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Steven Maijoor

CHAIR

EUROPEAN SECURITIES AND MARKETS AUTHORITY

Chair's Foreword

Over the last year, we have seen profound changes in financial markets, and in the European Union itself, which influences ESMA's work in 2017 and beyond. We must prepare for this changing world to be in a position to continue meeting our objectives of enhancing the protection of investors and promoting stable and orderly financial markets.

ESMA's key focus, against this background, is on its supervisory convergence work. Supervisory convergence may be a dry term, but the work itself, looking at how harmonised EU rules are applied in practice, is vital to ensuring the single rulebook is consistently applied across the EU to support investor protection and stable financial markets, and to avoid regulatory arbitrage between national markets.

Our supervisory convergence work spans a range of activities and uses a variety of tools. In 2016, we published the results of peer reviews on CCPs' margins and collateral requirements and on prospectuses, published various guidelines, updated existing Q&A's as well as issuing new ones. In particular on MiFID II/MiFIR, we have given clarity on implementation matters.

ESMA passed an important milestone with the first EU-wide stress test for Central Counterparties (CCPs), which was also a global first. The stress test focused on the counterparty credit risk that CCPs would face from severe price shocks and multiple clearing member defaults, with the results showing that the CCPs were resilient to the extreme, but plausible stress scenarios used. The second stress test of CCPs is currently prepared and we will undertake stress test work in the asset management sector in 2017, taking into account the sector-specific characteristics.

In 2016, we highlighted the regulatory action taken against several investment firms, in one Member State, where ESMA has coordinated a number of national regulators' activities relating to high-risk speculative products offered to retail clients across the EU. Protecting investors is one of our core objectives, and the growth in the sale of these high-risk products – such as contracts for difference (CFDs), binary options and rolling spot forex – has been a source of consumer detriment and we have sought to raise awareness by warning investors about these products.

Our supervisory convergence work in the asset management sector is an important building block of the Capital Markets Union (CMU), which aims to foster deeper and more integrated EU capital markets that can develop alternative sources of funding to the banking sector and boost economic growth. Last year we took some important steps in this direction, including issuing our work on closet indexing, which identified serious concerns regarding the practice, and addressing an Opinion to the EU co-legislators on what should be the key principles for a European framework on loan origination by funds.

Looking to the future, to increase investor protection in the asset management sector, ESMA is working on increasing transparency on costs, both for fees and performance. ESMA, together with EBA and EIOPA, designed the Key Investor Document (KID) under the packaged retail and insurance-based investment products (PRIIPS) legislation, which allows investors to compare investment alternatives to their benefit. As PRIIPs enters into force in 2018, preparing these new rules is high on our agenda in 2017. The new rules under MiFID II, on the unbundling of research from management fees will facilitate greater transparency and investor protection.

Our work on the development of the technical standards on securities financing transactions also contributed to the development of alternative sources of funding in the EU. While we also finalised our technical advice to the European Commission on important aspects of future rules for benchmarks.

On the technological front, we are seeing rapid advances in fintech, which has the potential to transform the way financial products and services are provided, and in 2016 we focused on three areas: Distributed Ledger Technology (DLT), Big Data and the automation of financial advice or robo-advice, the latter two issues together with the EBA and EIOPA.

ESMA's work in 2016, as the supervisor of credit rating agencies (CRAs) and trade repositories (TRs), brought tangible results, including increasing transparency around credit ratings with the launch of the European Ratings Platform, and levying our largest fine to date, €1.38m, on a CRA for breaches of the CRA Regulation. Linked to our supervisory work, has been our data quality project aimed at ensuring the consistency and clarity of data submitted to TRs by counterparties. We also issued the first fine of a TR for data access failures. Looking forward to 2017, strategy and governance will be a key theme for both CRAs and TRs, particularly in light of the UK's decision to leave the EU. We will also focus on the quality of ratings, internal controls and risk assessment for CRAs, and data quality, technology trends and internal control for TRs.

Preparing for MiFID II/MiFIR's go-live date has been a key project in 2016 and while there are still some rules to finalise in 2017, our focus is now on implementation. This includes approving opinions on position limits and waivers, clarifying issues through Q&A's and developing the IT infrastructure to collect, process and publish financial instruments' reference data and additional data to support the MiFIR transparency regime.

ESMA continues to play an important role in international cooperation regarding regulatory and supervisory matters. In 2016 we recognised 11 third country CCPs and advised the Commission on extending the passport under the Alternative Investment Funds Managers Directive (AIFMD) to non-EU Alternative Investment Funds Managers (AIFM) and Alternative Investment Funds (AIF) in 12 countries. We continued our active participation in the IOSCO Board, several IOSCO policy committees as well as its European Regional Committee. While, we also participated in various FSB work streams relating to stability and financial markets.

The UK decision to leave the EU is an unprecedented development in the EU's history, which will have a significant impact on financial markets and ESMA will have a key role to play in helping market participants adjust and prepare. In this respect, our focus is on supervisory convergence, and avoiding regulatory arbitrage, by ensuring that regulatory standards apply consistently to firms wishing to relocate activities to the EU27. We also see a need to rethink the framework for third countries in financial markets legislation including, the need to strengthen supervisory tools and to introduce regular enforcement powers regarding certain third country entities.

Another major issue that will influence our future is the Commission's review of the operations of the European Supervisory Authorities (ESAs) and we are committed to support the development of any actions resulting from this consultation.

I want to thank my colleagues from the EU national authorities, the Board of Supervisors and the Management Board. Through their guidance, challenge and cooperation, they play an invaluable role in ensuring that ESMA can meet its objectives, and their support will be vital in the period ahead. I also want to acknowledge our excellent cooperation with our fellow authorities in the Joint Committee, and with the European institutions – Commission, Parliament and Council – and the contributions made by stakeholders.

Finally, my thanks goes to ESMA's staff without whose continued hard work and dedication none of this would be possible.

Verena Ross

EXECUTIVE DIRECTOR
EUROPEAN SECURITIES AND MARKETS AUTHORITY

Executive Director's Foreword

ESMA continued to mature as an organisation during 2016, a year in which we celebrated our fifth anniversary. ESMA's priority last year, as identified in its Strategic Orientation 2016-2020, was to support National Competent Authorities (NCAs) in the delivery of more consistent regulatory implementation and stronger supervision, in order to enhance investor protection, orderly markets and financial stability in the EU.

Over the last five years, ESMA has made a significant contribution to building stronger EU capital markets through the development of rules and principles while also contributing to financial stability. At the same time we have undertaken the groundwork necessary to support our current priority work on supervisory convergence.

For 2016, ESMA identified a number of important areas for supervisory convergence. One priority was, and remains, the preparation for the sound, efficient and consistent implementation and supervision of MiFID II/ MiFIR. In promoting supervisory convergence, ESMA has supported NCAs in their ex-ante preparatory work for MiFID II/MiFIR, but also, when necessary, has drawn their attention to areas requiring more effort.

Key to ESMA's emphasis on supervisory convergence in 2016 has been the need for high quality data to assess risks to investors, markets and financial stability, and to enable ESMA and NCAs to focus our limited regulatory and supervisory resources on the right issues. In some areas, national authorities already have relevant data, which we can aggregate and benefit from at an EU level, in a way that does not create additional burdens for market participants. In other areas, national level data is either non-existent, or it is not possible to aggregate, exchange and use the different data collected at national level.

During the year, ESMA devoted significant time and resource to IT and data capabilities, focusing on the areas where data can add most value to NCAs and the market. In 2015 the IT Delegated Projects Programme marked a strategic turning point when, for the first time, NCAs delegated to ESMA two important IT projects, the Financial Instruments Reference Data System (FIRDS), under MiFIR, and a portal for access to Trade Repositories data (TRACE), under EMIR. In 2016, ESMA has delivered the first phase of the TRACE project and advanced well in developing phase 2 and in the building of FIRDS, both of which will be completed in 2017.

To support such a demanding supervisory and regulatory agenda, ESMA needs to stay operationally fit and efficient, and we continued to improve our internal processes while supporting an increased number of tasks.

We took a number of actions related to our operational effectiveness. Internally, we reorganised to create centres of expertise and to enable us to keep its resources flexible. The development of the new Risk and Economics Department has brought about more cohesion to our approach to, and use, of data. The creation of a single supervision department has allowed us to identify and exploit synergies in how we supervise. The new Corporate Affairs Department draws together our stakeholder management, communications, planning and internal control functions, allowing us to refine and improve our engagement with stakeholders and enhance internal governance.

Central to whether ESMA is successful operationally is the sound delivery of the significant IT projects that support NCAs and market participants. To that end, the work on enhancing the maturity and quality of our multi-annual IT planning has continued, the implementation of a new tool for project and portfolio management (PPM). ESMA also finished deploying its new document management system, which will be key to supporting staff collaboration, as well as improving traceability and security.

Mindful of our limited resources, ESMA continues to challenge itself to ensure that it is delivering its objectives effectively and efficiently, thus providing value for money. The European Court of Auditors' (ECA) findings on our supervision of CRAs demonstrated the fundamental shift and maturity in supervision since its inception. In 2016 ESMA also performed a Single Rulebook Audit, proactively seeking out areas where we could improve the processes around our regulatory work. In addition, the annual compliance audit by the European Court of Auditors on our resources management in 2016 resulted in a positive finding.

We continuously look for opportunities to test our administrative set up and processes. We undertook a benchmarking exercise of the Resources Department, focusing on efficiency, which resulted in a number of improvements. These included enhanced communication on internal services, accelerating automation and paperless initiatives to free up resources for higher value activities, and a focus on higher business impact services.

The organisation's greatest resource remains its staff, and ESMA has been active in ensuring they have the skill sets necessary to undertake the tasks demanded of the organisation, for example through our targeted training programmes. We have also instituted an internal mobility programme, which allows staff to redeploy within ESMA to bring relevant skills to bear.

ESMA has made a number of changes to further increase its accountability, including publishing the first Single Programming Document, giving a complete overview of our activities for the period 2017-19: including a three-year work programme; a detailed annual work programme for 2017; as well as a budget and resourcing plan. ESMA has moved to an activity-based funding model, promoting the alignment and reporting of costs against our objectives. This allows ESMA in particular to monitor the alignment between the fees collected from CRAs and TRs and the relevant supervisory costs.

I would like to thank everyone who has contributed to ESMA's work in 2016. My particular gratitude goes to all my ESMA colleagues for their continued impressive commitment to the delivery of a busy agenda and for proactively developing solutions to a complex range of issues. Their contribution has enabled ESMA to continue to grow and successfully re-orientate itself in order to meet the future challenges and support robust financial markets across the EU.

Verena Ross

Executive Director
European Securities and Markets Authority

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. As an independent authority, ESMA achieves these 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 in order to ensure consistent and coherent financial supervision in the EU. This system consists of the European Systemic Risk Board (ESRB) and the three European Supervisory Authorities, ESMA based in Paris, the European Banking Authority (EBA) based in London and the European Insurance and Occupational Pensions Authority (EIOPA) based in Frankfurt along with the national competent authorities (NCAs) of the Member States. ESMA, along with the EBA and EIOPA, forms part of the Joint Committee which works to ensure cross-sector consistency and joint positions in the area of supervision of financial conglomerates and on other cross-sector issues.

ESMA is accountable to the European Parliament and the European Council and works in close liaison with the European Commission (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 European Union (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 amongst market participants. In order to foster these conditions, ESMA works to improve harmonisation in both regulation and supervisory practices.

1 ESMA Regulation 1095/2010

In order to achieve harmonised rule implementation throughout the EU, ESMA serves as a standard setter in relation to securities markets legislation 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.

The Annual Report is an important accountability tool describing ESMA's delivery against its objectives and Annual Work Programme[2].

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

1. **Investor protection:** to have the needs of financial consumers better served and to reinforce their rights as investors while acknowledging their responsibilities;

2. **Orderly markets:** to promote the integrity, transparency, efficiency, and well-functioning of financial markets and robust market infrastructures; and

3. **Financial stability:** to strengthen the financial system in order to be capable of withstanding shocks and the unravelling of financial imbalances while fostering economic growth.

The three objectives are inter-linked: for example, investor protection and orderly markets feed into overall market 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, as well as the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), whom it works closely with on cross-sectoral issues through the Joint Committee of the European Supervisory Authorities (ESAs)[3]. ESMA has a unique position within the ESFS, focusing on the securities and financial markets dimension and the overarching European aspects of these objectives.

2 ESMA/2015/1475rev 2016 Work Programme

3 Joint Committee of the European Supervisory Authorities.

The four activities that help ESMA achieve its mission and objectives are:

- 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 strengthening the quality of the single rulebook for EU financial markets by developing technical standards and by providing advice to EU Institutions on legislative projects. This standard setting role was ESMA's primary task in its first years of activity resulting in the delivering numerous technical implementing details covering the entire span of European securities markets.

- 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 identify opportunities, so that they can be acted upon in a timely fashion. ESMA uses its unique position to identify market developments that threaten financial stability, investor protection or the orderly functioning of the European financial markets.

ESMA's risk assessments build on and complement risk assessments made by the other ESAs and NCAs, and contribute to the systemic work undertaken by the ESRB, which increasingly focuses on stability risks in financial markets. Internally, the output of the risk assessment function feeds into ESMA's work on the single rulebook, supervisory convergence and the direct supervision of specific financial entities.

Externally, we promote transparency and investor protection by making information available to investors via our public registers and databases and, where needed, by issuing warnings to investors. The risk analysis function closely monitors the benefits and risks of financial innovation in European financial markets.

- Supervisory Convergence

Supervisory convergence is the consistent implementation and application of the same rules using similar approaches across the 28 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.

Supervisory convergence implies sharing best practices and realising efficiency gains for both NCAs and the financial industry. This activity is performed in close cooperation with NCAs. ESMA's position in the ESFS makes it qualified to conduct peer reviews, set up EU data reporting requirements, conduct thematic studies and common work programs, draft opinions, guidelines and Q&As but also build a close network that can share best practices and train supervisors.

ESMA's participation in supervisory colleges for Central Counterparties (CCPs) contributes to supervisory convergence for this specific area. ESMA actively supports international supervisory coordination and convergence, for example through its participation in IOSCO.

- Supervision

ESMA is the direct supervisor of specific financial entities: Credit Rating Agencies (CRAs) and Trade Repositories (TRs). These entities form essential parts of the EU's market infrastructure. The supervision of CRAs helps to enhance the integrity, responsibility, good governance and independence of credit rating activities. ESMA's supervision therefore ensures the quality of ratings and helps to protect investors' interests. ESMA's TR supervision helps to ensure that TRs comply on an on-going basis with all EMIR requirements, thereby enabling authorities to have access to data and details of derivative contracts in order for them to fulfil their respective missions. ESMA's TR supervision therefore is key for ensuring data quality and providing transparency on derivatives markets.

ESMA's four activities are closely linked. Insights gained from risk assessment 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. The direct supervision of CRA and TRs benefits from and also feeds into our risk assessment and the single rulebook activities.

1.2 ESMA's key priorities for 2016

In 2015 ESMA undertook a strategic planning exercise that resulted in ESMA's Strategic Orientation 2016-2020[4]. The strategy describes how ESMA's focus from 2011 to 2015 was on building a single rulebook and establishing itself as a credible direct supervisor. Over the next few years our focus is shifting to implementation and convergence of supervisory practices.

Supervisory Convergence

ESMA's 2016-2020 Strategy identifies that the establishment of a single rulebook is necessary but in itself not sufficient to work towards achieving our objectives. Therefore, from 2016 onwards, ESMA's focus is shifting increasingly from rulemaking to implementation. As such, supervisory convergence in the implementation, supervision and enforcement of common EU rules is a core focus of our activities. In addition, co-operation with other institutions and in particular the Joint Committee of the ESAs, will also be vital to ensuring increased cross-sectoral consistency. In 2016 ESMA produced a first dedicated work programme for its supervisory convergence activity.

MiFID II and MiFIR

In common theme with previous annual work programmes, MiFID II and MiFIR were a key focus of ESMA's work in 2016, however in line with the shift towards supervisory convergence the focus was to be on the development of guidelines and Q&As to assist with the consistent implementation of MiFID II across the EU. This was supported by further single rulebook activity with the drafting of a further number of draft Technical Standards.

Data collection and management

ESMA's 2015-2017 IT Work Programme[5] is dominated by the legal requirements for data collection and reporting stemming from MiFID II and MiFIR, which was to be a key focus of work in 2016. In addition it was envisaged that ESMA would also set up tools and collect data related to CRA supervision and investor protection. ESMA was also committed to continue to develop systems to support ESMA's activities on supervision, risk monitoring and single rulebook. This work was to include two projects that are delegated tasks to ESMA from NCAs:

- Financial Instruments Reference Data System: a project where ESMA would collect, store and process instruments reference data from trading venues, including executing transparency calculations and management of suspensions from trading; and
- Access to Trade Repositories: a project to set up a logical portal, e.g. a single access point for querying and getting back data from Trade Repositories without storage.

4 ESMA/2015/935 ESMA Strategic Orientation 2016-2020

5 Contained in the ESMA/2015/1475rev 2016 Work Programme

1.3 Governance and Organisation

Governance and Management

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

Board of Supervisors

In addition to ESMA's Chair, the BoS is composed of the heads of the 28 EU Member State NCAs, responsible for securities regulation and supervision[6], while the authorities from Norway, Iceland, Liechtenstein and the EFTA Surveillance Authority[7] are also members, since October 2016, albeit without voting rights. In addition an observer from the Commission and representatives from the EBA, EIOPA and the ESRB also attend. The Executive Director attends the Board.

The Board 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, guidelines, the issuance of advice to the EU institutions, and taking authorisation and enforcement decisions. The Board is supported by a number of Standing Committees and Working Groups who deal with technical issues.

6 Where there is more than one national authority in a Member State those authorities will agree which of their heads will represent them.

7 EFTA Surveillance Authority website on 02/05/2017.

The current Members of the Board and summaries of the 2016 meetings of the Board of Supervisors can be found on ESMA's website[8].

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 five years in 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. In January 2016, Anneli Tuominen of the Finnish Financial Supervisory Authority (FIN-FSA) was appointed Alternate 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 of the Authority and preparing the work of the Management Board.

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 from the Commission attend as non-voting participants (except on budget matters where 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

8 Board of Supervisors

development and implementation of a multi-annual Work Programme, as well as budget and staff resource matters.

The current Members of the Management Board and summaries of their meetings in 2016 is available on ESMA's website[9].

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 members, serves a term of two and a half years. The current composition of the group began its mandate on 1 July and is chaired by Rüdiger Veil, a law professor at the Bucerius Law School, Hamburg. He is supported by joint Vice-Chairs Christiane Hölz, representing users of financial services, and Jarkko Syyrilä, representing financial market participants. The SMSG held seven meetings in 2016, two of which were held together with the BoS; three of these (including one with the BoS) were held with the new SMSG in the second half of the year. The Group issued advice, opinions and reports in 2016 on issues such as the ESFS review, PRIIPs, MAR, CRA, all of which concern ESMA's policy-making activities. The former group also issued an end of term report. Summaries of the groups meetings, as well as their reports, can be found on ESMA's website[10].

9 Management Board

10 Securities Markets Stakeholders Group

2 ESMA's achievements against its 2016 objectives

2.1 Completing a single rulebook for EU financial markets

ESMA's single rulebook work is aimed at strengthening regulation and creating a level-playing field across the EU. It involves delivering technical advice on legislation to the European Commission, drafting Regulatory and Implementing Technical Standards and issuing advice and guidelines on the application of EU law.

The financial crisis exposed the negative effects that unevenly applied legislation can have for financial markets, its consumers and the economies at large. As a result, reforms were introduced to provide effective instruments to ensure the harmonised application of EU law. ESMA, in fostering more coherence and consistency in securities legislation, and in its application, can issue regulatory technical standards (RTS) and implementing technical standards (ITS). These detail and clarify Level 1 EU legislation, thereby ensuring a level-playing field and adequate protection for investors. Those technical standards aim at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups and establishing an EU single rulebook applicable to all financial market participants in the internal market.

The Annual Work Programme 2016[11], published in 2015, outlined the areas where ESMA intended to progress in further developing and consolidating the single rulebook.

Key successes and deliveries

ESMA advises on extension of AIFMD third country passport to 12 non-EU countries

ESMA published Advice in relation to the application of the Alternative Investment Fund Managers Directive (AIFMD) passport to non-EU AIFMs and AIFs in twelve countries: Australia, Bermuda, Canada, Cayman Islands, Guernsey, Hong Kong, Japan, Jersey, Isle of Man, Singapore, Switzerland, and the United States[12]. Currently, non-EU AIFMs and AIFs must comply with each EU country's national regime when they market funds in that country. ESMA's Advice relates to the possible extension of the passport, which is presently only available to EU entities, to non-EU AIFMs and AIFs so that they could market and manage funds throughout the EU.

For each country, ESMA assessed whether there were significant obstacles regarding investor protection, competition, market disruption and the monitoring of systemic risk which would impede the application of the AIFMD passport.

ESMA advised that:

- there were no significant obstacles impeding the application of the AIFMD passport to Canada, Guernsey, Japan, Jersey and Switzerland;
- considered only in relation to AIFs, there were no significant obstacles impeding the application of the AIFMD passport to AIFs in Hong Kong and Singapore. However, both Hong Kong and Singapore operate regimes that facilitate the access of UCITS only from certain EU Member States to retail investors in their territories.
- there are no significant obstacles regarding market disruption and obstacles to competition impeding the application of the AIFMD passport to Australia, provided the Australian Securities and Investment Committee (ASIC) extends to all EU Member States the 'class order relief', currently available only to some EU Member States, from some requirements of the Australian regulatory framework;
- there were no significant obstacles regarding investor protection and the monitoring of systemic risk which would impede the application of the AIFMD passport to the United States (US). With respect to the competition and market disruption criteria, ESMA considers there is no significant obstacle for funds marketed by managers to professional investors which do not involve any public offering. However, ESMA considers that in the case of

11 ESMA/2015/1475rev 2016 Work Programme

12 ESMA/2016/1140 ESMA's advice to the EP, the Council and the EC on the application of the AIFMD passport to non-EU AIFMs and AIF funds marketed by managers to professional investors which do involve a public offering, a potential extension of the AIFMD passport to the US risks an un-level playing field between EU and non-EU AIFMs. The market access conditions which would apply to these US funds in the EU under an AIFMD passport would be different from, and potentially less onerous than, the market access conditions applicable to EU funds in the US and marketed by managers involving a public offering. ESMA suggests, therefore, that the EU institutions consider options to mitigate this risk;

- For Bermuda and the Cayman Islands, ESMA cannot give definitive Advice with respect to the criteria on investor protection and effectiveness of enforcement since both countries are in the process of implementing new regulatory regimes and the assessment will need to take into account the final rules in place. For the Isle of Man ESMA finds that the absence of an AIFMD-like regime makes it difficult to assess whether the investor protection criterion is met.

Finalising the Benchmarks Regulation standards

Benchmarks lie at the heart of financial markets as they help to price assets and measure the performance of investments. The objective of the Benchmarks Regulation, which will enter into application on 1 January 2018, is to improve the governance and control over the benchmark process, thereby ensuring their reliability and protecting users. ESMA had an intensive year in preparing the Level 2 texts that will implement the Benchmarks Regulation, with the timely delivery of its technical advice on possible delegated acts to the European Commission and the preparation of draft regulatory technical standards (RTS) and implementing technical standards (ITS) to ensure the regulation is applied coherently across the European Union.

Technical advice to the European Commission

ESMA received the mandate in February 2016 and, after having publicly consulted, it finalised the technical advice to the Commission on important aspects of future rules for benchmarks. In particular, ESMA advised on how benchmarks' reference values can be calculated by using data reporting structures under existing EU rules such as MiFID II and EMIR, criteria for deciding when third country benchmarks can be endorsed for use in the EU and on the concept of an index published or made available to the public.

Draft technical standards

ESMA also consulted on RTS and ITS covering key provisions applicable to both benchmark contributors and administrators. They include further specifying benchmark integrity and reliability requirements in relation to governance, input data and the methodology used as well as on benchmarks' transparency.

Technical standards related to TRs and trade reporting

Together with the consultation on technical standards under SFTR, to ensure consistency and a level playing field ESMA consulted on an amendment to a number of measures mandated under EMIR. The key areas of the draft rules published for consultation feedback included the procedure and criteria for the registration of trade repositories under EMIR and the access levels for different competent authorities. The standards are due to be finalised in 2017.

Technical standards on the bilateral margining of derivatives not cleared

ESMA, jointly with the EBA and EIOPA, finalised the requirements on bilateral margining for non-centrally cleared OTC derivatives, in accordance with the standards and the implementation calendar agreed at the international level (BCBS-IOSCO). These RTS[13] cover the risk mitigation techniques related to the exchange of collateral to cover exposures arising from non-centrally cleared over-the-counter (OTC) derivatives. They also specify the criteria concerning intragroup exemptions and the definitions of practical and legal impediments to the prompt transfer of funds between counterparties. These standards aim at increasing the safety of the OTC derivatives markets in the EU.

13 ESAs 2016 23 Final Draft Regulatory Technical Standards on risk-mitigation techniques for OTC-derivative contracts not cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012. Additionally, the ESAs issued an opinion on the amendments subsequently introduced by the European Commission ESAs 2016 62 Opinion of the European Supervisory Authorities on the European Commission's amendments of the final draft Regulatory Technical Standards on risk mitigation techniques for OTC derivatives not cleared by a central counterparty under Article 11(15) of Regulation (EU) No 648/2012.

2.1.1 MiFID II and MiFIR

Objective for 2016	Deliver between 15 and 18 Technical Standards including 2 Technical Standards assessing whether certain classes of derivatives should be subject to the trading obligation as per Article 32 of MiFID and one item of technical advice.

The new MiFID II framework intends to make EU markets safer, more transparent and efficient and to level the playing field for market participants. Most of the delegated acts and TS required under MiFID II/MiFIR were delivered in 2015, and while the focus of our MiFIDII/MiFIR work in 2016 was on supervisory convergence, ESMA continued to work on a number of key TS in 2016.

One major task in 2016 was the assessment of which classes of derivatives have to be subject to the trading obligation for derivatives foreseen in MiFIR. In this respect, ESMA issued a Discussion Paper (DP) on its general approach to this important topic which was well received by stakeholders. ESMA is looking to complete its work on the trading obligation during the course of 2017. In addition, ESMA had to develop an RTS in respect of the consolidated tape for non-equity instruments[14] and technical advice to the Commission on whether exchange-traded derivatives should be temporarily excluded from the access provisions in MiFIR[15].

14 ESMA/2016/1422 CP on RTS specifying the scope of the consolidated tape for non-equity financial instruments

15 ESMA/2016/461 Risk assessment on the temporary exclusion of exchange traded derivatives from Articles 35 and 36 of MiFIR

Completing Level 2 of MiFID II

During 2016, ESMA issued three opinions in response to the amendments introduced by the Commission on ESMA draft regulatory technical standards. These related to non-equity transparency[16], the ancillary activity test[17] and for position limits[18] facilitating agreement on the Level 2 text on technically complex issues. ESMA also progressed with additional technical standards required by MiFID II.

Opinion non-equity transparency

For non-equity transparency, ESMA issued an opinion on the Commission's proposal to revise the regulatory technical standards to add in a phase-in of the transparency requirements accompanied with a liquidity test for bonds. In its opinion, ESMA highlighted the importance to put in place a mechanism that would take into consideration the concerns that introducing transparency for non-liquid bonds that could cause further illiquidity while providing market participants with sufficient legal certainty regarding the applicable transparency thresholds for non-equity instruments and bonds in particular.

16 ESMA/2016/666 Opinion Draft RTS on non-equity transparency

17 ESMA/2016/730 Opinion on MiFID II standards on ancillary activities

18 ESMA/2016/668 Opinion on Draft RTS on position limits

Technical standards on package orders

ESMA also consulted on two MiFID II RTS on package orders. A package orders mandate was introduced in the MiFID II "Quick Fix" and requires ESMA to tackle a technically complex issue within a short legislative deadline. The consultation was a successful initiative in producing a workable solution within that short timeframe.

2.1.2 Corporate Reporting

Objective for 2016	
	Contribute to the set-up of high-quality accounting standards through providing enforcer's view on new pronouncements.
	Define the RTS of the European Single Electronic Format by end 2016.

ESMA contributes actively to the accounting standard setting and endorsement in the EU through its observer role at the EFRAG Supervisory Board and Technical Expert Group. In addition, ESMA contributes to the International Accounting Standards Board (IASB) in charge of developing those global standards. ESMA continued to provide comment letters throughout 2016 on a variety of issues as part of the standard setting process with the aim of improving the transparency and decision usefulness of financial statements and the enforceability of International Financial Reporting Standards (IFRS).

The Transparency Directive 2004/109, as amended by Directive 2013/50/EU[19], requires that ESMA draft RTS to specify the single European electronic reporting format (ESEF) for annual reports based on an adequate assessment of possible electronic reporting formats, with due reference to current and future technological options. This work started in 2015, with a Feedback Statement delivered in December 2016 but the finalisation of the draft RTS is delayed until 2017.

ESMA also contributed to tasks in the audit area in relation to equivalence and adequacy of third countries oversight systems and other tasks of common interest for both accounting and auditing regulators through active participation in the Committee of the European Audit Oversight Bodies.

19 Amended Directive 2013/50/EU on Transparency

2.1.3 Benchmark Policy

Objective for 2016	Contribute to improving the integrity of benchmarks by delivering up to 16 Technical Standards and up to 10 Technical Advices and through international co-operation.

The Benchmarks Regulation required ESMA to do significant work on Level 2 measures. This work began in 2015 and continued throughout 2016 with the provision of advice to the Commission as well as the discussion and consultation phases on proposed draft RTS. Looking ahead there will be ongoing tasks from 2017 for ESMA resulting from the regulation on coordinating the development of cooperation arrangements with third countries, participating and possibly mediating in colleges, and maintaining registers of notifications on the use of benchmarks and a list of registered benchmark administrators.

2.1.4 Market Abuse and Short Selling

Objective for 2016	Finalise the framework for co-operation under the Market Abuse Regulation and report on the evaluation of the Short Selling Regulation by end 2016.

In 2016 ESMA's market abuse and short selling work was focused on finalising the cooperation framework under the Market Abuse Regulation (MAR)[20], which will continue into 2017. Preparations were put in place to participate in evaluating the appropriateness and impact of the SSR – the initial evaluation by the Commission in 2013 had indicated that the next review should be completed by 2016 – but this latter work was finally initiated later the Commission and is now scheduled to be completed in the course of 2017.

Development of the MAR cooperation framework

During the course of 2016 ESMA delivered a key element of the cooperation framework required for the operation MAR, producing ITS on sanctions and measures which prescribe how NCAs should notify ESMA annually of the investigations they conduct and the sanctions and measures imposed in their

20 Market Abuse Regulation (EU) No 596/2014

Member States under MAR. The Regulation provides for two types of submission of information, as follows:

- NCAs shall provide ESMA annually with aggregated information regarding all administrative and criminal sanctions and other administrative measures imposed in accordance with Articles 30, 31 and 32 of MAR as well as regarding administrative and criminal investigations undertaken in accordance with those articles; and
- Administrative and criminal sanctions and other administrative measures that are disclosed to the public by NCAs shall simultaneously be reported to ESMA.

2.1.5 European Investment Fund Legislation

Objective for 2016	Contribute to the establishment of new European frameworks for money market funds and depositaries through delivering Technical Standards and Technical Advices by end 2016.

ESMA continued its ongoing work regarding the possible extension of the Alternative Investment Fund Management (AIFM) passport towards third countries, and the potential termination of the national private placement regimes for Alternative Investment Funds (AIF), by providing technical advice on 12 jurisdictions to the Commission in July 2016. This work was done in close cooperation with NCAs.

It also delivered draft RTS[21], under the European Long-Term Investment Funds (ELTIF). These specify the circumstances in which the life of an ELTIF is sufficiently long to cover the life cycle of each of the ELTIF's individual assets. It also set the criteria for the assessment of the market for potential buyers and the valuation for the assets to be divested. ESMA has delayed the delivery of its ELTIF RTS on the cost disclosure information, which must be included in the ELTIF's prospectus, in order to take into account the work undertaken on cost disclosures for PRIIPs

Although it was expected that ESMA would commence work on the development of draft RTS and Technical Advice under the Money Market Funds (MMF) Regulation in the course of 2016, delays in the legislative timetable meant that the Regulation was not approved until Q1 2017 and so this work is expected to be completed in the coming 12 months.

2.1.6 Reporting, clearing, margining and settlement Level 2 measures

Objective for 2016	Improve the clearing of OTC derivatives by determining which classes of derivatives should be subject to the clearing obligation and defining Technical Standards for CCPs.

ESMA's focus regarding EMIR has gradually shifted from single rulebook activity to implementation. However, in 2016, the technical standards of some of the key requirements under EMIR have still been an important part of ESMA's single rulebook activity, some technical standards have either been finalised, such as bilateral margining, completing further the single rulebook, or refined, such as reporting, taking into account the first stages of implementation of EMIR. For post-trading matters, beyond EMIR, ESMA finalised its draft RTS on settlement discipline under CSDR in February 2016.

Technical standards related to the clearing of derivatives

ESMA drafted RTS allowing CCPs to margin on a one-day margin period of risk, certain types of accounts under certain conditions for exchange traded derivatives and securities[22]. This supports a level playing field between European and US CCPs. Additionally, ESMA conducted an analysis of the issues of access to clearing that smaller financial counterparties have been facing in their preparations to comply with the clearing obligation and thus drafted technical standards proposing a delay of the clearing obligation for this type of counterparties. Furthermore, ESMA also finalised the technical standards on indirect clearing for OTC and exchange traded derivatives to ensure an equivalent level of protection to indirect clients as is provided to clients under EMIR and to address some of the issues currently faced by market participants in trying to develop indirect clearing services.

21 ESMA/2016/935 Draft regulatory technical standards under the ELTIF Regulation

22 ESMA/2016/429 Review of Article 26 of RTS No 153/2013 with respect to MPOR for client accounts

2.1.7 Packaged Retail and Insurance-based Investment Products (PRIIPs)

Objective for 2016	Improve the quality and comparability of information provided to retail investors by delivering 2 Regulatory Technical Standards and advice by March 2016.

In 2016 ESMA continued its work begun in 2014 under the auspices of the Joint Committee of the ESAs on the Technical Standards on Packaged Retail and Insurance-based Investment Products (PRIIPs), delivering the draft RTS on calculation of risk/reward and cost disclosure and the RTS on the content and format of the Key Information Document (KID). ESMA also contributed to the work of the Joint Committee on the Technical Advice to the Commission on PRIIPs which is due to be delivered in the course of 2017.

2.2 Assessing risks to investors, markets and financial stability

ESMA was created as part of an EU-wide response to a financial and economic crisis that posed risks to the stability of the financial system and the functioning of the internal market. In pursuit of this goal, ESMA continues to strengthen its activities in analysing developments, systemic risks, and structures in the financial markets within its remit. ESMA aims to continue and build its co-operation with the EU institutions, the other ESAs, the European Systemic Risk Board (ESRB) and international organisations in this field. ESMA conducts these activities to support the risk and impact assessment of NCA's and ESMA's regulatory activities

Assessing risks to investors, markets and financial stability is key to identifying emerging trends, risks and vulnerabilities, and where possible opportunities, in a timely fashion so that they can be acted upon. ESMA uses its unique position to identify market developments that threaten financial stability, investor protection or the orderly functioning of financial markets. ESMA's risk assessments build on and complement risk assessments by the other ESAs, and by the NCAs at national level, and contribute to the systemic work undertaken by the ESRB, which increasingly focuses on stability risks in financial markets. Internally, the output of the risk assessment function feeds into ESMA's work on the single rulebook, supervisory convergence[23] and the direct supervision of specific financial entities. Externally, we promote transparency and investor protection by making information available to investors via our public registries and databases and, where needed, by issuing warnings to investors. The risk analysis function closely monitors the benefits and risks of financial innovation in EU financial markets.

23 This includes supporting ESMA's work on the stress-testing of CCPs which is outlined in section 2.3 on Supervisory Convergence.

Key successes and deliveries

ESMA 2016 risk assessment

During 2016 risks in the markets under ESMA remit remained at high levels, reflecting very high risk in securities markets, and elevated risk for investors, infrastructures and services. During the first half of 2016, recurrent swings in valuations and high volatilities signalled sustained risk sensitiveness and scope for sudden risk repricing or rise in market imbalances. In particular, markets were affected by equity market disruptions in China, commodity price swings, and EU bank profitability concerns at the beginning of 2016. The outcome of the UK referendum on EU membership on 23 June caused turbulences especially in equity, bond, and currency markets. Later in the year, EU financial markets remained relatively calm, although continued to react to events such as the US election. From a wider perspective, the low yield environment and related sustained concerns with regard to excessive risk taking persisted.

Going forward, current market optimism is in contrast with substantive risks: Economic growth in the EU and elsewhere needs to prove resilient; structural problems in many EU member states remain to be addressed; internationally, rising public and private debt levels are of increasing concern; high asset price valuations persist; and political uncertainties prevail. Brexit-related uncertainties remain the single most important political source of risk and are carefully monitored by ESMA.

2.2.1 Financial market risk analysis

Objective for 2016	Identify financial market risks and report on these risks to the relevant institutions.

ESMA monitors trends, risks and vulnerabilities

ESMA monitors market developments in its remit in light of its objectives of promoting financial stability, orderly markets, and investor protection. ESMA carries out financial surveillance through its regular reporting activity to identify markets trends and developments and assesses the main risks and vulnerabilities. In 2016, ESMA further extended and deepened its regular market surveillance through its semi-annual Trends, Risks and Vulnerabilities reports[24] and the quarterly Risk Dashboards[25]. In the same vein, it contributed to the work of the ESRB, and to risk reports in collaboration with the other ESAs, in particular the semi-annual ESA Joint Committee reports on risks and vulnerabilities in the EU. It also contributes to international risk reporting by IOSCO. In doing so, ESMA draws on a variety of sources, including proprietary data, commercial data, market intelligence, and assessments by experts at the National Competent Authorities.

As new proprietary data sources became available in 2016, for example through AIFMD reporting, ESMA analysed the new statistical sources. Similarly, ESMA continued to analyse and report on short selling activities, settlement failures and other market activities where it collects regulatory data.

2.2.2 In-depth topical analyses

Throughout the course of 2016 ESMA continued to carry out a broad range of analysis activities in support of its broader activities in the areas of financial stability, orderly markets and investor protection. Particular highlights are outlined below.

Financial Stability

Collateral scarcity premia in EU repo markets

In its TRV1/16 ESMA published an article on EU repo markets[26]. The objective was to analyse the drivers of the cost of obtaining high-quality collateral, proxied by government bond repos. Collateral plays a very important and growing role in financial markets, enabling, for instance, dealers to finance their market-making activities and market participants to enter into derivative contracts. This role has become increasingly significant since the crisis, due partly to regulatory reforms, but also to generally greater reliance on secured funding.

24 ESMA Trends, Risks and Vulnerabilities 2016 reports

25 ESMA Risk Dashkboards 2016

26 ESMA/2016/348 ESMA Report on Trends, Risks and Vulnerabilities No. 1, 2016

EU corporate bond market liquidity

The role of corporate bond markets in financing the economy in the EU has gained greater prominence in recent years. At the same time, periods of high volatility associated with short-term illiquidity in different market segments have heightened concerns over the deterioration of liquidity. The article[27] in TRV 2/16 investigates secondary market liquidity developments in EU corporate bond markets. We develop quantity-based and price-based metrics of market liquidity for EU corporate bonds and provide an initial attempt to construct a composite liquidity index. We did not find systematic, significant positive or negative trends in liquidity levels during the period analysed (March 2014 to March 2016). However, when wider market conditions deteriorate, we observed episodes of decreasing market liquidity.

Synthetic leverage in the asset management industry[28]

The use of leverage has been common practice in financial markets for many years. Usually measured as debt over equity, high leverage ratios in individual financial institutions have in the past led to episodes of balance sheet and systemic stress. This prompted greater oversight by global regulators, and in some instances, the introduction of quantitative limits. However, the nature of leverage has evolved and off-balance sheet leverage, built through the use of derivative instruments, has gained traction in recent years. The growth of the EU asset management industry, the size of global derivatives markets, and anecdotal evidence suggest that reliance by investment funds on what has become known as "synthetic leverage" is becoming an increasingly relevant issue, potentially requiring greater regulatory scrutiny. This article published in ESMA's TRV 2/16 looks into the use, measures, regulatory treatments and financial stability risks of synthetic leverage, through the specific prism of investment funds.

Orderly Markets

The central clearing landscape in the EU[29]

The article in TRV1/16 provided an overview of the central clearing landscape in the EU within the EMIR framework. Since the entry into force of EMIR on 16 August 2012, the process of CCP authorisation has progressed, with seventeen CCPs having been authorised to operate in the EU. The mandatory clearing requirement for several classes of OTC interest rate swaps and credit default swaps became applicable in 2016, and several interoperability arrangements are in place.

Circuit breakers in the EU – use and effects[30]

Sudden and drastic price swings in financial markets can be a source of instability and are a concern for supervisors, regulators and market participants. Circuit breakers (CB) are key instruments for trading venues to interrupt excessive price movements. We provided an overview of the volatility safeguard mechanisms used by EU trading venues to manage periods of excess volatility. They differ in the type of volatility interruption (price collars, CBs, or both), in the reference price and threshold specification, and in their disclosure to market participants. In the article in TRV 2/16 it was found that CB trigger events are concentrated in a small number of trading venues. Furthermore, we find evidence that CBs may help increase market quality for both halted instruments and cross-listed or associated ones.

High-frequency trading

The second ESMA economic report on high-frequency trading (HFT)[31] activity focusses on liquidity aspects related to HFT activity in fragmented EU equity markets. The Economic Report has a focus on one particular pattern of cross-venue trader behaviour observed in fragmented markets. Traders – especially HFTs – replicate orders, i.e. they "advertise" their intention to trade by posting similar orders on more than one trading venue at the same time. We also observed that once such an order is traded on one venue, in many cases the order duplicates are immediately cancelled on the other venues. The report analyses the extent of order duplication or replication strategies, to which extent order duplicates are de facto available to the market and whether standard liquidity measures overestimate liquidity in fragmented equity markets.

Investor Protection

27 ESMA Report on Trends, Risks and Vulnerabilities No.2, 2016, p.62

28 Ibid, p.70

29 ESMA/2016/348 ESMA Report on Trends, Risks and Vulnerabilities No.1, 2016, p.47

30 Ibid, p.50

31 ESMA Economic Report No.1, 2016 on order duplication and liquidity measurement in EU equity markets

2.2.3 Data and statistics

Objective for 2016	Enhanced, centralised data management and statistical analysis.

ESMA continued to strengthen and concentrate its activities around hosting, maintaining and managing market data collected under the relevant regulatory frameworks, as well as commercial and publicly available data, for the purposes of market supervision, market transparency, and financial stability analysis. It developed key shared functions around risk assessment and statistics horizontally, providing a central service for core data management and statistical services to the public and to the relevant analysts and experts in the organisation. Particular attention continues to be given to providing high-quality and efficient data management, with advanced tools for statistical analysis.

The rationale of concentrating on data management and statistical activities is to obtain synergies in horizontal activities, allow the combination of datasets to enrich the information content and the spread of data use within ESMA. Efforts are being directed to managing datasets including their cleaning, reconciliation and maintenance, as well as the preparation of basic analyses, the automatic provision of recurring charts and reports, and the use of sophisticated analytical tools and methods.

ESMA Data Policy (EDP)

Since 2016, the ESMA Data Policy (EDP) assisted in implementing the ESMA Data Strategy, by defining the governance, roles, responsibilities, and basic working principles of ESMA's activities related to financial market data, it contributes to the effective and efficient fulfilment of all ESMA tasks.

AIFMD data - Quality enhancement and development of statistical reports for risk analyses

ESMA monitors the information provided by NCAs in the AIFMD reporting system for AIFs in order to ensure its completeness and accuracy. In order to execute this action, ESMA worked with NCAs to promote the timely provision of this information. The AIFMD aims to increase the transparency of Alternative Investment Fund Managers (AIFMs) by providing NCAs and ESMA with the necessary information to monitor possible systemic risk of AIFMs across the EU and enhance consumer protection. ESMA will continue to support the efforts of NCAs in developing the capability to establish a continuous transmission of information and produce the statistical reports for risk analyses.

MiFID II Interim Transparency Calculations

Preparation of the work to produce MiFID II interim transparency calculation, including provision of the aggregates needed for MiFID II interim transparency calculations as established in RTS1, RTS2 and RTS11, on behalf of the NCAs. ESMA has been delegated by NCAs the computation of the interim transparency calculations and their publication in order to promote the single rulebook and supervisory convergence in advance of the go live of the FIRDS IT system. ESMA will seek to commence computing and publishing the transparency calculations during 2017 to serve market operations starting in January 2018. Additionally, it will design and implement a process to ensure the future quality of the data submitted to FIRDS.

EMIR data analysis

ESMA, as part of the work to support the MiFID II Interim Transparency Calculations, has developed the processes to measure derivatives markets activity through the information provided under EMIR by TRs. The analysis of TR data will support a range of activities in ESMA including those linked to the single rulebook i.e. MiFID II implementation, and financial stability – in particular risk monitoring work as included in the Trends, Risks and Vulnerabilities Report (TRV) and ESMA Risk Dashboard (RD).

CRA Annual Market Share Calculation

On 16 December 2016 ESMA published its annual market share calculation for EU registered credit rating agencies. This calculation is required by Article 8d of the CRA Regulation, which aims to stimulate competition in the credit rating industry by encouraging issuers and related third parties to appoint smaller CRAs. To this end, this article states that where an issuer or related third party intend to use two or more CRAs, he/she should consider appointing one CRA with less than a 10% market share if one of these CRAs is capable of providing a credit rating of their entity or instrument.

The market share calculation is designed to increase awareness of the different types of credit ratings offered by each registered CRA and to help issuers and related third parties considering appointing smaller CRAs. The calculation was done using CRAs' 2015 revenues from credit rating activities and ancillary services at group level.

2.2.4 Monitoring of financial activities and innovation and preparing for product intervention

Objective for 2016	Develop a framework for the use of the product intervention powers provided by MiFIR by end 2016.

The task of monitoring the heterogeneous financial market across the 28 Member States and multiple asset classes is complex, as the markets differ in breadth, depth, volume, and sophistication of market participants. In order to achieve this task, ESMA has put in place a formal programme to analyse financial activities in general, with a particular focus on financial innovation. In addition, ESMA has in place a process to co-ordinate NCAs' initiatives on market monitoring and facilitating exchanges of best practices. The programme allowed both ESMA and NCAs' to prioritise its work around the analysis of innovative processes and products.

Product Intervention Framework

The Product Intervention Framework supports the monitoring of products and processes that are a threat to ESMA's objectives of investor protection, orderly markets and financial stability. The Framework is also used to ensure that NCAs apply the powers in a co-ordinated manner. The powers will be effective on January 3, 2018. ESMA developed an analytical framework for the assessment of issues and how best to prioritise. The primary focus in 2016 in this area was on setting the operating analytical framework for product intervention. In 2016, ESMA undertook the following steps: Education, training, and seminars on the use of product intervention powers to NCAs and internally in ESMA.

Monitoring and assessment of financial innovation

ESMA continues to monitor and assess developments on financial innovation keeping an eye on potential risks and challenges. There is ongoing risk identification and monitoring based on ESMA's qualitative and quantitative risk metrics, market intelligence, and the ESMA Financial Innovation Scoreboard. During 2016 ESMA formed a task force to pursue the potential uses of DLT technology within securities markets and any risks the technology may pose to the existing regulatory environment.

Assessing the uses, benefits and risks associated with distributed ledger technology

ESMA published a Discussion Paper in June 2016 on distributed ledger technology (DLT)[32], which sought feedback from stakeholders on the possible use of DLT in securities markets, its potential benefits and the risks that such broader use may pose.

The paper provided a stock-take, with a particular focus on post-trading activities, of the key EU regulations, which would be applicable to DLT. The regulations identified and discussed include the European Market Infrastructure Regulation (EMIR), the Securities Finality Directive (SFD), and the Central Securities Depositories Regulation (CSDR). ESMA stresses that firms willing to use DLT should be mindful of the existing regulatory framework.

ESMA analysed the potential benefits of DLT such as higher security, greater efficiency in clearing and settlement and reduced costs. It also a number of legal and technical challenges that would need to be overcome before DLT could be applied widely to securities markets. Some of these challenges are related to the technology itself such as the scalability of the technology and the interoperability with existing systems. Other challenges are mainly related to the governance framework, privacy and regulatory issues.

The consultation helped ESMA to assess the opportunities and challenges posed by DLT from a regulatory standpoint and form an opinion on whether a specific regulatory response to the use of this technology in securities markets is needed. ESMA

32 ESMA/2016/773 The Distributed Ledger Technology Applied to Securities Markets

acknowledged that the technology is still in its early days with no operating system using the DLT on large scale in securities markets yet. Therefore, the possible impact a broader use of DLT would have on the functioning of securities markets, market participants and infrastructures would need further assessment.

Assessing developments within the crowdfunding sector

ESMA continues to monitor and assess developments and risks that investment based crowdfunding may introduce. ESMA provides NCAs with a forum to discuss the challenges of authorising and supervising investment-based crowdfunding. It will continue to monitor developments in the sector and share results and feedback with the crowdfunding supervisory forum, and as appropriate with European Institutions.

Monitoring retail investor trends

ESMA works to identify and analyse changes in retail investor behaviour and potential investor protection risks to retail investors. In part, ESMA does this through gathering data on retail investor behaviour directly from Member States, and in part from statistical sources. Among these sources were surveys completed by Member States, commercially available analytical data, and meetings with retail investor representatives. The results of the analysis are included in ESMA's Trends, Risks and Vulnerabilities.

2.3 Promoting supervisory convergence

ESMA is required, under its Regulation, to foster supervisory convergence in order to improve the functioning of the internal market, including a sound, effective and consistent supervision. The Regulation specifies a number of tools ESMA can use to achieve this aim, and enables it to devise additional tools where necessary.

Supervision by the NCAs, together with supervisory convergence guidance by ESMA, is important to ensure that investor protection, orderly markets and financial stability are achieved in practice. Supervisory convergence contributes to ensuring that the EU Internal Market works effectively, by creating a level playing field and preventing regulatory arbitrage or a race to the bottom. In this context, ESMA's convergence work is also an important pillar for further developing the CMU.

Supervisory convergence does not mean that ESMA aims to converge to a one-size fits-all approach, however it does mean that it will promote the consistent and effective implementation and application of the same rules and the use of supervisory approaches leading to similar outcomes, including enforcement, for similar risks.

Key deliveries and successes

ESMA publishes first Supervisory Convergence Work Programme

In 2016 ESMA published its first Supervisory Convergence Work Programme (SCWP)[33], a new departure for the organisation, which provided an overview and explanation of the steps ESMA intended take to promote sound, efficient and consistent supervision in the EU. It set out its priority areas, the identification process and puts them into context with the wider work programme and environment.

ESMA's core priority areas in relation to supervisory convergence for 2016 were:

- Preparing for the sound, efficient and consistent implementation and supervision of MiFID 2/MiFIR. This was a high priority for 2016 due to the significant impact it will have on investors, market participants, regulators as well as the orderliness of markets and because of the need to promote ex ante sound and consistent application and supervision;
- Finalising the IT infrastructure needed to support the effective implementation and supervision of MiFID 2/MiFIR and MAR;
- Facilitating the sound and consistent supervision of OTC derivatives markets and in particular of EU CCPs: and
- Supporting the effective development of the Capital Markets Union through directly relevant supervisory convergence work.
- the planned thematic study on home and host responsibilities under UCITS and AIFMD with a view to clarifying the respective responsibilities of the NCAs and enabling smooth operation of the passports for marketing and management; and
- promote increased convergence in relation to prospectuses.

Closet indexing investigation promotes investor protection

In 2015 ESMA's attention was drawn to an alleged practice in the European fund industry that raised concerns from an investor protection perspective. The practice involves asset managers claiming, according to their fund rules and investor information documentation, to manage their funds in an active manner while the funds are, in fact, staying very close to a benchmark and therefore implementing an investment strategy which requires less input from the investment manager. At the same time, these funds charge management fees in line with those of funds that are considered to be actively managed. This practice is commonly referred to as 'closet indexing' or 'index hugging'.

In many EU Member States, NCAs had launched or were in the process of launching specific investigations, in addition to their regular monitoring and supervisory functions, to determine the potential extent of closet indexing in their jurisdictions. The issue had also been the subject of considerable attention by investor protection groups and the media throughout the EU.

The issues around *closet indexing* form part of a broader debate on the effectiveness of investor disclosure and the legitimate expectations of investors in respect of the service provided by some asset managers. Nonetheless, ESMA took the view that the potential practice of closet indexing in Europe raised questions that merited closer analysis due to the potential concerns for investor protection that such activity would generate.

The analysis carried out by ESMA (see below for further details) indicated that there might be a small, but not insignificant number of funds in the EU equity fund sector that may be closet index trackers. ESMA took the view that, if the existence of this practice were to be confirmed by further supervisory scrutiny carried out at national level, this could mean that:

i. investors could be making investment decisions based on an expectation that they will be provided with a more active fund management service than they receive in practice and, therefore, may be paying higher management fees than that usually envisaged for a passive/not significantly active management service;

ii. investors may be exposed to a different risk/return profile than they expect; and

iii. some asset managers may not provide clear descriptions of how funds are managed in key disclosure documents such as the fund's Prospectus and Key Investor Information Document (KIID).

33 ESMA42-397158525-448 Supervisory Convergence Work Programme 2017

In February 2016 ESMA published a statement[34] (ESMA/2016/165) setting out the results of its analysis and its views on the issue. The statement made clear that ESMA considers it important that fund managers take their commitments in disclosure documents seriously and that fund managers should expect supervisory consequences where evidence for incorrect disclosures is proven. This is particularly relevant in the case of UCITS funds as they can be sold to retail investors throughout the EU via the passporting mechanism. UCITS have a reputation internally as diversified products that are subject to stringent safeguards.

ESMA investigation triggers work at national level

ESMA's statement was an important step in bringing the issue of closet indexing to the attention of stakeholders across the EU. It also provided a basis for NCAs to look into the matter further in their jurisdictions. This was a natural next step given that a definitive assessment of whether a fund is being managed in a genuinely active manner can only be done through targeted supervisory work.

Protecting EU consumers from speculative financial products

ESMA has carried out extensive work in the area of CFD or binary options. ESMA's recent focus has been on promoting common supervisory approaches and practices across Europe in relation to the provision of CFDs, binary options and other speculative products to retail clients, as this is an area in which many competent authorities have serious concerns about the protection of investors and where there is a considerable degree of cross-border activity

Throughout 2016, ESMA published questions and answers (Q&As) on the provision of CFDs and other speculative products to retail clients. The purpose of these Q&As is to enhance supervisory convergence in the application of MiFID I and its implementing measures on key topics that are relevant when such speculative products are sold to retail investors. The Q&As specifically referred to issues concerning systems, platforms and software used by such firms in providing services to clients.

Since mid-2015, ESMA has been coordinating the activities of a group comprising a number of host National Competent Authorities (NCAs) and the Cyprus Securities and Exchange Commission (CySEC), in its capacity as home NCA. The work of this group has focused on issues arising in relation to a number of Cyprus-based investment firms offering CFDs, binary options and other speculative products that are operating throughout Europe on a cross-border basis.

34 ESMA/2016/165 Statement Supervisory work on potential closet index tracking

The group has therefore been operating as a forum for mutual cooperation between the members. In the context of its supervisory action plan, CySEC has so far imposed administrative fines or reached settlement agreements with a number of investment firms that are active in this sector of the market. CySEC has also issued a number of regulatory circulars to all Cyprus investment firms addressing some of the issues it has identified. CySEC's supervisory and regulatory work is ongoing. CySEC's actions include fines on, or settlement agreements with, eight firms - Depaho, Reliantco, IronFX Global, WGM Services, Pegase Capital, Rodeler, Banc de Binary and Ouroboros Derivatives Trading - totalling EUR 2,072,000. It has also suspended the license of Pegase Capital. CySEC's work is ongoing in this area.

Since sid-2016, ESMA has collected information from NCAs to assess the impact of the measure adopted by CySEC on detriment of these firms' clients across the EU and should be able to conclude its monitoring in 2017.

On the policy and consumer side, ESMA has adopted a number of Q&As to clarify how existing requirements should be implemented – authorisation, conflicts of interest, marketing, assessment of appropriateness – and has published a warning to raise investors' attention on the risks of these products.

ESMA is determined to ensure that retail investors receive the same level of protection independent of the location of the firm providing the services. This is an essential condition for safeguarding the free movement of services in the EU.

First pan-European exercise to assess CCPs resilience and risk

EU-wide CCP Stress tests

ESMA published in April 2016 the results of its first EU-wide stress test exercise on CCPs[35]. The report showed that EU CCPs were overall well equipped to face the counterparty risk associated with the considered stress scenarios.

The exercise is aimed at assessing the resilience and safety of the European CCP sector as well as to identify possible vulnerabilities. The results of the test shows that the system of EU CCPs can overall be assessed as resilient to the stress scenarios used to model extreme but plausible market developments – ESMA's stress test solely focused on the counterparty credit risk which CCPs would face as a result of multiple clearing member (CM) defaults and simultaneous market price shocks.

ESMA also issued recommendations addressed to the NCAs of CCPs that aimed to ensure on-going resilience. In the second half of the year, ESMA developed and finalised the design of the methodological framework for the second EU-wide CCP stress test exercise which will be conducted in 2017. Specifically, ESMA refined the methodology with number of key changes, notably with the addition of liquidity stress test and a few changes to strengthen the validation process in order to increase the data quality assurance.

2016 Stress Test Exercise – how it was conducted

ESMA tested the resilience of 17 European CCPs. These CCPs held over €150bn worth of default resources with more than 900 CMs Union-wide. ESMA tested CCPs resources using combinations of CM default and market stress scenarios. The results show that CCPs' resources were sufficient to cover losses resulting from the default of the top-2 EU-wide CM groups combined with historical and hypothetical market stress scenarios. However, under more severe stress scenarios, CCPs faced small amounts of total (i.e. across all CCPs) residual uncovered losses varying from 0.1bn up to 4bn Euros. This was especially the case for scenarios assuming the default of the top-2 CMs per CCP due to assumed CM defaults across CCPs. That is a scenario where a CM defaulting in one CCP would also be considered to be in default in all CCPs, in which it is a member, leading to more than 25 CM defaulting EU-wide.

Clearing member default scenarios

ESMA's stress test exposed CCPs to three different CM default scenarios, which include:

- *scenario A*: the default of the two CMs with the largest exposures per CCP taking into account the common membership across CCPs;
- *scenario B*: the default of the two groups of CMs EU-wide with the largest aggregate exposures to EU CCPs; and
- *scenario C*: the default of the two groups of CMs EU-wide with the largest aggregate exposures to EU CCPs also weighted by their probability of default.

35 ESMA/2016/658 EU-wide CCP Stress test 2015

Market price shock scenarios

Given CM default scenarios alone are in principle not deemed to endanger the resilience of CCPs, extreme market price shocks were also applied to CCPs. These consist of historical and hypothetical scenarios that were subject to defined minimum price shocks and modelled stress scenarios. ESMA's stress tests also considered the historical and hypothetical scenarios CCPs use on a daily basis to manage their resources – when needed, these scenarios were amended to meet a defined set of minimum shocks covering 36 market risk factors across five asset classes – interest rate, commodity, equity, FX and credit.

Knock-on and reverse stress analysis

The overall exercise was complemented by an inter-dependency analysis of CCPs through their common CMs, including also an assessment of the concentration of CCPs' exposures and the potential spill-over effects to non-defaulting CMs, triggered by the loss absorption mechanism of CCPs. In addition, a set of reverse stress scenarios was included which further increase the number of defaulting entities in order to look for extreme but plausible stress scenarios that would significantly impact the resilience of EU CCPs. These reverse stress scenarios have not revealed any plausible scenarios with systemic impact.

ESMA recommendations

Although EU CCPs overall seem well equipped to face severe scenarios, ESMA has included recommendations addressed to the NCAs of CCPs. These cover:

- assessment of the creditworthiness of CMs – a significant part of CCPs collateral are pooled resources of non-defaulting CMs. In extreme cases, these CM could face significant losses which in turn could trigger the default of further CMs and additional losses at CCP level. Therefore, ESMA recommends that CCPs incorporate in their creditworthiness assessment of CMs, the potential exposures these may face due to their membership in other CCPs. Such analysis is essential in order to identify sources of increased exposure; and
- methodologies for price shocks – in the course of data analysis provided by CCPs, ESMA has also identified that in a number of cases the stress price shocks applied by CCPs for some of their cleared products as part of their own stress testing framework are not as conservative as the *minimum shocks* defined for this exercise or do not replicate the most extreme historic price changes observed. In order to ensure the on-going resilience of CCPs, ESMA recommends NCAs ensure that CCPs revise their price shocks used in their stress test methodologies where gaps have been identified in the course of the exercise.

European Common enforcement priorities in financial reporting

As in previous years, ESMA, together with European enforcers, identified and will include in their supervisory practices a set of common enforcement priorities significant for European issuers when preparing their 2016 IFRS financial statements. The 2016 priorities focused on (1) the presentation of financial performance, (2) the distinction between equity instruments and financial liabilities and (3) disclosures of the impact of the new standards issued by the IASB, but not yet mandatorily applicable (IFRS 9 Financial Instruments, IFRS 15 Revenue from Contracts with Customers and IFRS 16 Leases). In the public statement[36], ESMA and European enforcers also urge issuers to provide disclosures on their exposure to risks arising from the UK's referendum to leave the EU and its expected impacts and how management handles and plans to mitigate those risks.

In 2016, ESMA and European enforcers evaluated a sample of 206 issuers the level of compliance with IFRS in areas identified as common enforcement priorities for the 2015 annual financial statements. This assessment resulted[37] in 45 enforcement actions being taken related to the two enforcement priorities assessed, namely (1) the impact of the financial market conditions on the financial statements and (2) the statement of cash flows and related disclosures.

Establishing European common enforcement priorities and making public the results of their supervision are considered to be effective tools in terms of fostering dialogue between issuers, auditors and regulators with a common goal of building upon increased consistency in the application of the IFRS.

36 ESMA/2016/1528 Public statement on European common enforcement priorities for 2016 financial statements

37 ESMA32-51-382 Enforcement and Regulatory Activities of Accounting Enforcers in 2016

2.3.1 Guidelines, Opinions, Q&As and other convergence tools

Objective for 2016	Help consistent implementation between supervisors by delivering between 12 and 17 guidelines and recommendations on MAR, MiFID, EMIR, UCITS V, EuSEF and Transparency Directive by the end of 2016, as well as updating Q&As.

ESMA carries out its convergence work by issuing guidelines and recommendations in areas where difference of application exist, providing Q&A's to accompany the implementation of legislation and facilitating the exchange of experience between NCAs. Additionally, ESMA assists with the coordination of supervisory activity, the development of effective supervisory approaches, the assessment of supervision by NCAs through peer reviews, and the identification of barriers to convergent supervision.

Credit Rating Agency Policy

Objective for 2016	Continue the development of the CRA single rulebook by delivering two guidelines and begin the preparation of up to five Regulatory Technical Standards related to securitisation.

In 2016, Credit Rating Agency (CRA) Policy development, in support of CRA supervision, included producing guidance on the validation of methodologies, Q&As resulting from ongoing supervisory work and, as part of the Joint Committee of the ESAs, guidelines on reducing reliance on ratings[38] – which is reported on in the Joint Committee section.

Guidelines on the validation and review of CRAs' methodologies

ESMA, during its investigation into the validation and review of CRA's methodologies in 2015, identified the need to set standards for the use of quantitative and qualitative techniques within the CRA industry, especially where there is limited quantitative evidence available. ESMA, in order to address this issue, decided to publish a set of Guidelines on the validation and review of CRAs' methodologies on 15 November 2016[39].

Raising standards on validation and improving the quality of credit ratings

The purpose of these Guidelines is to clarify how CRAs should validate and review their methodologies, and contributes to ESMA's objective of improving the quality of credit ratings for the protection of investors and financial stability. The Guidelines are intended to raise the overall standard of validation by CRAs while allowing sufficient flexibility for the CRAs to choose the approaches that are the most relevant to their business, size and activity areas.

The focus of the Guidelines is on quantitative measures as ESMA identified that the industry requires more clarity in this area. However, ESMA believes that good quality validation of methodologies should strike a balance between the application of quantitative and qualitative techniques. While stressing the importance of objectivity, which quantitative analysis brings to the process, validation should include both techniques.

In the Guidelines, ESMA also acknowledges there are challenges in validating methodologies with limited quantitative evidence and in such cases requires CRAs to consider data enhancement techniques as well as techniques enabling them to perform quantitative measures for demonstrating the discriminatory power of their methodologies. ESMA expects that even in cases where there is limited quantitative evidence, CRAs should demonstrate the robustness of their methodologies.

38 Reported on under the Joint Committee section of this report at p.

39 ESMA/2016/1575 Guidelines on the validation and review of Credit Rating Agencies' methodologies

MiFID II Implementation for secondary markets

MiFID II Q&As

In Secondary Markets, ESMA has started to issue guidance for MiFID II to promote convergence in the application of the rules across the EU in particular in the form of Q&As. Following the receipt of a significant number of questions from stakeholders, ESMA has notably issued guidance on transparency, market structure issues and commodity derivatives issues providing market participants with clarifications necessary for the timely implementation and application of essential provisions of MiFID II.

MiFID II Guidelines

ESMA also progressed with MiFID II Guidelines with consultation papers for the calibration, publication and reporting of trading halts as well as for the management body of market operators and data reporting services providers. These guidelines are due to be completed and published in 2017 and represent another vital component ensuring timely application of MiFID II from 3 January 2018.

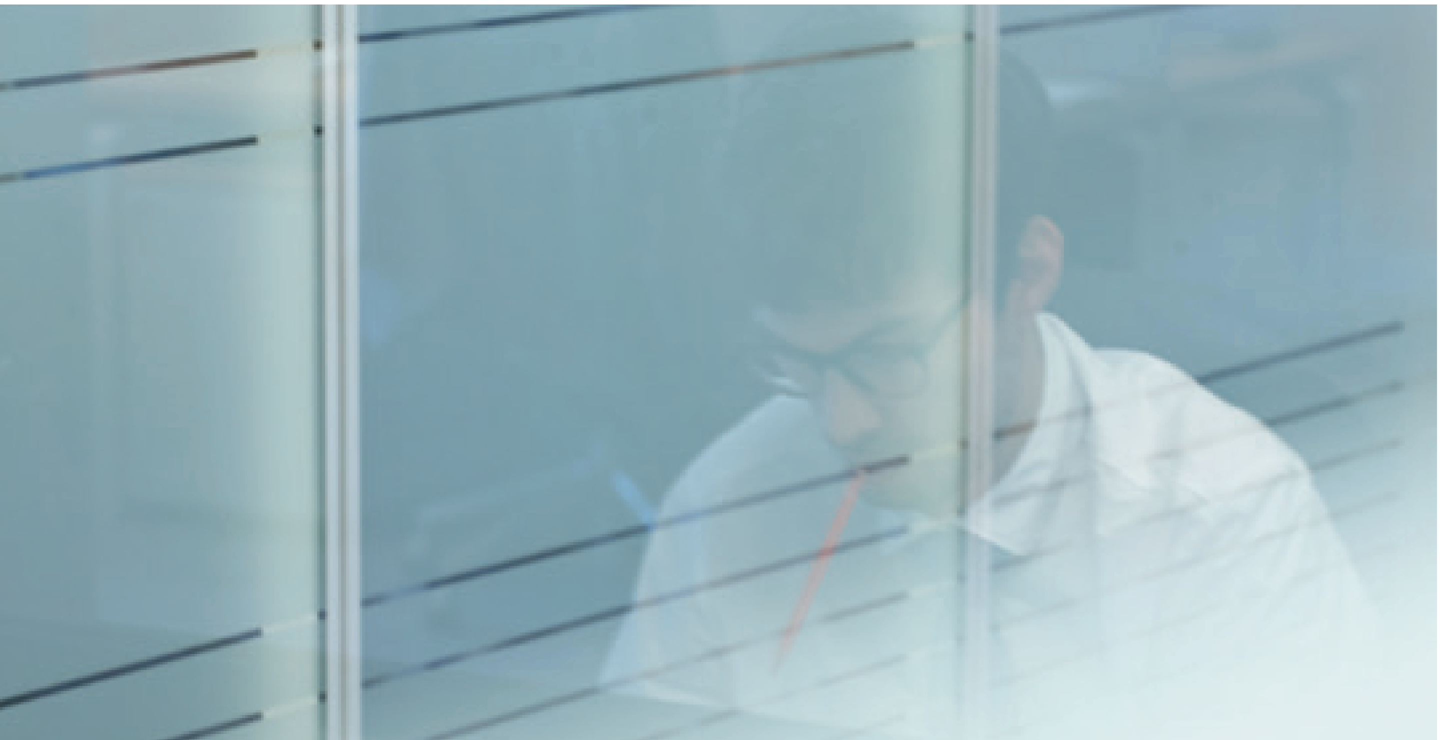
Ensuring MiFID II/MiFIR protects investors

In 2016, ESMA's MiFID II/MiFIR work has also focused on ensuring the framework is in place to ensure investors receive the enhanced protections envisaged under the new regime work, with much of this work being pursued through supervisory convergence.

ESMA has concentrated its efforts on supporting preparation for the sound, efficient and consistent implementation and supervision of MiFID II/MiFIR in areas where significant changes are envisaged relative to MiFID I. Key accomplishments and on-going work in this area include:

- Work on two sets of guidelines, on product governance and, jointly with the EBA, on the suitability of management bodies. These guidelines, to be completed by mid-2017, tackle two key aspects of the new regulatory framework: the identification of target market when manufacturing and distributing investment products and the need to strengthen the role and the profile of directors and key function holders within firms;
- Publication of numerous Questions and Answers (Q&As)[40] on various MiFID II topics, including: the new requirements for recording of telephone conversations/electronic communications; independent advice; inducements (research); best execution; suitability assessment; post-sale reporting; record keeping;
- Organisation of several *application workshops* and *training workshops* to promote the sharing of actual experience between ESMA and NCAs in relation to the practical application of the MIFID investor protection topics; and
- Preparatory work for the application of the new product intervention powers established under MiFIR.

40 ESMA page on Questions and Answers (Q&As), 11 May 2017



Applying and supervising MiFID I

ESMA continued to ensure that the existing MiFID framework still offered adequate protection to investors, particularly in relation to complex financial products or instruments, such as the cross-border marketing and sale of financial contracts for difference and similar products such as binary options and rolling spot forex and the sale of *bail-inable* instruments. These have been addressed through coordinated enforcement work, in the case of CFDs etc., and the publication of a Statement[41] on *bail-inable* products reminding banks and investment firms of their responsibility to act in their clients' interests when selling these instruments.

MAR implementation

The Market Abuse Regulation (MAR) entered into force in July 2016. In order to promote a consistent implementation and application of the new market abuse regime, ESMA finalised guidelines, published several Q&As and issued its first opinion on an Accepted Market practice (AMP).

MAR Guidelines and Q&As

ESMA publicly consulted on and finalised three sets of guidelines addressed to NCAs. These guidelines aim at clarifying the implementation of MAR in relation to persons receiving market soundings, delayed disclosure of inside information by issuers and one element of the definition of inside information for commodity derivatives. ESMA published several Q&A's to promote common supervisory approaches and practices in the application of MAR and its implementing measures on the prevention and detection of market abuse, the managers' transactions regime and how to handle investment recommendations.

First ESMA opinion on an AMP notified by the CNMV, the Spanish securities markets regulator[42]

MAR provides a protection from market manipulation where the transaction is legitimate and carried out in accordance with a market practice accepted by a competent authority. MAR describes the non-exhaustive factors that a competent authority should take into account before deciding whether to accept a market practice and requires ESMA to issue an opinion on the proposed AMP. The first ESMA opinion related to a market practice known as "liquidity contracts", which aims at increasing or maintaining the liquidity of a particular share, and was considered compatible with MAR and its technical standards.

Clearing and Settlement

ESMA has direct responsibility for participating in all colleges of EU CCPs and this significantly contributed to supervisory convergence in this area. For further details on ESMA activity on CCP colleges, please refer to section 2.3.5.

Supervisory convergence in settlement matters

In order to prepare for the launch of the CSD authorisation process in the course of 2017, ESMA has made important progress with the preparation of a number of CSDR guidelines and Q&As and on other projects in order to support the timely application of CSDR.

In respect of TARGET 2-Securities (T2S), the pan-European platform for securities settlement in central bank money, ESMA has also coordinated the NCAs supervising CSDs settling securities transactions on the platform, in cooperation with the Eurosystem.

Compliance with Guidelines by NCAs in 2016

ESMA has to take stock of the guidelines that have been issued in the year indicating which NCA has not complied with them. In 2016, ESMA has published eight guidelines.

In 2015, ESMA started publishing different tables showing the level of NCAs' compliance with different ESMA guidelines. These lists are an important tool to show the level of convergence achieved and flag areas for further improvements. These are on ESMA's website under National Implementation of Guidelines. ESMA continues to ensure that, when it issues a set of Guidelines, the NCAs to whom Guidelines apply declare their willingness and intention to comply with them and to show to ESMA how those Guidelines are incorporated into the law, regulation, or supervisory practices of the relevant member states. ESMA publishes tables of compliance declarations for each set of Guidelines on its website. The time period for declarations to be submitted begins following the publication of the Guidelines in all of the official languages of the EU. In 2016, ESMA published 10 compliance tables for different Guidelines[43].

41 ESMA/2016/902 Statement on MiFID practices for firms selling financial instruments subject to the BRRD resolution regime

42 ESMA/2016/1663 Opinion on Intended Accepted Market Practice on liquidity contracts

43 ESMA Guidelines

2.3.2 Peer reviews, BUL and mediation

Objective for 2016	Foster consistent supervisory practices across the EU by leading peer reviews between National Competent Authorities.

In order to foster consistent supervisory practices, ESMA conducts an ongoing peer review programme on the application of existing EU legislation in the field of securities regulation. The findings of these reviews are used to promote convergence in supervisory practices across NCAs. ESMA's approach is to follow targeted reviews backed by on-site visits rather than all-encompassing reviews of the 31 countries that are members of the BoS. Each year's peer review programme is determined in the context of the overall supervisory convergence work programme so as to ensure coherence with the use of other tools. A follow-up of previous peer reviews is also included.

ESMA aims to use its powers to investigate and remedy cases of breach of Union law and to settle disagreements between Competent Authorities in cross-border situations. ESMA also has binding mediation powers in the event of disputes between NCAs, and non-binding mediation in order to promote a co-ordinated EU response.

Peer Reviews

In 2016 three peer reviews were completed: one on the approval of prospectus[44] (June 2016), one on the application of the suitability rules under MiFID[45] (April 2016) and a third on CCP supervision, which is further detailed in section 2.3.5. In addition, ESMA's Chair sent a number of follow-up letters to NCAs where deficiencies had been identified in two previous peer reviews relating to MiFID requirements, namely on best execution and on fair, clear and not misleading information to clients. Based on responses received, a report has been published for the follow-up work on best execution[46]. Work is due to be completed in 2017 as regards the second follow-up workstream.

Prospectus approval process peer review

This peer review aimed at assessing the efficiency and effectiveness of NCAs' approval of Prospectuses, the disclosure documents prepared by issuers when they want to market their securities to EU investors. The Prospectus Directive applies when securities are offered to the public or admitted to trading on a European Economic Area (EEA) regulated market (exchange).

Overall, ESMA found that, while national regulators were in general sufficiently resourced, despite the seasonal nature of prospectuses, and approved prospectuses within legal deadlines, there were differences in national practices which would benefit from greater convergence.

ESMA has assessed how the EU's single rulebook on prospectuses is applied in practice by national regulators as part of our supervisory convergence work. National regulators have different interpretations of certain disclosure requirements and prospectuses are often too complex and may therefore be difficult for investors to understand, according to external stakeholders interviewed by ESMA during onsite visits.

The findings of this peer review will feed into ESMA's supervisory convergence work which is one of its main priorities for 2016-2020. ESMA intends to take a closer look, among other things, at the intelligibility of prospectuses, the disclosure of risk factors and the interpretation of certain requirements.

44 ESMA/2016/1055 Peer Review Report on Prospectus approval process

45 ESMA/2016/584 MiFID Suitability Requirements Peer Review Report

46 ESMA42-1643088512-2962 Follow-up Report to the Peer Review on Best Execution

MiFID suitability requirements

Compliance with the MiFID suitability requirements is a key component of the overall MiFID investor protection framework. These requirements are designed to ensure that firms only recommend suitable investment products, based on the investor's profile. NCAs are therefore required to monitor compliance by firms in this important area of the MiFID conduct of business rules and should allocate their supervisory resource and tools accordingly. ESMA found room for improvement in national supervision of investment advice to retail clients.

Overall, ESMA found that while most national regulators have a good understanding of the investment advice market in their jurisdictions and regularly review the distribution methods and business models of investment firms, there is scope to adopt more proactive supervisory approaches and strengthen enforcement activities.

These suitability requirements are a key part of Europe's investor protection framework and ESMA expects NCAs to be vigilant in ensuring firms comply with these important requirements.

The findings of this peer review will help ESMA identify those areas where there is a need for further supervisory convergence among regulators. It is therefore of the utmost importance to monitor follow-up actions taken by NCAs to address the findings of any peer review and to also share the practices employed to address those findings.

Peer reviews and follow-up

Peer reviews are an effective tool in assessing the degree of existing supervisory convergence and setting out where future necessary convergence should occur. However, convergence can only be achieved if the outcomes of a peer review are assessed and where necessary remedial actions are taken and implemented into national supervisory practices. Therefore it is important to monitor NCAs follow-up actions on peer reviews.

MiFID Best Execution peer review follow up

In the run-up to the entry into application of MiFID2-MiFIR, a check on progress made by NCAs in following recommendations of the peer review on MiFID Best Execution was undertaken. Best execution refers to the obligation under article 21 of MiFID for investment firms to execute orders on terms most favourable to their clients as an investor protection measure.

This report[47] follows up an earlier peer review already published in February 2015, focusing on 15 NCAs that were insufficiently or only partly compliant with the guidelines. The level of implementation of best execution provisions, as well as the level of convergence in the general supervisory practices by NCAs, was relatively low.

In general, the follow-up report concluded that overall there was a high degree of compliance amongst NCAs with the good practices identified in key areas. However, a variety of approaches was observed, leading to different intensity of supervision.

Mediation

In 2016, ESMA conducted its first successful mediation in accordance with Article 19 of the ESMA Regulation and the Rules of Procedure of the Mediation Panel[48] (ESMA/2012/BS/86) in relation to the settlement of a disagreement between two NCAs. The dispute concerned an interpretation of the UCITS Directive[49] (Directive 2009/65/EC).

Less than one month after receiving the formal request for binding mediation, the Mediation Panel convened a joint meeting with the two NCAs concerned. Thanks to the goodwill shown by the NCAs concerned, a settlement agreement was signed on the day of the meeting, resulting in conciliation between the parties involved.

Regulatory convergence & complaints handling

Ensuring compliance with Union law is one of the essential conditions for effective convergence in practices across the EU. In this respect, during 2016 ESMA has processed several complaints relating to possible Breaches of Union Law under Article 17 of the ESMA Regulation. These complaints lead to a number of requests for information by ESMA from different NCAs. The matters investigated covered topics including: the charging of fees by host NCAs for funds passporting under the EuVeCA and EuSEF Regulations; the application of MiFID to contracts for

47 ESMA42-1643088512-2962 Follow-up Report to the Peer Review on Best Execution

48 ESMA/2012/BS/86 Decision of the Board of Supervisors on Rules of procedure of the Mediation Panel

49 Directive 2009/65/EC UCITS Directive difference (CFDs); the conditions for exempting firms from investor compensation schemes; and compliance with the ESMA Guidelines on sound remuneration policies in the investment management area etc.

Thanks to the prompt corrective by NCAs involved, all cases have been resolved. In a few instances, legislative changes at national level are still pending, and this is being monitored by ESMA.

2.3.3 Supervisory and international co-operation

Objective for 2016	Enhance ESMA's constructive working relationship with its stakeholders and international partners.

European Supervisory Authorities (ESAs)

ESMA works with the other ESAs, typically within the Joint Committee of the ESAs, to ensure an efficient exchange of information and a consistent approach to cross-sectoral topics. The Joint Committee produces an annual work programme[50], which for 2016 included three key areas of work: Consumer Protection, Cross-sectoral Risk Assessment and other Regulatory Work.

In the area of consumer protection, the Joint Committee submitted draft RTS on the format and content of the Key Information Document under the PRIIPs Regulation. It prepared to facilitate the consistent implementation of the new disclosure requirements ahead of the PRIIPs Regulation application date at the end of 2016. With the delay in implementation until 1 January 2018, this will continue to be a feature of our work in 2017. The Joint Committee also spent considerable resources in developing guidelines, RTS and an opinion on anti-money laundering/countering the financing of terrorism[51]. It also produced guidelines on supplementary supervision in the area of financial conglomerates and assessed the compliance of the different initial margin models to the requirements of the draft RTS on EMIR and the BCBS-IOSCO framework as well as continuing to monitor developments regarding the securitisation market in the EU. Additionally the Joint Consumer Protection Day was hosted by ESMA in Paris in October 2016.

European Union institutions

ESMA maintains an open dialogue with and, is accountable to the EU institutions – Council, Parliament and Commission – including attending regular scrutiny hearings at the Economic and Monetary Policy Committee (ECON). It maintained its input to EU regulatory dialogues with third countries, playing a central role in assessing the equivalence of third-country supervisory regimes, as seen in the work on the AIFMD passport, and provided technical advice on various issues to the Commission and opinions to the institutions on a range of topics within its area of competence. ESMA has also worked on building its cooperation with the Single Supervisory Mechanism (SSM) and the European Central Bank in areas of mutual interest such as market infrastructures and financial stability.

International organisations

A key element in ESMA's work continues to be its membership of, and cooperation with, international organisations, such as the International Organization of Securities Commissions (IOSCO) – where it plays an active role in IOSCO's Committee on Credit Rating Agencies (Committee 6), which is currently working on ancillary services/non-ratings products provided by CRAs – and the Financial Stability Board (FSB). ESMA is currently engaged with both the FSB and IOSCO on their benchmarks work. ESMA's work with third-country supervisory authorities on CRAs and TRs regulatory and supervisory issues, and on co-operation concerning provision of services by third-country investment firms, is an essential element in its supervision and financial stability work.

50 JC 2015 055 2016 Work Programme of the Joint Committee of the ESAs

51 JC/2017/07 Joint Opinion on the risks of money laundering and terrorist financing affecting the Union's financial sector

2.3.4 EU IT projects

Objective for 2016	Deliver quality IT systems that allow ESMA to respond to its legal requirements as efficiently as possible.

IT Programmes supporting ESMA's supervisory work

In 2016, ESMA worked on the following four programmes and two delegated projects, in addition to maintaining more than 20 IT systems, as part of its Multi-Annual IT Work Programme 2016-2018. The four programmes and two delegated projects are:

- **Supervision Programme** – aims to develop IT systems to support the supervision of Credit Rating Agencies (CRAs) and investor protection, through the collection and publication of large data sets. In 2016, the focus was on finalising the development of a system called the European Rating Platform (ERP), which publishes data on the individual ratings[52] of all CRAs under ESMA's supervision. A related database on CRA fees was also delivered.
- **Markets Programme** - contains the projects related to MiFIR/MiFID II, MAR, EMIR and SFTR (Securities Financing Transactions Regulation) and has two main objectives:
  – Support the development of new regulatory technical standards in these areas, especially in terms of harmonisation of data exchange, and
  – Develop IT systems to organise reporting of data from the trading venues to NCAs on financial instruments, commodity derivatives position reporting and position limits. Several of these data sets will be published on the ESMA website once MiFIR/MiFID II enters into force.
- **Transparency Programme** - this work related to the revision of the Transparency Directive, which involved ESMA working on the development of the network of Officially Appointed Mechanisms (OAMs) and the definition of a common format to report financial statements in the EU. The programme also includes the support for investor protection, information collection and publication, required under other regulations such as MiFIR/ MiFID II, UCITS, ELTIF and Prospectus Directive.

In 2016 the main initiatives completed were the updates of the current Registers of Authorised and Registered Entities and Sanctions.

- **ESMA Corporate Programme –** included working on initiatives aimed at building ESMA's internal IT capacity in support of administrative and data management processes. This included the introduction of a Document Management System in 2016.
- **IT Delegated Projects**: these are projects related to tasks delegated by NCAs to ESMA – particularly in the field of MiFIR/MiFID II and MAR. The IT Delegated Projects Programme had marked 2015 as being a major strategic turning point: for the first time in ESMA's history, 28 NCAs delegated two important IT projects to ESMA – the MiFIR Financial Instruments Reference Data System (FIRDS) and a portal for access to Trade Repositories data (TRACE).
  – the Financial Instruments Reference Data (FIRDS), a project where ESMA will collect data, from trading venues and/or NCAs, which will be stored, processed and published by ESMA. This project will also include performing transparency calculations and the management of suspensions from trading; and
  – the Access to Trade Repositories Data (TRACE), a project to set up a logical portal, i.e. a single point of access for querying and retrieving data from Trade Repositories without storing the data.

52 ESMA European Rating Platform on 18 May 2017

2.3.5 EMIR convergence reports and Central Counterparty colleges

Objective for 2016	Monitor the implementation of EMIR via delivering an annual report, two peer reviews and a stress test on CCPs.

ESMA has the direct responsibility to participate in all colleges of EU CCPs. As a member of the colleges of CCPs established in the EU, ESMA fulfils a co-ordination role between competent authorities and across colleges in order to facilitate the consistent and correct application of EMIR, with a view to building a common supervisory culture and consistent supervisory practices, ensuring uniform procedures and consistent approaches, and strengthening consistency in supervisory outcomes. ESMA also takes an active role in the review and validation of the CCP risk models. Key priorities in 2016 were the common issues identified in CCP colleges, as well as the related opinions, Q&A's, common procedures, and guidelines and recommendations. For instance, ESMA issued an opinion defining a common supervisory approach for supervisors dealing with CCPs wishing to extend their existing authorisation or change their risk models under EMIR, they will need to follow some commonly agreed indicators to identify when a change is significant and seek the CCP college's opinion.

Peer Review of CCPs under EMIR

ESMA conducted a peer review[53] into how NCAs ensure that central counterparties (CCPs) comply with margin and collateral requirements under the European Markets Infrastructure Regulation (EMIR)[54]. The report identified a number of areas where supervisory approaches differ between NCAs and includes recommendations to improve consistency in supervisory practices. ESMA compared the supervisory approaches of the 12 NCAs supervising the 17 CCPs established in the EU at the time of the launch of the review, on 1 September 2015. The review focused on margin and collateral requirements but also identified areas for improvement regarding risk model validation and regular reviews under on-going supervision.

ESMA identified certain areas where divergences emerged in NCAs' supervisory approaches, these included supervision – with differences in both the frequency and depth of supervision of similar sized CCPs – margin requirements - where there were differing supervisory approaches regarding the frequency and proactivity of NCAs' assessments and reviews.

The Report also identified the following areas for improvement in order to enhance supervisory convergence:

- identifying new services requiring an extension of the CCP's authorisation;
- determining significant changes to CCPs' risk models;
- coordination of the focus of NCAs' supervisory activities; and
- further converge NCAs' supervisory approaches towards portfolio margining.

ESMA's review also identified a number of good practices, including having direct access to supervised CCPs data and requesting the CCPs to verify the marketability of collateral and reliability of prices.

2.3.6 Transparency and Prospectus

Objective for 2016	Contribute to improving Corporate Governance by evaluating the Prospectus and Transparency regimes, producing a review of the best practice principles of the proxy industry and an insight into disclosure of directors' remuneration.

During 2016, ESMA has been undertaking preparatory work as regards mandates it expects to receive as part of the revision of the prospectus regime. In particular, ESMA has been evaluating existing prospectus disclosure requirements to determine their fitness for purpose and suitability for inclusion in level 2 measures to be adopted by the Commission under the new Prospectus Regulation. ESMA has also undertaken significant work in terms of designing a bespoke prospectus disclosure regime for SMEs in order to facilitate smaller companies accessing the capital markets in a cost competitive way.

In terms of supervisory convergence, ESMA has produced a supervisory briefing on the scrutiny of financial information in prospectuses, which should assist NCAs in their scrutiny duties. A more harmonised approach to scrutiny should emerge from this, leading to increased certainty for market participants while minimising scope for regulatory arbitrage. ESMA also completed a thematic study in the area of notification of major shareholdings and a peer review on prospectus scrutiny. The follow up to both these significant pieces of work should also result in a more streamlined approach

53 ESMA/2016/1683 Peer Review on CCPs' Margin and Collateral requirements

54 Regulation (EU) No 648/2012 European Markets Infrastructure Regulation (EMIR)

to the relevant directives by NCAs and a further increase in the consistency of regulatory responses. A number of Q&A were also published in the prospectus area, providing clarity to market participants on issues such as advertisements and alternative performance measures.

ESMA finalised a review on the Best Practice Principles developed by the proxy industry. It will continue to monitor the outcome of the revision of the Shareholder Rights Directive in order to provide input concerning corporate governance issues whether in the form of outcomes of mapping exercises, technical advice or application of rules related to the securities markets.

2.3.7 Accounting and Auditing

Objective for 2016	Strengthen supervisory convergence in the accounting area and contribute to the successful implementation of the Audit Regulation

In 2016 ESMA contributed to supervisory convergence in the area of financial reporting by ensuring the implementation of the ESMA guidelines on enforcement of financial information, which apply to all NCAs as well as any other bodies in the EU undertaking enforcement responsibilities under the Transparency Directive[55]. ESMA continued to monitor the implementation of the guidelines and worked with the national enforcers on implementing certain aspects of the guidelines, including organising technical workshops, in-depth review of selected accounting topics, etc.

In 2016 ESMA reported to the market its quantitative and qualitative assessment based on the analysis of supervisory and enforcement data of a relevant sample of issuers for the International Financial Reporting Standards (IFRS) common enforcement priorities examined in 2015. While it also issued a statement on European common enforcement priorities highlighting topics significant for European issuers when preparing their 2016 year-end IFRS financial statements.

55 Directive 2004/109/EC Transparency Directive

European Enforcers Coordination Sessions

A key part of ESMA's convergence role in financial reporting in the area of supervision and enforcement of IFRS lies in analysing and discussing accounting matters faced by individual enforcers which are of relevance to other European enforcers either by their degree of complexity, significant importance to European regulated markets or because of having a widespread effect around EU. This work is performed by the European Enforcers Co-ordination Sessions (EECS), which continue to meet to promote consistent application of IFRS and to foster convergence of enforcement practices across the EU. In addition, ESMA will organise technical workshops, in-depth review of selected accounting topics, depending on needs etc. ESMA will also intensify its co-operation with the ECB on accounting matters relevant for financial institutions.

2.3.8 Cross-Sector Convergence: The Joint Committee of the ESAs

In 2016, the Joint Committee[56] continued to provide a forum for cross-sector coordination and exchange of information across the three ESAs. Under the chairmanship of EIOPA, the Joint Committee focused in particular on consumer protection and cross-sectoral risk assessments. In order to increase the visibility of the Joint Committee, a new website was set up with a dedicated domain name where deliverables about the Joint Committee are centrally published. To further promote the work of the Joint Committee and to celebrate its 5th anniversary a booklet ("Towards European Supervisory Convergence") was also published highlighting the Joint Committee's mission, its objectives and tasks, as well as its strategic outlook.

Consumer Protection and Financial Innovation

ESAs focus on consumer protection – PRIIPs milestone

In the area of consumer protection, the Joint Committee reached a significant milestone by

56 The Joint Committee website, 3 May 2017

submitting draft Regulatory Technical Standards (RTS) on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs), at the beginning of April, to the Commission for endorsement. The proposed KIDs provide retail investors, for the first time across the EU, with simple and comparable information on investment products in the banking, insurance and securities sectors. The three page document will increase the transparency and comparability of information about the risks, performance and costs of these products. The new rules contribute to enhance confidence and strengthen the protection of European consumers.

The Commission endorsed the draft RTS in June 2016. However, during the following scrutiny period, the European Parliament rejected them. In order to address the concerns expressed by the Parliament, the Commission set out its intention to amend the RTS. The ESAs discussed the proposed amendments to the draft RTS and presented a joint Opinion to the three Boards of Supervisors covering all amendments in the RTS. However, the three ESAs could not provide an agreed joint Opinion on the amended draft RTS to the Commission.

ESAs report on automation in financial advice

The Joint Committee finalised its work on the automation of financial advice which focuses on the characteristics of automated financial advice tools and potential benefits and risks associated with increasing automation of financial advice for consumers and financial institutions and published a comprehensive report in December 2016. As the proliferation of automated advice is still at an early stage, it is less likely, at present, for some of the risks to materialise in a way that creates widespread detriment to consumers or undermines the confidence of market participants. For these reasons, the ESAs have concluded not to develop additional joint cross-sectoral requirements specific to this particular innovation. However, this topic will continue to be monitored.

ESAs work on Big Data

In December, the Joint Committee launched a three month public consultation on the potential benefits and risks of Big Data to better understand what the Big Data phenomenon means for consumers, the financial industry and regulators, and to determine whether any further regulatory or supervisory actions may be needed. Big Data can bring a number of benefits to both financial firms and consumers. Better analytics mean firms can profile customers in order to personalise products and services, enhance their own internal processes and improve their fraud detection capabilities. At the same time, the ESAs also considered potential risks associated with Big Data, such as access issues for consumers being classified as undesirable due to firms' abilities to undertake more granular analyses.

4th Joint Consumer Protection Day

The ESAs held their 4th Joint Consumer Protection Day on 16 September which was hosted by ESMA in Paris with Olivier Guersent, DG FISMA's Director-General as keynote speaker. The event, which was livestreamed, attracted a wide range of consumer representatives, academics, legal and financial consultants, national supervisors, experts from the EU institutions and financial services industry.

Joint Risks and Vulnerabilities assessment

ESAs assessment of cross-sectoral risks

The Joint Committee produced two bi-annual cross-sectoral reports which identified key risks and vulnerabilities in the EU financial system. The reports were submitted at the Spring and Autumn 2016 meetings of the Economic and Financial Committee of the Council (EFC-FST), shared with the European Systemic Risk Board (ESRB) and subsequently published on the Joint Committee website. They provided an overview of the main cross-sectoral risks identified in the EU financial system and recommended policy actions to mitigate them. The main risks identified over the past year included the low growth and low yield environment and its potential effects on financial institutions' profitability and asset quality. Further concerns relate to the interconnectedness in the EU financial system. The EU financial system is also vulnerable to more immediate risks such as the result of the UK referendum on EU membership which has added political and legal uncertainties.

Anti-Money Laundering

ESAs work on anti-money laundering and counter-terrorist financing

The Joint Committee continued its work on anti-money laundering and counter-terrorist financing, focusing on the ESAs regulatory mandates under both the fourth Anti-Money Laundering Directive and the Anti-Money Laundering Regulation. In December, the Joint Committee published its final Guidelines on the characteristics of a risk based approach to anti-money laundering and terrorist financing supervision and the steps to be taken when conducting supervision on a risk-sensitive basis. They define the characteristics of a risk-based approach to anti-money laundering/countering the financing of terrorism (AML/CFT) supervision and set out what Competent Authorities should do to ensure that their allocation of supervisory resources is proportionate to the level of money laundering and terrorist financing risk associated with credit and financial institutions in their sector.

Financial Conglomerates

ESAs work on supervision of Financial Conglomerates

The Joint Committee published its updated annual list of identified Financial Conglomerates in December 2016 which shows 79 financial conglomerates with the head of the group in an EU/EEA country, one with the head of the group in Australia, one with the head of group in Bermuda, one with the head of the group in Switzerland, and two with the head of the group in the United States.

The Joint Committee also submitted its response to the Commission's public consultation on the evaluation of the Financial Conglomerates Directive in the context of the Commission Regulatory Fitness and Performance Programme. The Joint Committee believes that an appropriate supplementary supervision of financial conglomerates -most of them being large financial groups active in different financial sectors and often across borders – remains very important. The Joint Committee encourages the Commission to increase consistency between the sectoral rules and the supplementary conglomerates supervision.

Further cross-sectoral work to enhance supervisory convergence

ESAs work on acquisitions and increases of holdings in the financial sector

The Joint Committee finalised its work on the review of the joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors, which aimed to ensure a common, uniform and consistent application of the Directive on acquisitions and increase of holdings in the financial sector. The revised Guidelines,which were published in December, replace the previous Guidelines adopted in 2008. They provide further clarity on some key concepts, such as indirect holdings, persons acting in concert and decision to acquire. They ensure a consistent interpretation of time limits by clarifying when the competent authority should provide an acknowledgement of receipt of the notification regarding the acquisitions of a qualifying holding in a financial institution. The Guidelines further clarify certain matters relevant to the assessment of an acquisition, such as the financial soundness of the proposed acquirer and suspicions of money laundering or terrorist financing. The joint Guidelines shall be applicable as of 1 October 2017.

ESAs joint report on reducing reliance on credit ratings

In December 2016, the Joint Committee published its report on good supervisory practices for reducing sole and mechanistic reliance on credit ratings[57]. The report is directed at the nationally appointed Sectoral Competent Authorities (SCAs) for a wide range of financial institutions, such as credit institutions, investment firms, asset management companies and insurance undertakings. The report's purpose is to ensure cross-sectoral consistency in the implementation of elements of the CRA Regulation regarding overreliance on credit ratings. To achieve this, the report recommends a common framework of non-binding good supervisory practices for SCAs.

Board of Appeal of the ESAs

The ESAs continued to provide operational and secretarial support to the Board of Appeal. The Board of Appeal held its annual meeting in July at the EIOPA premises in Frankfurt and decided on one appeal case in January 2016. Furthermore, the majority of Board of Appeal Members were reappointed for a second term and the recruitment procedure for new members has been launched and will be finalised in 2017.

57 JC 2016 71 Good Supervisory Practices for Reducing Mechanistic Reliance on Credit Ratings

2.4 Direct supervision of specific financial entities

ESMA is the sole supervisor for credit rating agencies (CRAs) and trade repositories (TRs) – those data warehouses that collect, save and make available data on derivatives contracts– in the EU. It has been the sole supervisor of CRAs since 2011 and TRs since 2013. ESMA adopts a risk-based approach to the supervision of CRAs and TRs in accordance with its overall objectives of promoting financial stability and orderly markets and enhancing investor protection. This risk-based approach requires the analysis of information from a variety of sources and the application of multiple supervisory tools including thematic reviews, regular meetings with different functions of the supervised entities, on-site inspections and dedicated investigations.

2016 was the first full year of operations for ESMA's new supervision department, created following an internal reorganisation at the end of 2015 merging the teams overseeing CRAs and TRs. The benefits of this approach were evident in the performance of the department resulting in better sharing and consistency of experiences, processes and resources.

ESMA's has a number of supervisory tools available to it in carrying out its mission in this area, and is committed to using all of these tools, as appropriate, in addressing supervisory issues including, when necessary taking enforcement action. In 2016, ESMA had occasion to use this particular tool in relation to its supervision of both CRAs and TRs, in actions that resulted in entities being fined for breaches of relevant legislation.

Key successes and deliveries

ESMA fines Fitch €1.38 million – the largest ever fine for a CRA

ESMA fined[58] Fitch Ratings Limited (Fitch) €1.38 million, the highest fine levied to date, for a series of negligent breaches of the CRA Regulation. ESMA found certain senior analysts in Fitch transmitted information about upcoming rating actions on sovereign ratings to certain senior persons in a parent company of Fitch before it was made public.

Further, ESMA found that Fitch failed to have proper internal controls in place to ensure it provided a rated entity with the minimum time period to consider and respond to a rating action before making it public. Fitch failed to allow Slovenia 12 hours (the minimum required period at the time) to consider and respond to the downgrade of its sovereign rating in 2012, as required under the CRA Regulation.

First fine for a trade repository - €64,000

ESMA imposed its first fine[59] on a trade repository when it fined DTCC Derivatives Repository Limited (DDRL) €64,000, and issued a public notice, for negligently failing to put in place systems capable of providing regulators with direct and immediate access to derivatives trading data. This is a key requirement under the European Markets and Infrastructure Regulation (EMIR) in order to improve transparency and facilitate the monitoring of systemic risks in derivatives markets. DDRL is the largest EU registered trade repository.

Investors provided with ratings information by European Rating Platform

Launched in 2016 the ERP[60] provides access to free, up-to-date information on credit ratings and rating outlooks. The ERP is an important element of ESMA's work, following the financial crisis, to increase transparency around credit ratings and help investors make informed decisions.

The benefits of the ERP include:

– allowing investors and other users of ratings to easily compare all credit ratings that exist for a specific rated entity or instrument;
– lowering information costs by centralising information; and
– helping smaller and new credit rating agencies gain visibility in the market.

The ERP holds all individual credit ratings and rating outlooks issued by CRAs registered and certified with ESMA except for those issued under the investor-pays model. Users can also access rating history details from 1 July 2015 onwards, press releases accompanying the rating issuances and research reports for sovereign ratings. The rating information in the ERP is collected and published on a daily basis. In providing granular information on specific rated entities and instruments, the ERP complements the statistical data on CRAs' rating activities and rating performance which ESMA already publishes via its central repository database (CEREP).

58 ESMA/2016/1131 Decision of the Board of Supervisors of the European Securities And Markets Authority to adopt a Supervisory Measure and to impose s fine with respect to Fitch Ratings Limited

59 ESMA/2016/408 Decision to adopt a supervisory measure taking the form of a public notice and to impose a fine in accordance with Statement of Findings in accordance with Articles 64(5), 65, 67 and 73 of Regulation (EC) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

60 ESMA/2016/1620 Press release ESMA to provide free credit ratings information to public

2.4.1 Credit Rating Agencies

Objective for 2016	
	Ensure that registered CRAs comply with the CRA Regulation and, where applicable, refer cases to the Independent Investigation Officer (IIO) where there are serious indications of potential infringements of the CRA Regulation.
	Protect investors by ensuring that only registered CRAs issue credit ratings in the Union.
	Ensure that ESMA only registers applicants who comply with the standards set out in the CRA Regulation by assessing applications for registration as a CRA in a timely and thorough manner.

Supervision of Credit Rating Agencies

ESMA is currently supervising 25 registered and 4 certified CRAs. However, the CRA industry in the EU remains concentrated around three large players. ESMA notes that revenue-generation capacity and overall operating margins for the largest CRAs operating globally have fully recovered from the crisis. The picture is different for the smaller players, which do not have the same market position as the largest CRAs operating globally that have a longer track record and cover all asset classes. ESMA has observed that the current economic and credit conditions have triggered strategic business decisions to change operating models, achieve critical size through consolidation and diversify the product offering and geographical presence.

Perimeter assessments

As part of its supervisory activities regarding CRAs, ESMA continuously carried out perimeter assessments in 2016 to identify entities that may be issuing credit ratings without registering with ESMA. Throughout 2016, ESMA has requested information from several companies, including a number of financial intermediaries, to assess whether their investment research or investment recommendation activities fall within the scope of the CRA Regulation.

Governance and strategy of CRAs

In 2016, ESMA observed significant changes in the governance and strategy of various CRAs. More aggressive business strategies of supervised entities required ESMA's attention to ensure growth plans are coupled with sufficient resources for the CRAs' analytical, compliance and internal review functions.

Within the governance of CRAs, ESMA also focused on conflicts of interest and the independence of the rating process. ESMA concluded a number of investigations in this area and followed-up on other issues in its day-to-day supervision. As part of its priorities for 2016, ESMA also monitored the effectiveness of CRAs' internal control structures.

Quality of ratings

Regarding the quality of ratings, an important achievement for ESMA was the publication of the Guidelines on the validation and review of CRAs' methodologies,[61] which sets standards for the use of quantitative and qualitative techniques throughout the CRA industry. ESMA also conducted investigations into the rating process of several CRAs and continuously examined the quality and accuracy of credit ratings issued by CRAs and reported to ESMA. Furthermore, following the conclusion of its IT risk assessment ESMA continued its work regarding CRAs' IT infrastructure, IT internal controls and information security.

61 ESMA/2016/1575 Guidelines on the validation and review of CRAs Methodologies

Ratings data

In 2016, ESMA also focused its resources on further enhancing its risk-based approach to supervision. ESMA invested in developing the RAtings DAta Reporting tool (RADAR) and the European Rating Platform (ERP). Through RADAR, CRAs are providing ESMA with information on credit ratings and pricing practices and fees charged for these credit ratings and ancillary services. ESMA launched the ERP to provide access to free, up-to-date information on credit ratings and rating outlooks. In providing granular information on specific rated entities and instruments to the public, the ERP complements the statistical data on CRAs' rating activities and rating performance, which ESMA already publishes via its CEntral REPository database (CEREP).

International cooperation

ESMA actively participated in the global supervisory colleges during 2016, which consist of ESMA and the main CRA supervisors outside the EU for the three largest and internationally operating CRAs (Fitch, Moody's and S&P). ESMA also interacted on a bilateral basis with supervisors outside the EU during 2016 to inform its supervisory activities on specific topics including conflicts of interest, internal controls, the adequacy of the validation of methodologies and the role of the compliance function.

Establishment of cooperation with South African CRA supervisor

On 30 June 2016, ESMA announced that South Africa's legal and supervisory framework meets the conditions for endorsement. As of that date, ESMA has allowed CRAs registered by ESMA to endorse credit ratings issued by a South African subsidiary or parent company. Endorsed credit ratings may be used for regulatory purposes in the EU.

In order to facilitate the exchange of regulatory information, ESMA also entered into a co-operation agreement for the supervision of CRAs with the competent South African authority, the Financial Services Board. The cooperation agreement[62] recognises the cross-border activities of certain CRAs and the global nature of ratings generally and the importance of ongoing supervisory and enforcement-related cooperation in this area.

62 MoU on the cooperation of the Financial Services Board and the ESMA for the supervision of CRAs

2.4.2 Trade Repositories

Objective for 2016	Improve access to data on derivative contracts by ensuring Trade Repositories comply with EMIR requirements.

Supervision of Trade Repositories

During 2016, the TR industry has remained relatively stable with six TRs registered and supervised by ESMA. The role of TRs with respect to receiving, processing and providing access to derivatives trade reports, is crucial to support a more transparent and accessible EU derivatives market. Currently, 44 regulatory authorities including NCAs and central banks have access to at least one EU TR and are able to view and analyse the data in line with their mandates.

By the end of 2016, the six TRs operating in the EU had collected nearly 44 billion reports in total. The reports do not only include new trades but also their modifications and other lifecycle events. During the course of this year, the level of reporting activity has stabilised at an average of around 400 million submissions per week. Based on its risk assessment exercise carried out in 2015, in 2016 ESMA has focused on data quality, data access, information security and business continuity and financial risks. Based on the identification of these risks, ESMA's activities in 2016 specifically focused on data access and data quality, the monitoring of TR governance and strategy, adequacy of resources and the complexity of IT system-design and operations.

Access to TR data and quality of data reported by TRs

ESMA's supervision activities have led to some significant improvements in overall data quality. More specifically, as regards data quality and data access, ESMA carried out some specific supervisory activities regarding TR systems' operation and performance, which in some cases required significant changes to TRs' systems. In addition, the introduction of level 2 data content validations in late 2015 significantly improved the quality of the reported data and helped authorities to make better use of them. Furthermore, ESMA, NCAs and other users of TR data have committed to a more collaborative approach to become even more effective in this area.

Governance and strategy of TRs

ESMA monitored the governance and strategy of TRs via various approaches in 2016. For example, it entered into active discussions with senior management and Board members in order to understand the strategic direction TRs are exploring. ESMA also actively promoted a more embedded compliance culture and conveyed its expectations for the compliance function to senior management and the Boards of TRs.

Adequacy of resources allocated to TR operations

The level of resources dedicated to the TR business remained an area of concern for ESMA during 2016. Turnover of key staff noticeably increased throughout 2016. In addition, ESMA has identified a risk that some TRs might not be in a position to influence the relevant decision making processes or to assess the appropriateness and effectiveness of the services provided by parent companies or affiliates.

IT system-design and operations

In 2016, as part of its on-going TR supervision ESMA dedicated significant attention to the TRs' efforts towards achieving smooth and reliable operational systems. This has been achieved among others through interactions with supervised entities at various levels within their organisations, in-depth investigations, active monitoring of TR incidents, follow-up on data quality and the thematic review on cyber risk and security.

Fees and ancillary services (common area of focus)

During 2016, joint work was performed by ESMA in the area of fees charged by CRAs and TRs. For 2017, ESMA identified a number of supervisory areas, which are common to both CRAs and TRs, such as their approaches to internal control frameworks, IT, including cloud computing, and the supervision of fees and ancillary services in 2017.

2.4.3 Enforcement

Objective for 2016	Take appropriate enforcement action where breaches of regulation in supervised entities are discovered.

ESMA has the power to take appropriate enforcement action where it discovers a breach of regulation in its supervised entities. These actions may range from the issuance of public notices to the withdrawal of registration and imposition of fines. The enforcement team's core activity consists in carrying out investigations of possible infringements by CRAs of their obligations under EU law. Where ESMA's supervisory department finds serious indications of potential infringements, this will lead to the appointment of an independent investigating officer (IIO) to further investigate the matter and submit findings to ESMA's Board of Supervisors for a final decision on enforcement action. Two enforcement cases were finalised in 2016 against a CRA (Fitch Ratings) and a TR (DDRL), which are already included in this report.

2.4.4 Third-Country CCPs

CCPs established in third countries (TC-CCPs) may provide clearing services to clearing members or trading venues established in the EU only where that CCP is recognised by ESMA. In addition, under the Capital Requirements Regulation (CRR)[63], credit institutions and investment firms may only benefit from advantageous capital treatment with respect to cleared derivatives transactions, when the CCP they are facing is recognised by ESMA.

63 Capital Requirements Regulation (CRR) - 575/2013

The ability of TC-CCPs to provide clearing services in the EU or to EU groups is an important component of the functioning of EU markets and EMIR. In particular, this means that recognised TC-CCPs that market participants have been using to clear their OTC derivatives could continue to be used to comply with the clearing obligation that has started in 2016.

ESMA has continued to process a wide range of applications, which has led to many TC-CCPs being recognised (11 in 2016) with more to come. This involves the initial applications, taking into account when they extend their range of activities and services or taking into consideration the classes of OTC derivatives they clear for the purpose of the clearing obligation. This has led 47 third-country CCPs to apply for recognition to ESMA, as of 31 December 2016.

Monitoring of Third Country-CCPs activity

ESMA monitors recognised third Country CCPs (TC-CCPs) activities from the perspective of their link to the EU. In 2016 ESMA, to support this work, launched a data collection exercise and analysis, through the cooperation channels it set-up with EU and non-EU NCAs on risks for EU entities and markets arising from TC-CCPs.

2.5 ESMA as an organisation

Objective for 2016	Improve support to ESMA's Standing Committees and Technical Committees by promoting video, audio and web conference tools for ESMA's staff and stakeholders' use.
	Reduce manual workload and improve efficiency and traceability by starting making some workflows paperless such as document management, missions, payments and procurement.
	Improve the planning of ESMA's work by extending project management across the organisation.
	Further, develop ESMA's human resources by adopting a learning and professional development strategy.

In 2016, ESMA continued to improve its internal processes while supporting an increased number of tasks and staff. The work reflected the ongoing growth of ESMA with an emphasis on providing improved support to staff, in their daily work, and stakeholders, in their interaction with ESMA.

This included a focus on facilitating the practicalities around meetings, where much of ESMA's work carried out, which involves from all over the EU. It involved the introduction of tools to manage work group participants and online registration systems in order to help simplify the organisation process and ensure traceability. In addition, improvements to its e-meetings offer via new audio, video and web conferencing tools means more meetings can be held remotely, with a resulting saving in costs. These services are now being promoted to ESMA's staff and stakeholders to increase their use.

Secondly, the introduction of automatic processes for some internal activities including financial workflows, the usage of an e-procurement tool (sourced in 2015), as well as the second phase (roll-out) of a tool to manage staff business trips should lead to a reduction in paper-based transactions while improving, and speeding up, these activities.

In addition, EU IT projects remained a key area of activity of the Authority. These projects were organised in four programmes: the Supervision, Markets, Delegated Projects and Transparency Programmes. The IT Delegated Projects Programme was by far the most important: this programme consists of specific tasks under EMIR and MiFIR delegated by NCAs to ESMA. These have already been expanded upon in the section on Supervisory Convergence.

Day-to-day Management

The Executive Director and the Heads of Department are responsible for ESMA's day to day management, forming the management team. ESMA has seven departments and the Heads are responsible for the activities in their respective business areas. In 2016 ESMA introduced Heads of Unit positions within the Resources (Information & Communications Technology), Markets (Post Trading) and Supervision (Investigations) Departments reflecting the growth in size and responsibilities of these units. ESMA also has team leader positions in most departments in order to assist with coordinating work within the department. Further detail about ESMA's decision-making bodies, the Management Board and Board of Supervisors is available on px, Chapter 1.

ESMA's management meets weekly to discuss its activities and cross-organisational issues including deciding on how these should be addressed. Planning and monitoring of activities are a crucial part of the management team's role and contributes to ESMA's internal control system.

An Annual Work Programme is adopted yearly in September for the following year by the Board of Supervisors. This is based on multi-annual planning, including a multi-annual staff policy plan. The Work Programme is monitored internally on an ongoing basis, with progress on its implementation reported to the Management Board quarterly.

A comprehensive set of reports on key administrative activities such as recruitment and budget execution are provided monthly to the Executive Director and quarterly to the Management Board.

ESMA's internal processes continued to improve

Thanks to efficiency gains,at the end of 2016, the Resources department's staffing remained almost unchanged compared to the year before. In total, 39 staff members vs. 38 staff members at the end of 2015 were working in the Department (excluding the ICT Unit) despite the 10% increase in the number of staff to support within the organisation.

To reduce its administrative burden, ESMA joined several procurement procedures of the Commission, thus allowing us to benefit from economies of scale. In 2016, ESMA joined fifteen EC procurement procedures for different supplies and services, and two inter-institutional procurement procedures together with other European agencies.

New HR policies and procedures were implemented (see further details below). A new SharePoint-based document management system was implemented across all ESMA departments in 2016, a key element to help ESMA staff work in a collaborative way and ensure the availability and easy traceability of documents and records internally.

For certain processes, a series of e-workflows were tested in different support functions of the organisation, notably in finance, procurement and facility management, with a view to be further extended in 2017. They will help improve the efficiency and security of the processes, and by using less paper, save on physical storage space and reduce ESMA's environmental footprint..

Project management continued to be a priority at ESMA. The project management methodology - an instrument to increase efficiency within the entire organisation – continued to be spread and training to all departments of the Authority, adapted of course to the size of each project to avoid adding unnecessary administrative burdens to the current workload.

The environment continues to be an important topic at ESMA. Following the implementation of a recycling project in 2015 in the field of waste management, ESMA was able in 2016 to recycle 15.1 tons of paper, thus contributing to reduce the cutting of 257 trees and the CO2 emissions by 3.7 tons.

But the Authority decided to go further in 2016 by launching its EMAS (Eco-Management and Audit Scheme) certification process, a premium management instrument developed by the Commission for companies and other organisations to evaluate, report, and improve their environmental performance, while involving staff members and stakeholders.

The objective is to evaluate how ESMA makes use of the environmental systems and to assess the situation of the EMAS implementation on its premises, while aiming to reduce the direct environmental impact of its activities.

Planning

As required by its new Financial Regulation, ESMA produced its first Single Programming Document covering the period of 2017 to 2019; it set out a three-year work programme, a detailed annual work programme for 2017, as well as a budget and resourcing plan. The Annual Work Programme provides a breakdown of the overall activities into various sub-activities and also includes 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: these include annual Supervision, Supervisory Convergence and Regulatory Work Programmes.

The delivery against the Annual Work Programme and Regulatory Work Programme is monitored on a regular basis, with quarterly reports being provided to the Management Board. ESMA expects to publish its first Risk Assessment Work Programme in 2017; this will provide more detail on one of ESMA's growing activities.

ESMA's IT projects

ESMA's IT projects represent two main categories:

- The internal IT projects, implementing IT systems for the support of ESMA as an organisation; and
- The EU regulatory IT projects, aiming to develop IT systems that support supervisory convergence and exchange of financial data amongst NCAs and between NCAs, ESMA and the public.

ESMA is currently running five IT programmes, out of which four programmes are related to EU regulatory IT projects. In addition, ESMA provides operational support to a growing number of end-users and carries out maintenance activities of the existing IT systems in use.

Information Technology

The provision of EU IT systems is a key ESMA activity, which is reflected in its budget. In 2016, an IT budget of €1.6m was allocated for the development of new IT systems and enhancement of the existing systems, of €3.8m for the maintenance of existing IT systems, and of €2.6m for the development of delegated IT projects. These amounts were in addition to the €1.8m dedicated to the IT-related infrastructure. In total, IT expenses therefore amounted to €9.8m or 25% of ESMA's total budget.

An IT Management and Governance Committee (ITMG) oversees the EU IT projects. A business owner is assigned for each IT systems The EU IT projects are those projects that are carried out to exchange financial data with external stakeholders, such as the NCAs, the CRAs, and the TRs (Trade Repositories). These projects are steered by both an ESMA Standing Committee in charge of the regulatory aspects and by the ITMG. Both groups report to the BoS.

The increasing number and size of IT deliverables in the last years and the multi-annual nature of many projects are the main reasons for ESMA to develop and adhere to an IT strategy and planning that provides a long-term view on the IT investments. The current IT strategy was developed in 2015 for the period 2016-2020 and approved the same year by the Management Board and Board of Supervisors. The multi-annual IT Work Programme, which includes the detailed planning of projects and maintenance activities as well as estimates for budget and human resources needs, is revised annually and thereafter approved by the Management Board and Board of Supervisors.

In 2016, the work on enhancing the maturity and quality of the multi-annual IT planning has continued and a step forward in this direction has been the implementation of a new IT tool for project and portfolio management (PPM). Additionally, ESMA kept using the project management methodology of the EU institutions (PM²)[64], a methodology systematically applied by the Authority since 2015 to all its IT projects.

In November and December 2016, the Management Board and the BoS respectively approved the 2017-2019 multi-annual IT Work Programme.

Maintenance of systems launched before 2016

In addition to these IT projects, ESMA also maintains today in total 30 IT systems allowing the collection, exchange and sometimes publication of financial data such as financial instruments reference data, credit ratings, investment firms' information, UCITS information, prospectuses, sanctions etc.

Securing ESMA's data

While in 2015 ESMA had finished the implementation of its Security Plan, in 2016 the organisation implemented the following additional data security measures: procedure on the handling of classified documents; protection of data, encryption of servers, laptops, and mobile devices; deployment of a secure communications platform and performance of disaster recovery tests to test the resilience of the IT infrastructure. The security governance model (approved in 2014) allowed the continuation of the quarterly meetings of ESMA's Security Committee which has been in place since January 2015. Last, ESMA benefited in 2016 from the results of the security awareness programme implemented the year before to improve its staff member's awareness towards security, in line with the standards and best practices in this field.

64 Project Management Methodology (PM2)

Projects completed in 2016

In 2016, ESMA delivered the following three systems:

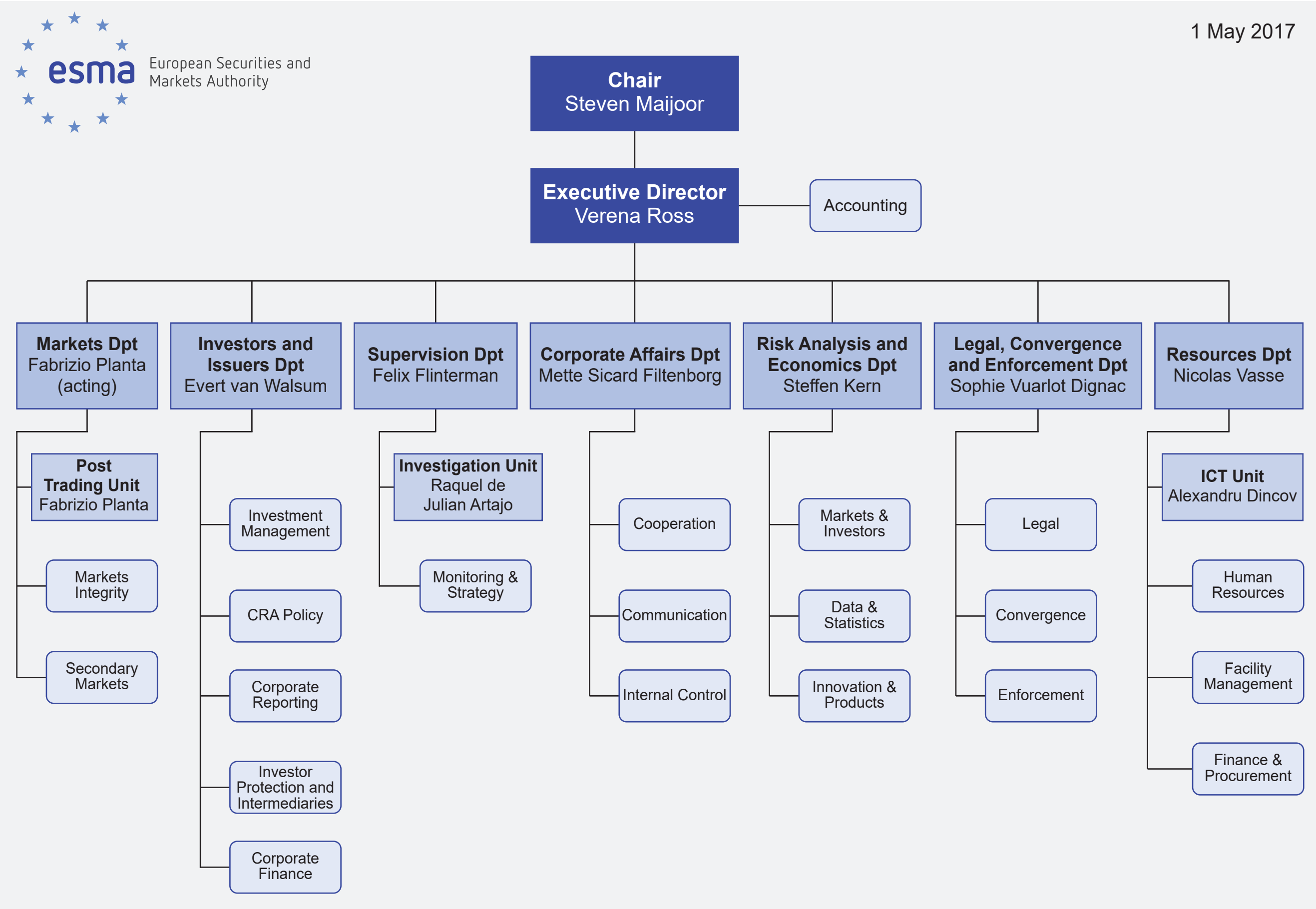
Programme	System name	Description
Supervision	CRA III - European Rating Platform and Fees	The system aims to make the performance of CRAs more transparent via two means: - The European Rating Platform (ERP) collects and publishes data on ratings activities performed by all registered or certified CRAs. - The Fees system collects data on fees policy of all registered or certified CRAs
Transparency	Prospectus Final Terms	The system facilitates the exchange of notifications of prospectus final terms between NCAs and ESMA.
IT Delegated Projects	Access to Trade Repositories (TRACE), first phase	The system enables a single point of access for querying and retrieving data from Trade Repositories.

Ongoing Regulatory IT Projects (for future delivery):

Programme	Project name	Description
Supervision	CRA III – Rating Statistics Consolidation	The old ratings statistics database, CEREP, will consolidate with the new ratings statistics database, RADAR.
Markets (IT Delegated Projects)	Financial Instruments Reference Data System (FIRDS)	ESMA will collect data, from trading venues and/or NCAs, which will be stored, processed and published by ESMA. This project will also include performing transparency calculations and the management of suspensions from trading
Markets (IT Delegated Projects)	Volume Cap Mechanism	The system will allow the collection and publication of data on volume of trading across Europe per equity instrument, and percentage of trading under transparency waivers.
Markets (IT Delegated Projects)	Commodities Derivatives – Weekly Position Reports	The system will allow the collection and publication of data on weekly aggregated position reports from all trading venues trading commodity derivatives and emission allowances.
Markets (IT Delegated Projects)	Commodities Derivatives – Position Management Controls and Position Limits	ESMA will maintain and publish on its website a database with summaries of position management controls and position limits
Markets	TREM Specifications Update	Transaction Reporting Exchange Mechanism system upgrade in order to support MiFID II/MiFIR requirements.
Markets	SFTR	Securities Financing Transactions Regulation. The project scope includes the development of harmonised data reporting and collection templates / format, as well as the business requirements for information exchange under this new regulation.
Transparency	Update of the ESMA register of Authorised/ Registered Entities and Sanctions	Update of the current ESMA register with new requirements stemming from four different regulations: MiFID, UCITS V, CSDR and MAR.

2.5.1 ESMA operations, budget and structure

ESMA Organigramme



ESMA's 2016 budget

In 2016, ESMA's core budget increased by €2.9m compared to the previous year, from €34m in 2015 to €36,9m in 2016. In addition, the core budget was complemented by a delegated budget of €2.4m in order to perform NCAs delegated tasks.

ESMA was in 2016 financed by five separate streams of income:

i) the NCAs of the Member States - €16.1m, representing 41% of the total revenues;

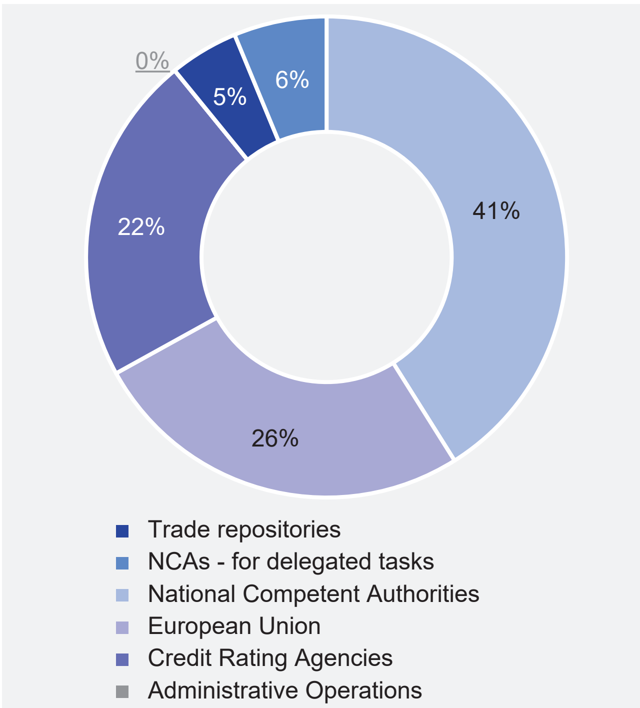
ii) the European Union - €10.2m, representing 26%;

iii) fees charged to Credit Rating Agencies - €8.7m, representing 22%;

iv) fees charged to Trade Repositories - €1.8m, representing 5%; and

v) NCAs' contribution for delegated tasks - €2.4m, representing 6%.

2016 revenues by source



Annual accounts

The 2016 annual accounts of ESMA are produced in accordance with the Financial Regulation of ESMA. They will be final and adopted by ESMA in June 2017.

2016 - Overall financial indicators:

- 99.97% of the budget was committed
- 87.3% of the budget was paid within the year
- 92.8% of the 2015 budget credits carried forward to 2016 were paid within the year
- 0.9% of late payments

ESMA continued to develop its Human Resources function

Staff allocation and development

The allocation and recruitment of staff is based on the Authority's Establishment Plan, the Authority's budget and the Single Programming Document.

In 2016, ESMA adopted five implementing rules under the new Staff Regulations and ten policies and procedures in the area of Human Resources to improve its processes.

In the area of personnel administration, 38 newcomers have been welcomed at ESMA in 2016 and 20 staff members left the service. The staff turnover rate for the year amounted to 8% (target <10%).

In the area of recruitment, in 2016, ESMA published 30 vacancy notices of which 14 for Temporary Agent posts, 7 for Contract Agent posts and 9 for positions of Seconded National Experts. The Authority received in total 2,398 applications in 2016, or an average of 80 applications per vacancy. 211 candidates were interviewed.

In the area of staff development, ESMA internal staff (TAs, CAs and SNEs) attended a total of 745 days of training in 2016, or an average of 3.8 days per internal staff member. 72% of these days corresponded to trainings organised by ESMA (in house trainings). These figures do not include e-learning courses. The categories of internal training were the following:

- Technical skills;
- Non-technical skills;
- IT for end users;
- Management and leadership;
- Project management.

Moreover, a language learning policy (adopted in 2015) gives guidelines to ESMA's staff on the different language training tools and methods available at ESMA.

A staff engagement survey conducted in 2016 as every two years showed that the global favourable engagement of staff within the organisation rising from 63% in 2014 to 68% in 2016. ESMA was placed 4th in terms of the level of its staff engagement amongst the 19 EU Agencies who had undertaken the survey. Overall, the results of the survey offer a very positive picture, with an improvement over 2014, as an organisation with employees proud of belonging to it and satisfied with the work they do, accountable and motivated as they feel that their work is interesting and challenging.

Overview of staff data in 2016

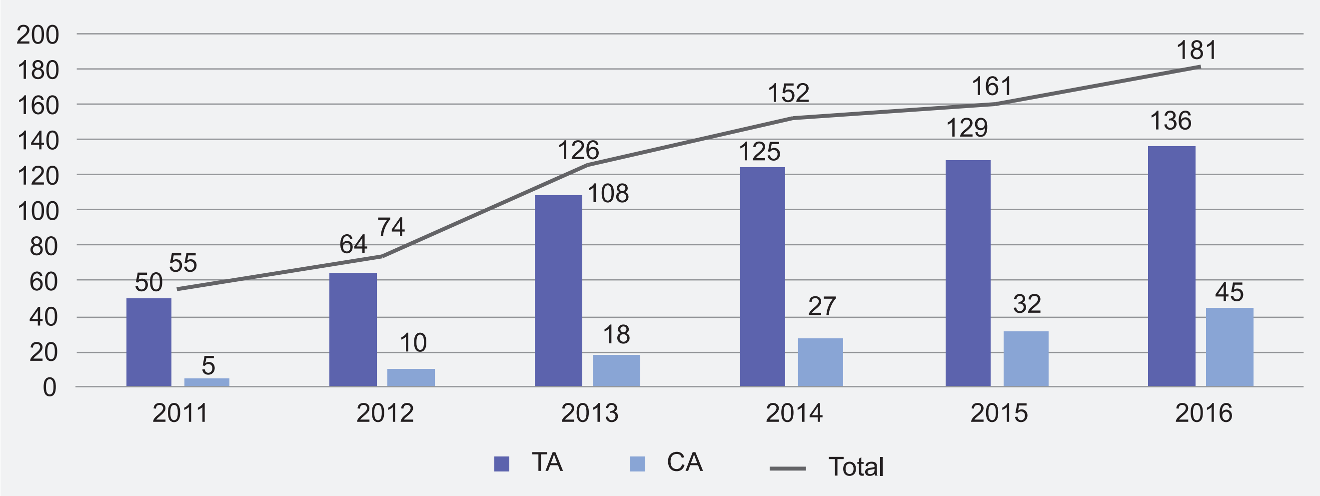
ESMA employs different categories of staff:

- Temporary Agents (TA)[65],
- Contract Agents (CA) and
- Seconded National Experts (SNEs).

At the end of 2016, a total of 204 staff (TA/CA/SNE) was employed, a 10% increase compared to one year before. Within that number on 31 December 2016, ESMA employed 181 statutory staff members, 136 TAs and 45 CAs, whereas the HR Staffing Plan 2016 targeted 184 statutory staff members (98% current implementation rate). This was 20 more statutory staff members than one year before, or a 12% increase.

65 Posts for temporary agents are listed in the establishment plan of ESMA, and in the EU budget.

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



In addition, at the same date, 23 SNEs were also working at ESMA (versus 25 one year before), bringing the total number of ESMA staff to 204, versus 186 one year before, or a +10% increase.

ESMA's staff population 2016 (all categories of staff)

Staff population		Headcount as of 31.12.2015	Authorised under EU budget 2016	Headcount as of 31.12.2016
Officials	AD			
	AST			
	AST/SC			
TA	AD	116	127	123
	AST	13	13	13
	AST/SC			
TOTAL		**129**	**140**	**136**
CA GFIV		13	20	22
CA GFIII		18	24	22
CA GFIII		1		1
CA GFI				
TOTAL CA		**32**	**44**	**45**
SNE		25	21	23
TOTAL		**186**	**205**	**204**

ESMA’s establishment plan 2016 (temporary agents)

Category and grade	Establishment plan in EU Budget 2016	Filled as of 31.12.2016	Modifications in 2016 in application of flexibility rule	Establishment plan in EU Budget 2017	Modifications in 2017 in application of flexibility rule	Establishment plan in Draft EU Budget 2018[66]	Establishment plan 2019[67]	Establishment plan 2020[68]
AD16	1	1		1		1	1	1
AD15	1	1		1		1	1	1
AD14								
AD13	2	1		2		2	3	4
AD12	4	1		5		6	7	8
AD11	7	3		8		9	10	11
AD10	10	7		13		14	17	19
AD9	22	14		26		28	30	31
AD8	29	32		28		28	28	28
AD7	24	30		26		26	25	25
AD6	17	20		14		14	14	13
AD5	10	13		13		15	15	10
Total AD	**127**	**123**		**137**		**144**	**151**	**151**
AST11								
AST10								
AST9								
AST8				1		2	2	3
AST7	2			2		2	3	3
AST6	2			3		3	3	3
AST5	4	2		4		4	3	3
AST4	4	6		3		1	1	
AST3	1	2						
AST2		1						
AST1		2						
Total AST	**13**	**13**		**13**		**12**	**12**	**12**
AST/SC6								
AST/SC5								
AST/SC4								
AST/SC3								
AST/SC2								
AST/SC1								
Total AST/SC								
TOTAL	**140**	**136**		**150**		**156**	**163**	**163**

66 Additional 6 posts requested in 2018 (6 x AD5). In addition, 1 AST converted to AD post.

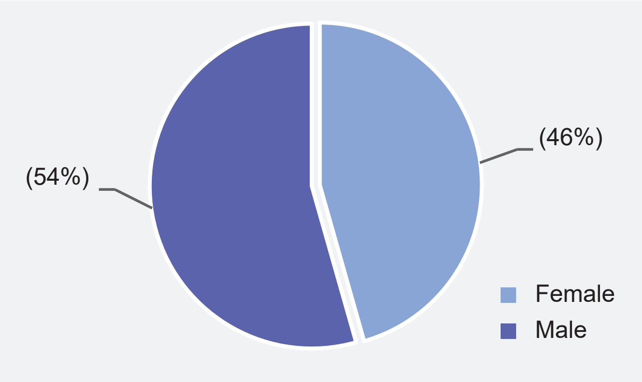
67 Additional 7 posts requested in 2019 (7 x AD5).

68 No additional posts requested in 2020.

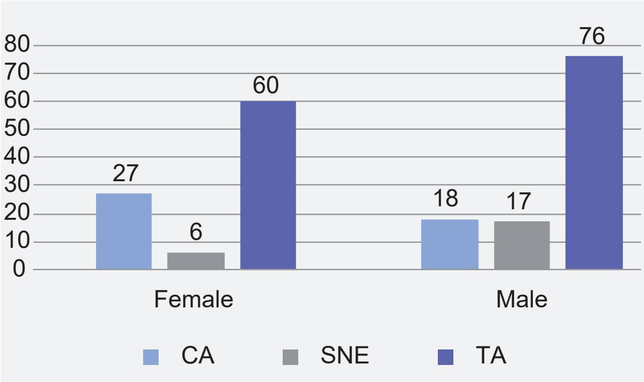
Gender balance

ESMA tries to reach the best possible gender and geographical balance during its recruitment process. The global gender balance amongst ESMA staff (TAs, CAs and SNEs) was 54 % (male) – 46% (female) in 2016.

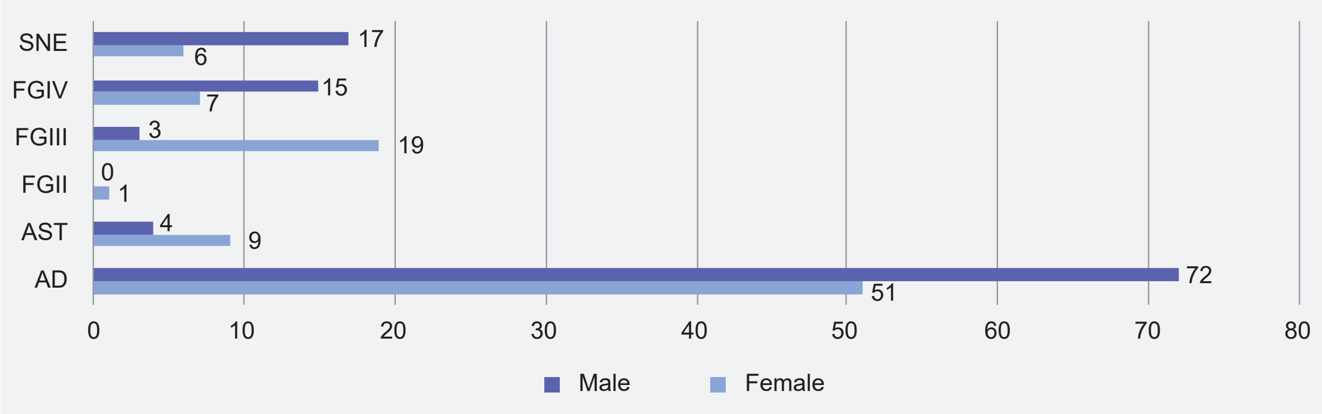
Gender distribution at ESMA



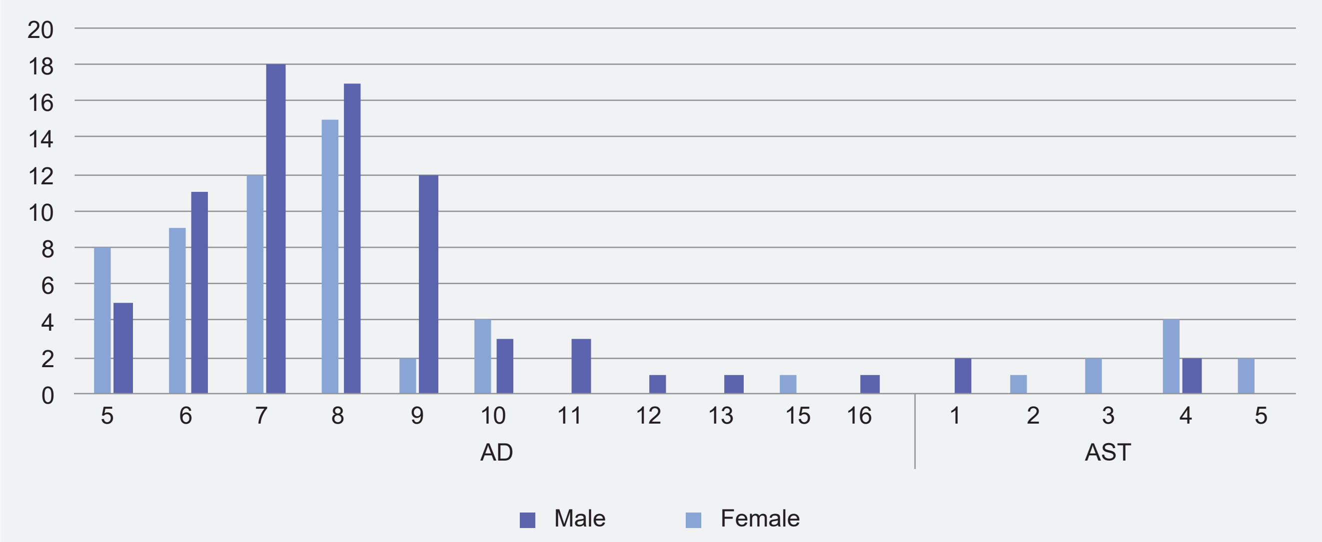
Gender distribution per category



Gender distribution per category



Distribution of temporary agents by grade and gender

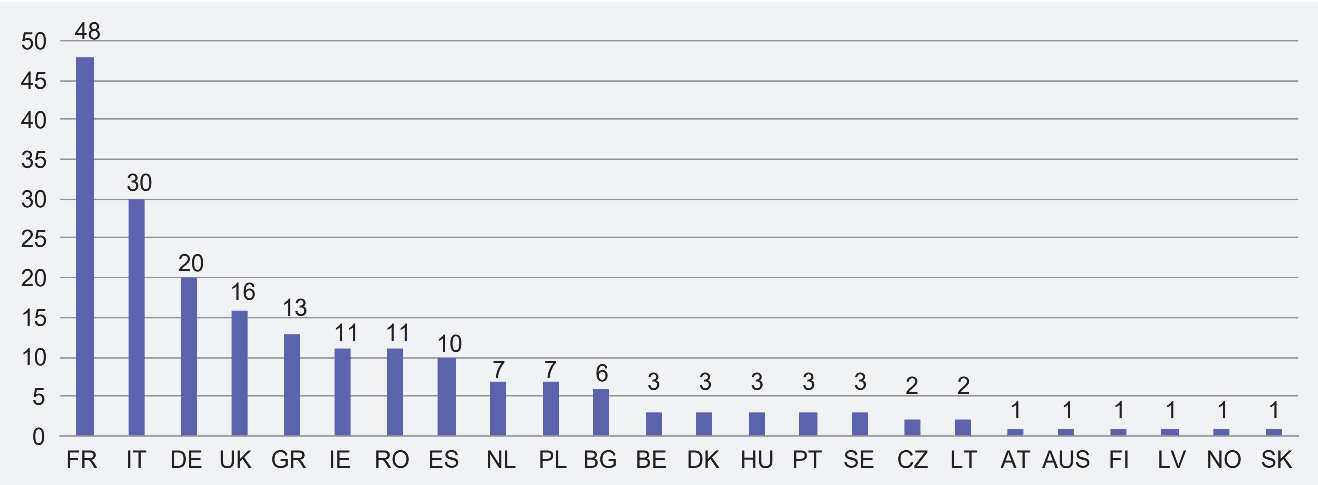


Geographical balance

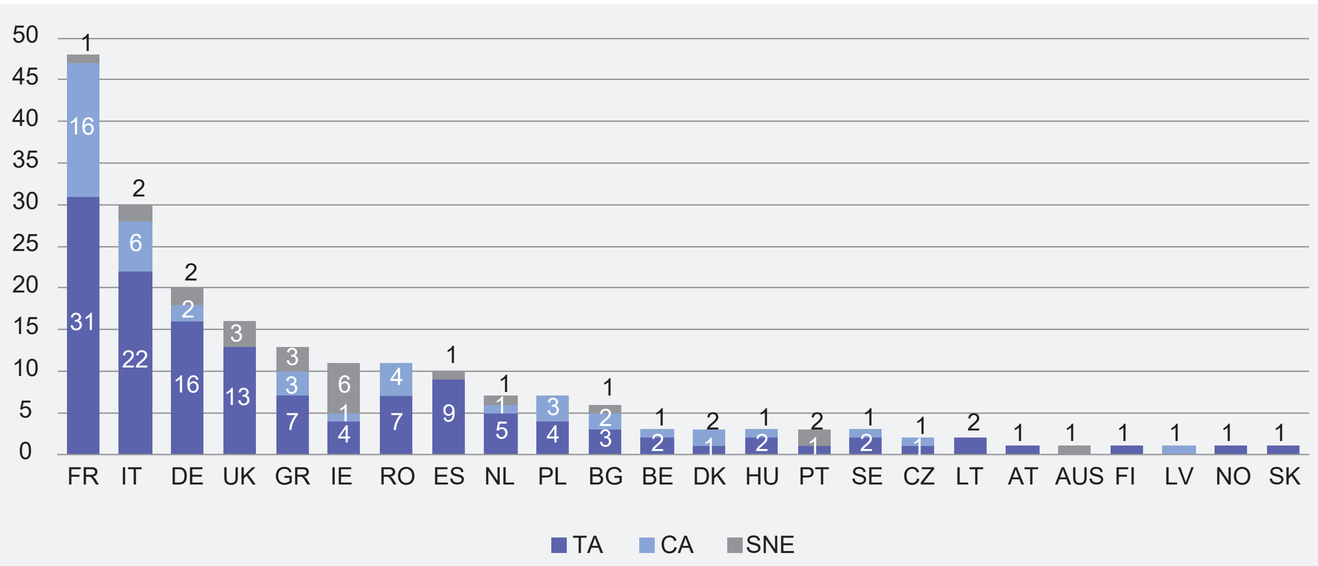
At the end of 2016, ESMA staff (TAs/CAs/SNEs) included 22 different EU nationalities, and 1 national from the European Economic Area (Norway), and 1 Australian (Seconded National Expert). The following table shows by alphabetical order the distribution of nationalities per contract type and function group:

	FR	IT	DE	UK	GR	IE	RO	ES	NL	PL	BG	BE	DK	HU	PT	SE	CZ	LT	AT	AUS	FI	LV	NO	SK	TOTAL
TA	31	22	16	13	7	4	7	9	5	4	3	2	1	2	1	2	1	2	1		1		1	1	136
CA	16	6	2		3	1	4		1	3	2	1	2	1		1	1					1			45
SNE	1	2	2	3	3	6		1	1		1				2					1					23
Total	**48**	**30**	**20**	**16**	**13**	**11**	**11**	**10**	**7**	**7**	**6**	**3**	**3**	**3**	**3**	**3**	**2**	**2**	**1**	**1**	**1**	**1**	**1**	**1**	**204**

ESMA nationalities



Nationality distribution by staff category at ESMA



ESMA staff per Department (as of 31/12/2016)

	SMG	CAD	MKT	INI	SUP	RAE	LCE	RES	Total
Temporary Agents (TA)	5	10	25	18	23	12	11	32	136
Contract Agents (CA)		2	4	4	6	11	3	15	45
Seconded National Experts (SNE)		2	6	6	1		4	4	23
Total	**5**	**14**	**35**	**28**	**30**	**23**	**18**	**51**	**204**

Below the acronyms of the relevant Departments:

- SMG: Senior Management;
- CAD: Corporate Affairs;
- MKT: Markets;
- INI: Investors and Issuers;
- SUP: Supervision;
- RAE: Risk Analysis;
- LCE: Legal, Convergence and Enforcement; and
- RES: Resources.

2.5.2 Governance & Stakeholders

Objective for 2016	Set-up of the Corporate Affairs Department to provide support to senior management and the organisation on planning, internal control and stakeholders' relations.
	Implementation of Action Plan in response to IAS Audit on stakeholders' relations.

In 2016 ESMA began to develop, and implement, an integrated approach to the planning, management and execution of ESMA's communications activities towards its internal and external stakeholders. This

has been facilitated by the development of an Internal Communications Plan, an External Communications Strategy, and associated work plan, along with a Stakeholder Strategy which has enable ESMA to develop a centralised overview of its communications activities with its stakeholders. This has in turn contributed to the definition of its goals, target audiences, timing, channels etc. The new integrated approach supports ESMA's corporate mission, objectives and activities, while also ensuring that it is accessible, open and transparent to its stakeholders.

The creation of a the Corporate Affairs Department, bringing together the Communications Team, the Cooperation Team, the Securities Markets Stakeholders Group secretariat along with the Planning & Reporting and Internal Control functions will have contributed to a coordinated approach to stakeholders and organisational strategic planning. The change will result in a number of synergies, including greater co-ordination of stakeholders' activities across all communications channels, which will support and be supported by, more central oversight of ESMA's planning and strategy setting. Additionally, in order to meet its commitment to transparency about its interaction with third parties, ESMA began, in the course of 2016, to publish a register[69] of staff meetings with external stakeholders.

2.5.3 Management and internal control systems

Internal control standards (ICS)

On 5 November 2012, the Management Board adopted the Internal Control Framework in ESMA. The Framework covers 16 Internal Control Standards. The Internal Control Standards[70] are indispensable in order to define the internal control framework, foster clear accountability of the management, and ensure oversight of the internal control system by the Management Board.

The Internal Control Standards specify the necessary expectations and requirements in order to build an effective system of internal control that could provide a reasonable assurance on the achievement of the ESMA objectives. These control standards were developed along the lines of the Commission's Internal Control Standards, which are based on the international COSO standards.

The standards cover the areas of mission and values, human resources, planning and risk management processes, operations and control activities, information and financial reporting, and evaluation and audit. Each Internal Control Standard is made up of a number of requirements to be met.

Six standards were selected as areas to focus during 2016:

ICS 5 - Planning and objectives

ICS 6 – Risk Management

ICS 8 – Policies and procedures

ICS 10 – Business continuity

ICS 11 – Document management

ICS 13 – Accounting and financial reporting

ICS 5 – Planning and objectives

ESMA completed in 2016 a project related to defining an activity-based management (ABM), activity-based budgeting (ABB) and activity-based costing (ABC) model. This allows ESMA to show in a more transparent way how much its activities cost, and to monitor the alignment between the fees collected from the Credit Rating Agencies (CRAs) and the Trade Repositories (TRs) that the Authority supervises, as well as the relevant supervisory costs.

ICS 6 - Risk Management

ESMA setup a project in 2016, to enhance risk management activities at all levels of ESMA and to foster synergies across the different risk activities of the Authority.

69 Register of Stakeholder Contacts
70 COSO website

ICS 8 – Processes and procedures

In 2016, in an ever-changing regulatory environment for EU agencies and with a constant focus on the performance and efficiency of its support functions, ESMA continued to improve its processes by adopting new implementing rules, policies and procedures, notably in HR, finance and procurement, but also in facility management and ICT.

ESMA has created and documented the bulk of the processes, procedures and workflows that constitute the core administrative framework in an EU body. This includes key items such as the financial circuits, recruitment procedures, reporting on exceptions, and ethics guidelines. An important set of new policies and procedures was adopted in 2016, including new implementing rules.

New HR policies and procedures were implemented, including a Learning and Professional Development strategy.

For certain processes, a series of e-workflows were tested in different support functions of the organisation, notably in finance, procurement and facility management, with a view to be further extended in 2017. They will help improve the efficiency and security of the processes, and by using less paper, save on physical storage space.

Project management continued to be a priority at ESMA. The project management methodology - an instrument to increase efficiency within the entire organisation – continued to be spread and training took place for all departments of the Authority, adapted of course to the size of each project to avoid adding unnecessary burden to the current workload.

ICS 10 - Business continuity

ESMA started developing its business continuity framework in 2012. The business impact assessment was reviewed during 2013 and a business continuity plan was drafted in 2014. There is an IT disaster and recovery plan in place. ESMA has two security officers and a stand-by office service is in place for emergencies. The review of the business continuity framework took place in 2016 with the business continuity plan subsequently being signed by the Executive Director.

ICS 11 - Document management

In 2016 ESMA finished deploying across the organisation a new document management system based on SharePoint that had started to be implemented in 2015 in two departments. This new document management is a key element to help ESMA staff work in a collaborative way and ensure the availability and easy traceability of documents and records internally.

ICS 13 - Accounting and financial reporting

ESMA has implemented certain controls to ensure that accounting data and related information are accurate, complete and timely. These include controls ensuring the independence of the Accounting Officer and a process of financial reporting. The Accounting Officer is appointed by the Management Board and the appraisal appeal assessor is the ESMA Chair.

The management of physical assets and inventories was further improved, notably with the implementation of a new policy and procedure.

2.6 Building blocks of assurance

Follow up of audits and evaluations European Court of Auditors

Financial audit

ESMA is audited every year by the European Court of Auditors (ECA). The audit provides a Statement of Assurance as to the reliability of the accounts of the Agency and the legality and regularity of the transactions underlying them.

In ECA Statement of Assurance of 2015, it was indicated that ESMA accounts are reliable and the transactions underlying the accounts are legal and regular.

The ECA audit of the 2016 annual accounts is on-going. The draft report will be available by mid-2017. There has been no preliminary finding following the first mission and an observation was made in relation to the Brexit risk following the second mission.

In addition, the audit of the accounts 2016 is performed by a private company (Ernst & Young). This audit is still ongoing.

The recommendations raised by ECA regarding the 2015 annual accounts are being addressed by ESMA.

Among others:

- ESMA has developed an activity based costing system for the calculation of the fees of supervised entities,
- ESMA is developing a methodology to address high levels of carry forwards

Performance audit on supervision

The European Court of Auditors performed an audit on Credit Rating Agencies supervision. The audit had started in June 2014 and the final report was published in February 2016.

In its report, ECA acknowledges that ESMA has laid down good foundations for carrying out supervision of the CRAs in the EU in a short period of time.

ECA also indicates that there still room for improvement and provides eight recommendations: the need to increase the traceability of the different supervisory processes, the need to further examining methodologies and conflict of interest, as well as the need to improve disclosures.

ESMA has setup an action plan following the audit and its implementation is reported to the Management Board. Seven, of the eight recommendations made by ECA, have already been addressed and one is ongoing,

Internal audit service

ESMA is also audited by its internal auditor, the Internal Audit Service of the European Commission (IAS).

ESMA follows up and reports to the Management Board on all audit findings and recommendations on a quarterly basis. All critical or very important recommendations from previous years' audits are closed.

IAS performed a new Risk Assessment of ESMA's activities based on which a Strategic Audit Plan for 2016-2018 was setup.

The following were selected as prospective audit topics for the period:

- Peer Reviews of National Competent Authorities
- Regulatory Projects for the Single Rulebook
- Data Management related to Assessment of Risks to Investors, Markets and Financial Stability
- Procurement and Contract Management
- Revenues and Activity Based Management
- Information Security and related IT Governance Processes

Follow up of reservations from previous years

No reservations have been made in the previous annual reports.

Conclusions

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 Court of Auditors known at the time of the declaration;
- the observations of the Internal Audit Service 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 standards;
- the ex-ante and ex-post controls;
- the validation of the accounting systems;
- the analysis of the list of recorded exceptions.

Given the control system in place, the information attained from the building blocks above and the lack of critical findings from the Court of Auditors and the Internal Audit Service at the time of the declaration, there is no reason to question the efficiency and effectiveness of the control system in place.

2016 Declaration of Assurance by the Executive Director of ESMA

I, the undersigned, Verena Ross, Executive Director of the European Securities and Markets Authority, in my capacity as authorising officer:

Declare that the information contained in this Annual Activity Report gives a true and fair view[71]; State that I have reasonable assurance that the resources assigned to the activities described in this 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 ex- ante and ex-post control verifications performed during the year;

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

Paris, 2 June 2017

[Signed]

Verena Ross
Executive Director
European Securities and Markets Authority

71 Fair view in this context means a reliable, complete and correct view on the state of affairs in the service

2.7 Management Board and Board of Supervisors

The ultimate decision-making body of ESMA is the Board of Supervisors, whereas the Management Board deals with the management of the Authority.

ESMA's Boards and their 2016 composition

Members of the Management Board as at 31 December 2016

Member	Authority	Country
Steven Maijoor	ESMA	
Anneli Tuominen	ESMA (Vice-Chair)	Observer
Ugo Bassi	Commission	Observer
Elisabeth Roegele	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany
Cyril Roux	Central Bank of Ireland	Ireland
Gérard Rameix	Autorité des Marchés Financiers (AMF)	France
Klaus Kumpfmüller	Finanzmarktaufsicht (FMA)	Austria
Marek Szuszkiewicz	Komisji Nadzoru Finansowego (KNF)	Poland
Gabriela Figueiredo Dias	Comissão do mercado de valores mobiliários (CMVM)	Portugal

Members of the Board of Supervisors as at 31 December 2016

Member	Authority	Country
Steven Maijoor	ESMA	
Jean Paul Servais	Financial Services and Markets Authority (FSMA)	Belgium
Karina Karaivanova	Комисията за финансов надзор (FSC)	Bulgaria
Pavel Hollmann	Česká národní banka (CNB)	Czech Republic
Birgitte Søgaard Holm	Finanstilsynet	Denmark
Elisabeth Roegele	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany
Andre Nõmm	Finantsinspektsioon (FSA)	Estonia
Cyril Roux	Central Bank of Ireland	Ireland
Charalampos Gotsis	Ελληνική Επιτροπή Κεφαλαιαγοράς (HCMC)	Greece
Sebastian Albella	Comisión Nacional del Mercado de Valores (CNMV)	Spain
Gérard Rameix,	Autorité des Marchés Financiers (AMF)	France
Petar-Pierre Matek	Hrvatska agencija za nadzor financijskih usluga (HANFA)	Croatia
Guiseppe Vegas	Commissione Nazionale per le Società e la Borsa (CONSOB)	Italy
Demetra Kalogerou	Επιτροπή Κεφαλαιαγοράς Κύπρου (CySEC)	Cyprus
Gunta Razāne	Finanšu un kapitāla tirgus komisija (FKTK)	Latvia
Vytautas Valvonis	Lietuvos Bankas	Lithuania
Claude Marx	Commission de Surveillance du Secteur Financier (CSSF)	Luxembourg
Gergó Szeniczey	Magyar Nemzeti Bank (MNB)	Hungary
Marianne Scicluna	Malta Financial Services Authority (MFSA)	Malta
Merel Van Vroonhoven	Autoriteit Financiële Markten (AFM)	Netherlands
Klaus Kumpfmüller	Finanzmarktaufsicht (FMA)	Austria
Marek Szuszkiewicz	Komisja Nadzoru Finansowego (KNF)	Poland

Member	Authority	Country
Gabriela Figueiredo Dias	Comissão do mercado de valores mobiliários (CMVM)	Portugal
Mişu Negriţoiu	Autoritatea de Supraveghere Financiară (ASF)	Romania
Miloš Čas	Agencija za trg vrednostnih papirjev (ATVP)	Slovenia
Ivan Barri	Národná Banka Slovenska (NBS)	Slovakia
Anneli Tuominen	Finanssivalvonta (FSA)	Finland
Martin Noréus	Finansinspektionen (FI)	Sweden
Andrew Bailey	Financial Conduct Authority (FCA)	United Kingdom
Unnur Gunnarsdóttir	Fjármálaeftirlitið (FME)	Iceland
Marcel Lötscher	Finanzmarktaufsicht (FMA)	Liechtenstein
Anne Merethe Bellamy	Finanstilsynet	Norway

Observers to the Board

Name	Authority	Country
Adam Farkas	European Banking Authority	
Fausto Parente	European Insurance and Occupational Pensions Authority	
Francesco Mazzaferro	European Systemic Risk Board	
Ugo Bassi	European Commission	
Frank Buchel	EFTA Surveillance Authority	

2.8 Standing Committees and Working Groups

Much of ESMA's work is supported by Standing Committees (SC), working groups and task forces which draw together senior experts from NCAs. The different ESMA SCs are established on a permanent basis. Each Committee is normally chaired by senior representatives of NCAs and supported by ESMA staff as rapporteurs. All SCs also have consultative working groups made up of external stakeholder representatives.

ESMA's SCs prepare the technical work on all areas of ESMA's activities. However, the ultimate decision making body of ESMA is the Board of Supervisors, whereas the Management Board deals with the management of the Authority.

More details can be found on www.esma.europa.eu

A table of ESMA's Standing Committees and their tasks are set out below:

Name of Standing Committee	Mandate	Chair
Secondary Markets Standing Committee	• work on structure, transparency and efficiency of secondary markets for financial instruments, incl. trading platforms OTC markets (such as regulated markets, MTFs, systematic internalisers or other platforms. • develop technical standards and guidelines and other guidance material, preparing advice to the EC relating to the MiFID.	Elisabeth Roegele, BaFin, Germany
Investment Management Standing Committee	• work on issues relating to collective investment management, covering both harmonised and non-harmonised investment funds. • develop technical standards, preparing advice to the EC, or developing guidelines and recommendations relating to UCITS and AIFMD.	Cyril Roux, Central Bank of Ireland
Post-Trading Standing Committee	• work relating to clearing and settlement of transactions in financial instruments. • develop technical standards, preparing advice to the EC or developing guidelines and recommendations relating to EMIR.	Guiseppe Vegas, CONSOB, Italy
Credit Rating Agencies Technical Committee	• prepare technical standards and common guidelines on CRA Regulation. • co-ordinate with other international organisations and third-country regulators that are performing activities in relation to CRAs.	Verena Ross, ESMA
Corporate Finance Standing Committee	• work relating to the Prospectus Directive, corporate governance, and major shareholding disclosures under the Transparency Directive. • develop technical advice and guidance, standards on the provisions of the above Directives. • in the area of corporate governance, respond to areas which relate to securities laws in the EU.	Gérard Rameix, AMF, France

Name of Standing Committee	Mandate	Chair
Corporate Reporting Standing Committee	• work relating to the regulatory developments in the area of accounting and auditing, periodic financial reporting under the Transparency Directive. • develop technical advice, guidance and standards. • in the area of accounting, coordinating work on enforcement of compliance with IFRS.	Hannelore Lausch, BaFin, Germany
Market Integrity Standing Committee	• work on issues relating to market surveillance, enforcement of securities laws, facilitation of co-operation of national authorities and exchange of information in market abuse investigations. • develop technical standards, preparing advice to the EC or developing guidelines and recommendations on issues relating to the integrity of markets on issues such as market abuse or short-selling.	Guiseppe Vegas, CONSOB, Italy
Investor Protection and Intermediaries Standing Committee	• deal with regulatory issues related to the provision of investment services and activities by investment firms and credit institutions. Particular regard is made to investor protection, including the conduct of business rules, distribution of investment products, investment advice and suitability. • develop and provide technical advice to the EC, prepare technical standards, guidelines and recommendations as well as other guidance material relating to the provisions of MiFID applicable to investment services and activities.	Merel van Vroonhoven, AFM, Netherlands
Financial Innovation Standing Committee	• achieve a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities. • identify risks to investor protection, and to financial stability, in the financial innovation area; and then to produce a risk mitigation strategy.	Jean-Paul Servais, FSMA, Belgium
Supervisory Convergence Standing Committee	• identifying topics for, and carrying out, peer reviews by ESMA • promoting a common framework within ESMA in relation to supervisory convergence • reporting to the ESMA Board on the implementation of the supervisory convergence work programme • dealing with cross-cutting issues of supervisory convergence that arise	João Sousa Gião, CMVM, Portugal

Name of Standing Committee	Mandate	Chair
Committee of Economic and Markets' Analysis	• financial markets monitoring and analysis. • identification, monitoring, and assessment of trends, potential risks and vulnerabilities in financial markets across borders and sectors related to market practices both at the wholesale and retail level.	Misu Negritoiu, ASF, Romania
IT Governance and Management Group	• work on IT governance, exchange of data & information between NCAs and ESMA	Nicolas Vasse, ESMA
Market Data Standing Committee	• •work on issues relating to reporting of transactions, positions, record-keeping of orders and instrument reference data. The objectives of this group are to enhance the quality of the market data reported to EU NCAs and TRs and to foster supervisory convergence among NCAs; • •elaborating technical standards, guidelines and Q&As relating to the review and implementation of reporting requirements resulting from two important markets legislations: the European Market Infrastructure Regulation (EMIR) and the second iteration of the Markets in Financial Instruments Directive (MiFID II). The aim is to foster consistency, to the maximum extent, by avoiding reporting conflicts between the two regimes.	Hannelore Lausch, BaFIN, Germany
Commodity Derivatives Task Force	• monitoring and analysing regulatory and industry developments in the field of commodity financial markets • participating in the European legislative process in the commodity derivatives field and promoting supervisory convergence • managing the co-operation between financial regulators/ESMA and other regulatory and supervisory authorities such as the Agency for the Cooperation of Energy Regulators ("ACER") and national energy regulators.	Edwin Schooling-Latter, FCA, United Kingdom

Annexes

ANNEX 1 – Access to documents requests in 2016

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

In 2016, ESMA received six requests for access to documents pursuant to Regulation (EC) No 1049/2001. These requests concerned a variety of topics, such as: letters sent by the EC to ESMA in the context of the endorsement of certain RTS; meetings between ESMA officials and relevant stakeholders; delegation agreements concluded between ESMA and national authorities; and a list of all non EEA fund managers reporting to European NCAs under the National Private Placement Regime (NPPR) for AIFMD filings.

In four cases, ESMA granted full access to the requested documents. On two other occasions ESMA decided to grant only partial access to the documents as it was sufficient to meet the objectives of the requesters, and as the disclosure of certain information would have undermined the protection of the privacy and integrity of the individual. In particular, in accordance with EU legislation regarding the protection of personal data in one case, while on another occasion a requested document contained confidential supervisory information.

ANNEX 2 – Work Programmes 2016

ESMA published four work programmes in 2016 which set out the work it intends to carry out as an organisation in general but also in specific areas. The Work Programmes published in 2016 were:

- Annual Work Programme
- Regulatory Work Programme
- Supervisory Work Programme
- Supervisory Convergence Work Programme

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