliability of the accounts and on the legality and regularity of the transactions underlying the accounts, ESMA can conclude that the systems in place provide reasonable assurance that the resources under the responsibility of the Executive Director were used for their intended purposes and in accordance with the principles of sound financial management.

2019 Declaration of Assurance by the Executive Director of ESMA

I, the undersigned, Executive Director of the European Securities and Markets Authority,

In my capacity as authorising officer:

Declare that the information contained in this report gives a true and fair view.

State that I have reasonable assurance that the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

This reasonable assurance is based on my own judgement and on the information at my disposal such as the results of the self-assessment, *ex post* controls, the work of the Internal Audit Service and the lessons learnt from the reports of the European Court of Auditors for years prior to the year of this declaration.

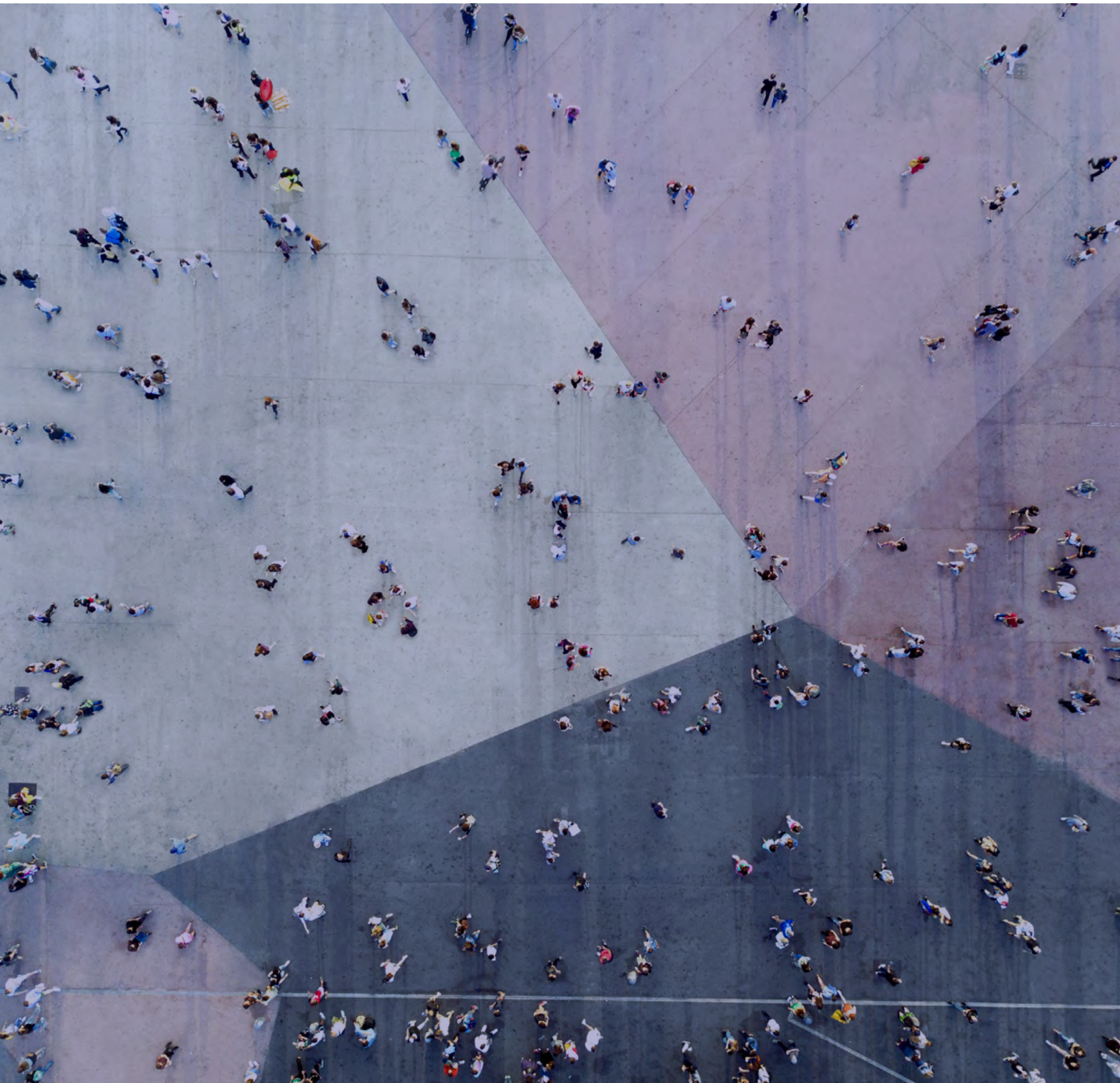
Confirm that I am not aware of anything not reported that could harm the interests of the European Securities and Markets Authority.

Paris, 20 May 2020

[Signed]

Verena Ross
Executive Director
European Securities and Markets Authority

Annexes



ANNEX I – Access to documents requests in 2019

ESMA, under Article 17(1) of Regulation (EC) No 1049/2001 (Access to Documents Regulation), must include a report detailing (1) the number of access cases in which ESMA refused to grant access to documents, (2) the reasons for such refusals and (3) the number of sensitive documents recorded in the register.

In 2019, ESMA received 21 requests for access to documents pursuant to the Access to Documents Regulation. These requests concerned a variety of topics, such as travel expenses of ESMA's Executive Director; Excel SFTR validation rules; the response of an NCA to documents published by ESMA in the context of crypto-assets; human resources matters; the selection process of the consultative working group members of ESMA's Financial Innovation Standing Committee; documents in the context of a short-selling ban; pairing and matching rates for derivative reports subject to EMIR; trading obligations for shares; ESMA's draft decision prepared for the EFTA Surveillance Authority delegated decision of 27 July 2018 to register Nordic Credit Rating AS as a credit agency; Brexit (e.g. MoU(s) to deal with a no-deal Brexit scenario and other ESMA Brexit preparedness activities); the allocation of tasks among ESMA staff members; an overview of the activity and tasks of the ESMA department dealing with requests for access to documents; minutes of meetings, memos and correspondence between ESMA and NCAs regarding Colombian bonds; data for the systematic internaliser calculations in the context of the MiFID II transparency regime; and a list of non-financial counterparties subject to the clearing obligation under EMIR.

All the requests were processed in due time as required by the Access to Documents Regulation and, in 14 of them, access was granted either partially or fully.

As regards the requests received, in eight different cases, ESMA provided full access to the documents requested, although, in most of the requests, parts containing personal data were removed in line with the exemption relating to the protection of personal data and privacy.

In two cases, ESMA did not possess the document requested. In the remaining five cases, ESMA decided not to grant access to the documents, as the disclosure of certain documents would have been in breach of specific provisions of the Staff Regulations or EMIR or would have seriously undermined ESMA's decision-making process, legal advice, commercial interests of a natural or legal person, or international relations.

Furthermore, in the only case brought before the European Ombudsman, the procedure was closed, with a suggestion that ESMA indicate, in its information for the public, if detailed records of its meetings with external stakeholders exist. ESMA is working on the implementation of the above suggestion.

ANNEX II – Reporting on key performance indicators

ESMA has defined a list of key performance indicators that are regularly reported to the Management Board. ESMA's work programme in 2019 was measured against these indicators.

Activity	Key performance indicator	Target	Results 2018	Results 2019
Promoting supervisory convergence	Non-compliance with guidelines and recommendations	N/A	21	23
	Number of peer reviews conducted	2	1	2
	Number of opinions issued	N/A	117	68
	Number of Q&As issued	N/A	44	81
	Percentage of IT systems delivered compared with planned	95 %	90%	95 %
	Percentage of budget execution of IT work programme	95 %	99.93%	99.95 %
Assessing risks to investors, markets and financial stability	Number of risk topics analysed	8	10	8
	TRV and Joint Committee (of the ESAs) risk reports delivered against work plan	4	8	4
	Data and statistics: coverage of ESMA databases under central data management	100 %	95%	100 %
Completing a single rulebook for EU financial markets	Number of technical standards and pieces of technical advice approved by ESMA's BoS	N/A	22	21

Activity	Key performance indicator	Target	Results 2018	Results 2019
Direct supervision of specific financial entities	Effective calibration of supervisory resources/tools, including enforcement, with the aim of ensuring independent rating quality-oriented culture in CRAs	N/A	-	Yes
	Effective assessment of applications for registration	N/A	-	Yes
	Effective calibration of supervisory resources/tools, including enforcement, with the aim of ensuring good levels of TR data quality and stability of TR databases	N/A	-	Yes
	Effective preparation of new supervisory tasks to ensure a smooth registration process and subsequent ongoing supervision	N/A	-	Yes
Organisational implications	Budget management measures:			
	- Rate of implementation of commitment appropriations	> 95 %	100%	99.95 %
	- Rate of cancellation of payment appropriations	< 5 %	6.84%	3.7 %
	- Rate of budget outturn	> 84 %	88.89%	88.77 %
	- Rate of payments executed within legal/contractual deadlines	> 95 %	98.32%	93.4 %
	Human resource measures:			
	- Average vacancy rate	< 10 %	7.8%	7 %
	- Staff turnover rate	< 10 %	6.9%	5 %
	Percentage of completion of the activities of the annual work programme	95 %	90%	95 %
	Rate of external and accepted internal audit recommendations	N/A	100%	100 %

ANNEX III – ESMA’s boards and standing committees

The ultimate decision-making body of ESMA is the BoS, whereas the Management Board ensures that the Authority carries out its mission and performs the tasks assigned to it.

ESMA’s boards and their 2019 composition

Members of the Management Board as at 31 December 2019

Member	Authority	Country
Steven Maijoor	ESMA (Chair)	
Gabriela Figueiredo Dias	Comissão do Mercado de Valores Mobiliários (CMVM)	Portugal
Robert Ophèle	Autorité des Marchés Financiers (AMF)	France
Elisabeth Roegele	BaFin	Germany
Derville Rowland	Central Bank of Ireland	Ireland
Erik Thedéen	Finansinspektionen (FI)	Sweden
Sebastian Albella Amigo	Comisión Nacional del Mercado de Valores (CNMV)	Spain
Anneli Tuominen	ESMA Vice-Chair (observer)	
Ugo Bassi	European Commission (non-voting member)	EU
Verena Ross	ESMA Executive Director (non-voting member)	

Members of the Board of Supervisors as at 31 December 2019

Member	Authority	Country
Steven Maijoor	ESMA	
Jean-Paul Servais	Financial Services and Markets Authority (FSMA)	Belgium
Mariya Filipova	Комисията за финансов надзор (FSC)	Bulgaria
Vojtěch Belling	Česká národní banka (CNB)	Czechia
Karen Dortea Abelskov	Finanstilsynet	Denmark
Elisabeth Roegele	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany
Andre Nõmm	Finantsinspektsioon (FSA)	Estonia
Derville Rowland	Central Bank of Ireland	Ireland
Vasiliki Lazarakou	Ελληνική Επιτροπή Κεφαλαιαγοράς (HCMC)	Greece
Sebastian Albella Amigo	Comisión Nacional del Mercado de Valores (CNMV)	Spain
Robert Ophèle	Autorité des Marchés Financiers (AMF)	France
Ante Žigman	Hrvatska agencija za nadzor financijskih usluga (HANFA)	Croatia
Paolo Savona	Commissione Nazionale per le Società e la Borsa (CONSOB)	Italy
Demetra Kalogerou	Επιτροπή Κεφαλαιαγοράς Κύπρου (CySEC)	Cyprus
Santa Purgaile	Finanšu un kapitāla tirgus komisija (FKTK)	Latvia
Mindaugas Šalčius	Lietuvos Bankas	Lithuania
Claude Marx	Commission de Surveillance du Secteur Financier (CSSF)	Luxembourg
Gergő Szeniczey	Magyar Nemzeti Bank (MNB)	Hungary
Marianne Scicluna	Malta Financial Services Authority (MFSA)	Malta
Gerben Everts	Autoriteit Financiële Markten (AFM)	Netherlands
Klaus Kumpfmüller	Finanzmarktaufsicht (FMA)	Austria
Magdalena Łapsa-Parcewska	Komisja Nadzoru Finansowego (KNF)	Poland
Gabriela Figueiredo Dias	Comissão do Mercado de Valores Mobiliários (CMVM)	Portugal
Leonardo Badea	Autoritatea de Supraveghere Financiară (ASF)	Romania

Member	Authority	Country
Miloš Čas	Agencija za trg vrednostnih papirjev (ATVP)	Slovenia
Peter Tkac	Národná Banka Slovenska (NBS)	Slovakia
Anneli Tuominen	Finanssivalvonta (FSA)	Finland
Erik Thedéen	Finansinspektionen (FI)	Sweden
Andrew Bailey	Financial Conduct Authority (FCA)	UK

Non-voting members of the Board of Supervisors as of 31 December 2019

Name	Authority	Country
Unnur Gunnarsdóttir	Fjármálaeftirlitið (FME)	Iceland
Marcel Lötscher	Finanzmarktaufsicht (FMA)	Liechtenstein
Anne Merethe Bellamy	Finanstilsynet	Norway
Peter Mihalik (acting)	European Banking Authority (EBA)	EU
Fausto Parente	European Insurance and Occupational Pensions Authority (EIOPA)	EU
Francesco Mazzaferro	European Systemic Risk Board (ESRB)	EU
Ugo Bassi	European Commission	EU
Frank Buchel	European Free Trade Association (EFTA) Surveillance Authority	EFTA

Standing committees and working groups

Much of ESMA's work is supported by standing committees, working groups and task forces, which draw together senior experts from NCAs. The different ESMA standing committees are established on a permanent basis. Each committee is chaired by a Board member and supported by a member of ESMA staff as a rapporteur. Standing committees also have consultative working groups made up of external stakeholder representatives.

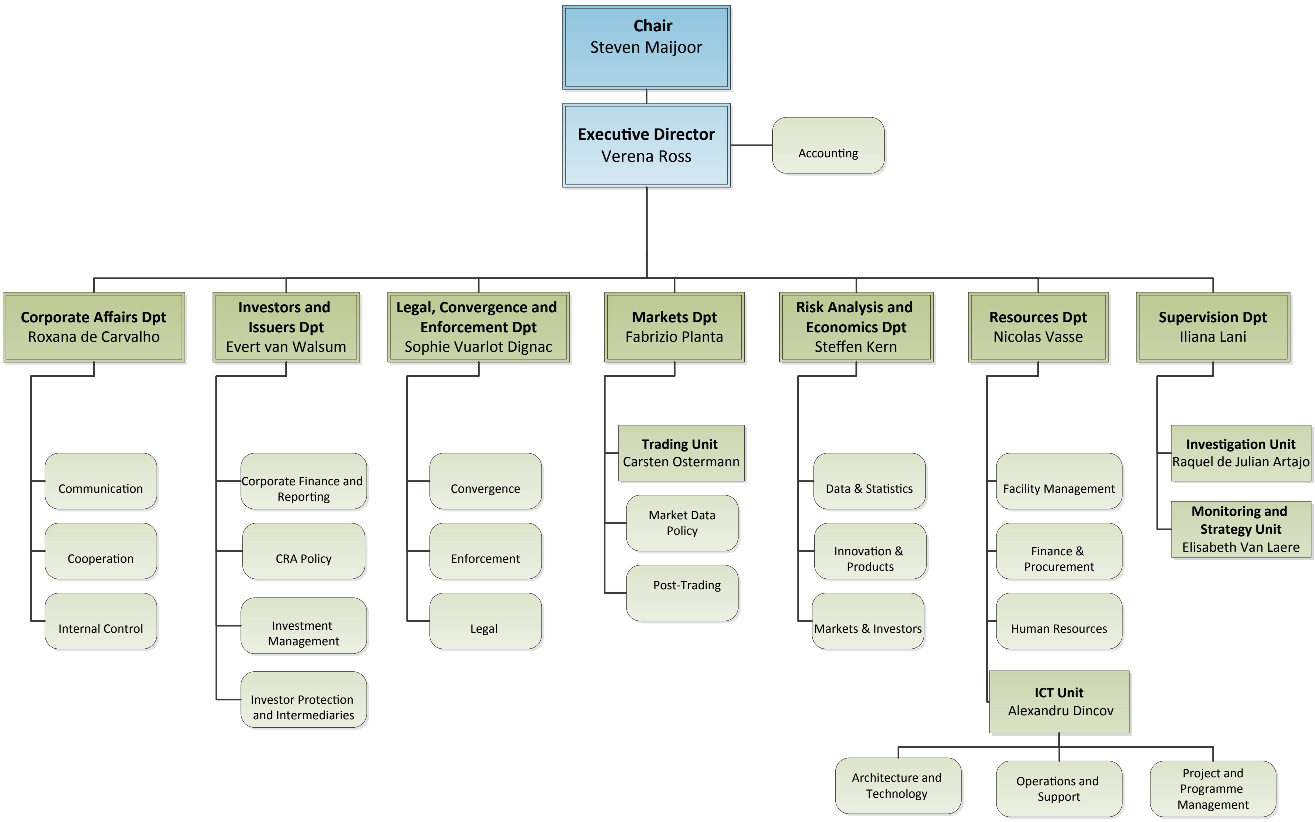
ESMA's standing committees prepare the technical work on all areas of ESMA's activities. However, the ultimate decision-making body of ESMA is the BoS, whereas the Management Board ensures that the Authority carries out its mission and performs the tasks assigned to it.

A table of ESMA's standing committees is set out below; more details can be found at www.esma.europa.eu, including the mandates of each standing committee.

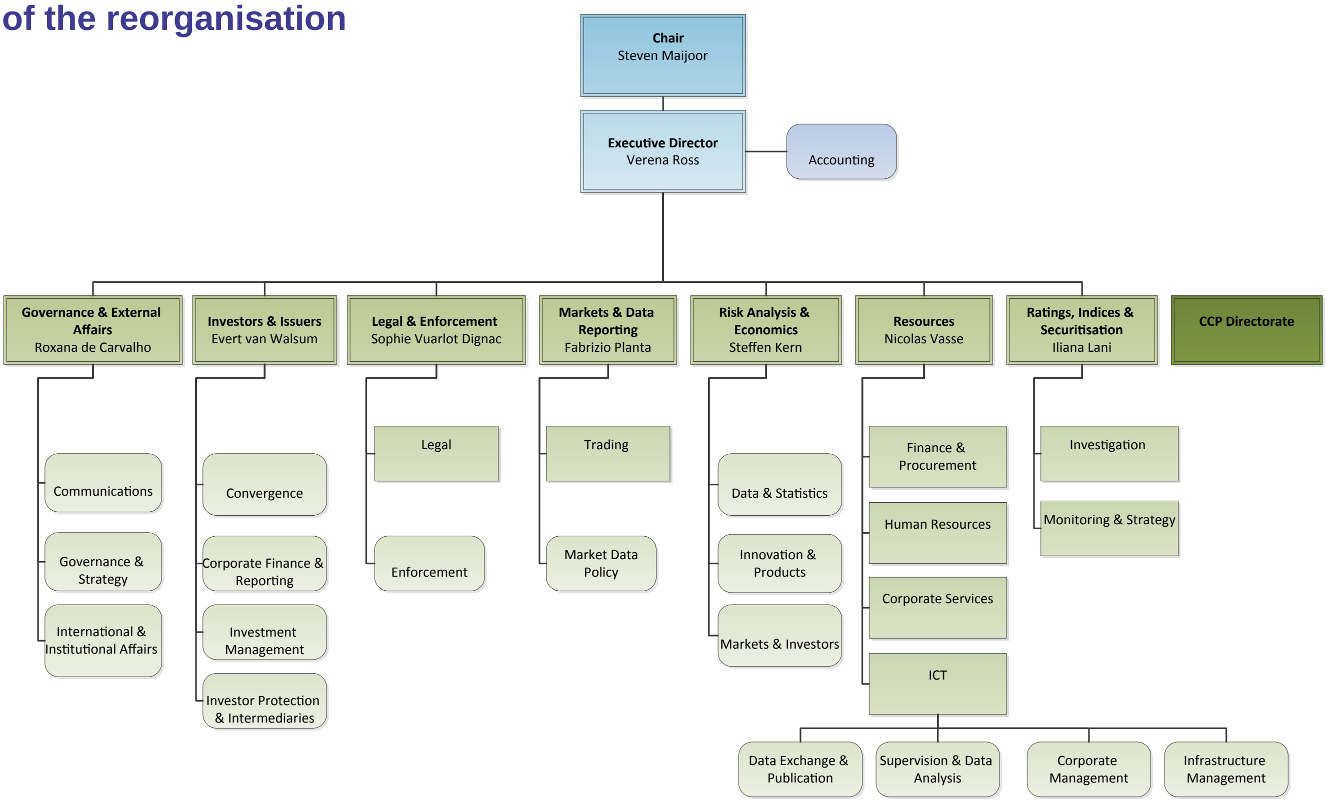
Name of standing committee	Chair
Committee of Economic and Markets Analysis	Carmine Di Noia, CONSOB, Italy
Corporate Finance Standing Committee	Benoit de Juvigny, AMF, France
Corporate Reporting Standing Committee	Ana María Martínez-Pina García, CNMV, Spain
Credit Rating Agencies Technical Committee	Verena Ross, ESMA
Financial Innovation Standing Committee	Jean-Paul Servais, FSMA, Belgium
Investment Management Standing Committee	Gabriela Figueiredo Dias, CMVM, Portugal
Investor Protection and Intermediaries Standing Committee	Vacant
IT Governance and Management Group	Nicolas Vasse, ESMA
Data Standing Committee	Christopher Buttigieg, MFSA, Malta
Market Integrity Standing Committee	Nicoletta Giusto, CONSOB, Italy
Post-Trading Standing Committee	Robert Ophèle, France
Secondary Markets Standing Committee	Elisabeth Roegele, BaFin, Germany
Supervisory Convergence Standing Committee	João Sousa Gião, CMVM, Portugal

ANNEX IV – Organisational charts

2019 organisational chart as at 31 December 2019



2020 organisational chart from 1 January 2020, after the implementation of the reorganisation



ANNEX V – Establishment plan and benchmarking exercise

ESMA's staff population 2019 (all categories of staff)

Staff population		Headcount as of 31 December 2018	Authorised under EU budget 2019	Headcount as of 31 December 2019
Officials	AD			
	AST			
	AST/SC			
TAs	AD	138	197	146
	AST	11	13	9
	AST/SC			
Total		**149**	**210**	**155**
CA FGIV		43	45	45
CA FGIII		25	25	23
CA FGII				
CA FGI				
Total CAs		**68**	**70**	**68**
SNEs		14	12	10
TOTAL		**231**	**292**	**233**

AD, administrator; AST, assistant; FG, function group; SC, standing committee.

ESMA's establishment plan 2019 (temporary agents)

Category and grade	Establishment plan in EU budget 2019	Filled as of 31 December 2019
AD16	1	1
AD15	2	1
AD14	6	
AD13	2	
AD12	7	5
AD11	14	1
AD10	17	10
AD9	39	31
AD8	30	33
AD7	58	25
AD6	10	13
AD5	11	26
Total ADs	**197**	**146**
AST11		
AST10		
AST9		
AST8	2	
AST7	3	
AST6	3	
AST5	3	4
AST4	1	3
AST3	1	
AST2		
AST1		2
Total ASTs	**13**	**9**

Category and grade	Establishment plan in EU budget 2019	Filled as of 31 December 2019
AST/SC6		
AST/SC5		
AST/SC4		
AST/SC3		
AST/SC2		
AST/SC1		
Total AST/SCs	**0**	**0**
TOTAL	**210**	**155**

AD, administrator; AST, assistant; SC, standing committee.

Benchmarking against previous year results ([20])

The table below outlines the results of the fifth job-screening exercise conducted in ESMA and in all EU regulatory agencies. The exercise is based on Articles 29(3) and 38(1) of the Framework Financial Regulation. The methodology was designed by a working group including representatives from different EU agencies (including ESMA) and from the Commission (the Directorate-General for Budget, the Directorate-General for Human Resources and Security and the Secretariat-General). It was generated as an adaptation, refinement and clarification of the Commission job-screening methodology, which the Commission had been implementing for several years.

Job type (sub-)category	2018 (%)	2019 ([21]) (%)
Administrative support and coordination	**15.6**	**18.5**
Administrative support	11.3	13.6
Coordination	4.3	4.9
Operational	**80.6**[22]	**76.9**

(**20**) Reference date: 31 December 2018.

(**21**) Reference date: 31 December 2019.

(**22**) Totals may not add up to 100% due to rounding.

Job type (sub-)category	2018 (%)	2019 [21] (%)
General operational activities	9.5	9.8
Programme management and implementation	65.3	60.5
Top operational coordination	1.7	2.1
Evaluation and impact assessment	4.0	4.5
Neutral	**3.8**	**4.5**
Accounting, finance, non-operational procurement, contract management and quality management, internal audit and control	3.8	4.5
Linguistic activities	0.0	0.0

ANNEX VI – 2019 annual accounts and work programmes

2019 annual accounts

The 2019 annual accounts of ESMA are produced in accordance with its Financial Regulation; they are adopted by ESMA's Management Board and BoS and are published on ESMA's website.

2019 work programmes

As required by its new Financial Regulation, ESMA produced a programming document covering the period 2020–2022; it set out a 3-year work programme, a detailed annual work programme for 2020 and a budget and resourcing plan.

An annual work programme is adopted yearly in September for the following year by the BoS. The annual work programme provides a breakdown of the overall activities into various sub-activities and also includes an estimation of human (full-time equivalents) and financial (budgetary expenditure) resources per area of activity, as well as key performance indicators. In addition to the annual work programme, ESMA also publishes various specific work programmes providing more detail about its activities.

ESMA published five work programmes in 2019, which set out the work it intended to carry out as an organisation in general but also in specific areas. The work programmes that were published on ESMA's website in 2019 were:

- the annual work programme,
- the risk assessment work programme,
- the regulatory work programme,
- the supervisory work programme,
- the supervisory convergence work programme.

Delivery against the work programmes is monitored on an ongoing basis, with progress on its implementation reported to the Management Board on a quarterly basis. A comprehensive set of reports on key administrative activities such as recruitment and budget execution is provided monthly to the Executive Director and quarterly to the Management Board.

ANNEX VII – Abbreviations

AIF	alternative investment fund
AIFMD	Alternative Investment Fund Managers Directive
AMF	Autorité des Marchés Financiers
AML	anti-money laundering
AMP	accepted market practice
APM	alternative performance measure
ASIC	Australian Securities and Investments Commission
ASR	annual statistical report
BaFin	Bundesanstalt für Finanzdienstleistungsaufsicht
BCBS	Basel Committee on Banking Supervision
BMR	Benchmarks Regulation
BoA	Board of Appeal
BoS	Board of Supervisors
CA	contract agent
CCP	central counterparty
CEAOB	Committee of European Audit Oversight Bodies
CFT	countering the financing of terrorism
CMU	capital markets union
CMVM	Comissão do Mercado de Valores Mobiliários
CNMV	Comisión Nacional del Mercado de Valores
CNS	Coordination Network on Sustainability
CONSOB	Commissione Nazionale per le Società e la Borsa
COSO	Committee of Sponsoring Organisations of the Treadway Commission
CRA	credit-rating agency
CRAR	Credit Rating Agencies Regulation
CRR	Capital Requirements Regulation
CSA	common supervisory action
CSD	central securities depository
CSDR	Central Securities Depositories Regulation
CT	consolidated tape

DVC	double volume cap
EBA	European Banking Authority
ECA	European Court of Auditors
ECB	European Central Bank
EEA	European Economic Area
EFIF	European Forum for Innovation Facilitators
EFTA	European Free Trade Association
EIOPA	European Insurance and Occupational Pensions Authority
EMIR	European Market Infrastructure Regulation
EMMI	European Money Markets Institute
EONIA	euro overnight index average
ESAs	European supervisory authorities
ESEF	European Single Electronic Format
ESFS	European System of Financial Supervision
ESG	environmental, social and governance
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
Euribor	euro interbank offered rate
FBA	frequent batch auction
FI	Finansinspektionen
FIN-FSA	Finnish Financial Supervisory Authority
FinTech	financial technology
FIRDS	Financial Instruments Reference Data System
FRANDT	fair, reasonable, non-discriminatory and transparent
FSMA	Financial Services and Markets Authority
IAS	International Accounting Standard(s)
IASB	International Accounting Standards Board
IFRS	International Financial Reporting Standards
IOSCO	International Organization of Securities Commissions
ISIN	International Securities Identification Number
ITS	implementing technical standards
KID	key information document

KIID	key investor information document
LEI	legal entity identifier
MAR	Market Abuse Regulation
MFSA	Malta Financial Services Authority
MiFID II	Markets in Financial Instruments repealing Directive
MiFIR	Markets in Financial Instruments Regulation
MMF	money market fund
MoU	memorandum of understanding
NCA	national competent authority
NFRD	Non-Financial Reporting Directive
OLAF	European Anti-Fraud Office
OTC	over-the-counter
PRIIP	packaged retail and insurance-based investment product
RegTech	regulatory technology
RTS	regulatory technical standards
SFDR	regulation on sustainability-related disclosures in the financial services sector
SFTR	Securities Financing Transactions Regulation
SMSG	Securities and Markets Stakeholder Group
SNE	seconded national expert
SSR	Short Selling Regulation
STORs	suspicious transactions and order reports
STS	simple, transparent and standardised
SupTech	supervisory technology
TA	temporary agent
TR	trade repository
TRV	trends, risks and vulnerabilities
UCITS	undertakings for collective investment in transferable securities
VSC	voluntary supervisory college

esma European Securities and Markets Authority

EK-AA-20-001-EN-C

Publications Office of the European Union

ISBN 978-92-95202-35-1
doi:10.2856/868753