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# FOREWORD BY THE CHAIR

➤ STEVEN MAIJOOR

The European Securities and Markets Authority's (ESMA) third year as the European Union's (EU) securities markets regulator was marked by a number of advances in pursuit of its mandate, and significant achievements in its broader cooperative work. A comparison with the previous editions of the Annual Report shows the growth of the responsibilities and powers ESMA wields in meeting the objectives set for it by the European Parliament and Council.

ESMA's mandate applies to a broad range of financial activities in the EU's securities markets, ranging from trading complex derivatives to hedge funds, the supervision of entities such as credit rating agencies and trade repositories, to the management of investment funds and their sale to the public. However, responsibility for these broad and diverse areas is based on a very clear objective of protecting investors and ensuring the stability of our financial markets.

The backdrop to the majority of ESMA's activity continued to be the implementation of the regulatory and supervisory changes identified by the EU as necessary to tackle the financial crisis, and to meet its global commitments to building a more resilient financial system.

While meeting these objectives and carrying out the related tasks may seem daunting, I believe that ESMA has performed well since its creation in delivering high quality work to challenging deadlines and with limited resources. This is not just my own opinion but has been echoed in an International Monetary Fund report of March 2013 which found that ESMA has performed especially well in connection with the development of the single rulebook and the direct supervision of credit rating agencies. In 2013, we were also subject to the European Commission's review of the European System of Financial Supervision (ESFS). The findings of the review are expected to be published in the first half of 2014.

The ESFS review looked at the totality of ESMA's activity and how it met its objectives, both as an independent body but also as a member of the wider ESFS network. This has involved working closely with Member States' National Competent Authorities (NCAs) and our strong working relationship with our fellow European Supervisory Authorities (ESAs): the European Banking Authority (EBA); the European Insurances and Occupational Pensions Authority (EIOPA); and the European Systemic Risk Board (ESRB).

One of ESMA's main tasks, unique amongst the three ESAs, is the supervision of key market players. Our main focus is on credit rating agencies (CRAs) but our supervisory remit has broadened with the registration of six trade repositories. This further cements our role and contribution to pan-European supervision, with trade repositories central to achieving the objective of more transparency for derivatives markets.

ESMA has developed an effective supervisory regime for CRAs, and has conducted significant on-site supervisory work with CRAs, most recently on the sovereign ratings process. The investigation identified areas for improvement in relation to independence and avoidance of conflicts of interests, the confidentiality of sovereign rating information, the timing of publication of rating actions and the resources allocated to sovereign ratings.

In terms of ESMA's contribution to the single rulebook, a core area was in relation to EMIR where we finalised the technical standards necessary for its implementation, and started the consultation process on the clearing obligations for derivatives. We also produced technical standards for alternative investment funds, provided technical advice to the EC on the prospectus directive and produced Guidelines and Recommendations for a diverse range





The regulatory reform of the past years has not sufficiently improved the protection of the financial consumer. In the years to come we need to ensure the balance between stability-prudential concerns and investor protection concerns. I am optimistic that with the upcoming legislation we can make a stronger contribution to financial consumer protection.

On financial stability, we have stepped up our identification and output on the risks in securities markets, both through publications such as the *Trends, Risks, and Vulnerabilities* Report and Risk Dashboards, and our contribution to the work of the ESAs' Joint Committee and our participation in the ESRB. Alongside this risk identification and economic analysis one of our most significant achievements of 2013 was our work, together with the EBA and national authorities, on principles to address benchmark setting processes in the EU.

The global aspect to financial markets reform has meant that ESMA continues to be engaged across a broad range of international activities and bodies. This has included participation in the international coordination of OTC derivatives reform, the equivalence assessment of CRA and derivatives regimes and the facilitation of the agreement of over 1,000 MoUs on cooperation in the supervision of alternative investment funds between the 28 EU Member State authorities and a large number of third countries. In addition, we participate in the work of the FSB, CPSS, the OTC Derivatives Regulators Group and IOSCO, where ESMA became an observer to the IOSCO Board in 2013.

ESMA continues to ensure that all relevant stakeholders have the chance to contribute and inform our decisions through a number of avenues, including open public consultations, hearings, and the interaction with the Consultative Working Groups and the Securities Markets Stakeholders Group (SMSG). The term of the first members of the SMSG expired in 2013 and we are looking back at a successful first term of the SMSG. I am looking forward to continuing our excellent cooperation with the second SMSG. In addition, I want to thank all stakeholders for their invaluable contributions to ESMA in 2013.

I would also like to thank all ESMA staff for their hard work, dedication and sacrifice, which is essential in these formative years of ESMA. Finally, I want to sincerely thank my colleagues from the national authorities across the EU who, as Board of Supervisors members, devote considerable time and energy to ESMA's progress. The members of the Management Board are doubly involved providing assistance and advice in ensuring that the Authority meets its objectives. The Members of our Boards make, both individually and their institutions, invaluable contributions to ESMA which are essential for creating a truly common supervisory culture across the EU.

**Steven Maijor**, *Chair*  
*European Securities and Markets Authority*



# THE IMPLEMENTATION OF REGULATORY REFORM IS NOW A PRIORITY FOR US



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# FOREWORD BY THE EXECUTIVE DIRECTOR

► VERENA ROSS

2013 was the third year of existence for the European Securities and Markets Authority (ESMA). In organisational terms, one could say that ESMA is “growing up”. This has meant that the EU’s securities markets regulator had to develop and grow on many different fronts in 2013. Looking at our Work Programme alone and the range of issues we tackled one understands how demanding a task this has been and continues to be. In my role as Executive Director, I am therefore pleased to report on what 2013 entailed in terms of developing and growing ESMA as an organisation. ESMA has been able to deliver in 2013 against its objectives, its many responsibilities and tasks (as outlined in the Work Programme) and the many additional demands it faced throughout the year in terms of standard-setting, supervision and organisational development.

In order to keep up with the additional responsibilities and tasks that were on ESMA’s plate in 2013, ESMA staff numbers grew by more than 50% to 139 staff by the end of the year. ESMA saw new colleagues from a wide variety of professional backgrounds join and by doing so enabling the Authority to further its pool of experience and expertise. This growth in staff was also mirrored by substantial progress in improving systems and procedures, which overall led to a significant step forward in ESMA’s operational effectiveness. Looking ahead at the long list of our responsibilities and on-going and new tasks (whether under EMIR, MiFID II or other legislative provisions), ESMA will need to continue to develop existing and attract new staff, as well as continue to improve its organisational effectiveness.

ESMA’s 2013 Annual Accounts (see p.69) also reflect the growth of the Authority. In 2013, ESMA’s annual budget increased by about €8 million compared to the previous year, from €20.2 million to €28.1 million in 2013. This represents an overall increase of 39% which is both impressive and desperately needed to allow ESMA to have the capacity and capability to deliver against its additional tasks provided for by new EU legislation. With the authorisation of six new trade repositories and some new CRAs, ESMA funding

sources also reflect the Authority’s increased role as a supervisor: in 2013, 23% of our budget came from fees paid by authorised entities.

2013 was somewhat of a turning point for ESMA in terms of moving from its traditional policy role to a more implementation- and supervision-orientated role, with direct supervisory responsibility for an expanded set of financial market entities and many on-going tasks related to implementation, supervisory convergence and data monitoring and analysis. It was thus an important year in ESMA’s further development as an organisation. Let me illustrate this shift in focus on the basis of the big dossier of EMIR. Bringing OTC derivatives trading under regulatory oversight, by requiring trade reporting, central clearing and risk mitigation, is an important change that will make derivatives markets a safer place. Besides much standard-setting that ESMA had to accomplish under EMIR, changing the way derivatives trading works also meant for ESMA a strengthening of its role as a pan-European supervisor by taking on the supervision of six newly authorised EU-based trade repositories. ESMA furthermore played a key role together with NCAs in starting to prepare the supervisory colleges that will authorise and supervise European clearing houses. Finally, EMIR also meant more international engagement for ESMA in terms of active discussions with our counterparties in other key derivative markets jurisdictions and with international standards setters such as IOSCO and the FSB. It is clear that MiFID II will lead to some similar developments that will require ESMA to ensure that its organisational set up is able to cope not only with the initial rule-making but also the on-going implementation challenges.

The greater implementing and operational role of ESMA can also be seen in the development of some key IT systems that were either completed or started in 2013. Building common systems that allow for comparability and usage of data between national and EU regulators and sharing of information to enable supervisors to analyse and monitor important market developments is important to allow the European



System of Financial Supervision to operate effectively. Furthermore many of the IT systems have the ultimate important purpose to increase transparency and information to the users of, and investors in, EU financial markets.

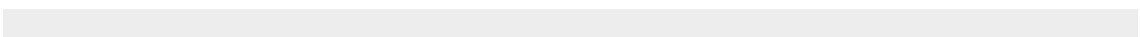
I would like to warmly thank everybody who contributed to ESMA's work in 2013. First and foremost all ESMA staff, without whose dedication, commitment and tireless efforts the achievements in 2013 would not have been possible. I am deeply grateful for being able to work with such fantastic colleagues on a daily basis. ESMA's success is built on its people and I look forward to continue working with all of them.

I would also like to thank our counterparts in the regulators in Europe and beyond for their strong contribution and the good cooperation, as well as stakeholders for their valuable input. Finally, my thanks go to the current and former members of the Management Board, and the Board of Supervisors of ESMA. Only through our successful and strong joint effort was ESMA able to have such a successful year in 2013.

**Verena Ross**, *Executive Director*  
European Securities and Markets Authority



IN ORGANISATIONAL TERMS,  
ESMA IS "GROWING UP"





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# ESMA'S ROLE AND OBJECTIVES

# ★ ESMA'S OBJECTIVES

Established in January 2011, ESMA is charged with enhancing the protection of investors and promoting stable and well-functioning financial markets in the European Union. As an independent institution, ESMA achieves these aims by building a single rulebook for EU financial markets and ensuring its consistent application across the EU, and contributing to the supervision of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

Sound and effective regulation of securities markets is key for the growth, integrity and efficiency 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 was created as an independent EU Authority to improve harmonisation in both regulation and supervisory practices.

In order to achieve harmonised rule implementation throughout the EU, ESMA serves as a standard setter in relation to securities legislation and provides technical advice where mandated by the European Commission (EC). It also has an important role in directly supervising financial players with pan-European profile, currently credit rating agencies (CRAs) and trade repositories (TRs). ESMA also participates in the supervision of Central Counterparties (CCPs) through supervisory colleges. ESMA's annual report is an important tool in providing accountability regarding its delivery against its objectives and annual Work Programme. ESMA's role can be better understood through the five objectives it has set itself, namely:

## Financial Stability

In order for ESMA to contribute to safeguarding the financial stability of the EU's securities markets, it is crucial that it continuously analyses trends and, at an early stage, identifies potential risks and vulnerabilities at a micro-prudential level. ESMA achieves this, across borders and sectors, by conducting economic analyses of European securities markets and models the impact of potential market developments.



ESMA informs the European Institutions, the other European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB) on a regular and ad-hoc basis about its findings. The aggregation of micro-data collected at supervisory level is key to identifying the build-up of potential macro risks to the economy as a whole. Therefore, it is crucial to inform regularly all necessary decision-makers, including, at the EU level, the Financial Services Committee (FSC) and the Financial Stability Table of the Economic and Financial Committee (EFC-FST). Since early 2013, ESMA has published bi-annual reports in order to raise awareness of risks, trends and vulnerabilities in EU securities markets. ESMA also contributes to fostering financial stability by coordinating emergency measures across the EU.

## Investor Protection

Ensuring that the interests of investors are properly met is another important task for ESMA. ESMA achieves this through promoting transparency, simplicity and fairness in securities markets for consumers of financial products or services. In order to ensure that investors enjoy the same level of protection regardless of the point of sale or the product being sold, ESMA collects, analyses and reports on consumer trends, while promoting both financial literacy and education initiatives and contributing to the enhancement of common disclosure rules. ESMA's work in this area includes focusing on ensuring that the financial information provided by market participants to investors is clear, understandable and in compliance with existing rules. It is important for ESMA to monitor new and existing financial activities as this allows it to assess the need of whether to adopt guidelines and recommendations that promote safe and sound securities markets, and thus enhancing investor protection across the EU.

If ESMA identifies products which may inherently present serious threats to investors, it considers issuing warnings. If current legislative proposals come into force, ESMA will be able in future, as a last resort, to ban temporarily certain products.

## Single Rulebook

In its role as a standard setter, ESMA works on establishing harmonised technical (TS) and implementing standards (IS) in different areas of securities regulation. By drafting those standards, ESMA contributes to creating a single EU rulebook applicable to all market participants and creating a level-playing-field across the EU.

## Convergence

ESMA was established to foster supervisory convergence thereby reducing regulatory arbitrage resulting from different practices across the EU. Different supervisory practices have the potential to undermine not only the integrity, efficiency and orderly functioning of markets, but ultimately financial stability.

In order to foster fair and balanced supervisory practices, ESMA conducts peer reviews of existing EU securities legislation. In addition, ESMA has a number of tools to promote regulatory convergence, including issuing opinions and Q&As, entering into mediation and, as a last resort, a Breach of Union law procedure. ESMA aims to use its convergence work to drive its activities in other areas of its Work Programme, including enhancing the single rulebook, through issuing guidelines and recommendations in areas where difference of application exist, and through providing advice to the Commission on areas where revised legislation might be necessary to align supervisory practices.

## Supervision

ESMA's direct supervisory powers are focused on two groups of participants in the financial markets, namely credit rating agencies and trade repositories. Since 1 July 2011, ESMA is the EU body responsible for the registration and supervision of CRAs. Since early 2013, ESMA took on direct supervisory powers regarding trade repositories and participates in the supervisory colleges that register and oversee CCPs.

# ★ ESMA ORGANISATION

## Governance and Management

Two decision-making bodies govern ESMA: the Board of Supervisors and the Management Board. Since 2011, ESMA's full-time Chair is Steven Maijor and its Executive Director, Verena Ross. Both are based at ESMA's premises in Paris and serve a five-year term which may be extended once. The Chair is responsible for preparing the work of the BoS and chairs both the meetings of the Board of Supervisors and the Management Board. He also represents the Authority externally. His alternate is Carlos Tavares, Vice-Chair of ESMA.

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.

## Board of Supervisors

In addition to the ESMA Chair, the Board of Supervisors is composed of the heads of the 28 national competent authorities (NCAs) responsible for securities regulation and supervision - where there is more than one national authority in a Member State those authorities will agree which of their heads will represent them -, with one observer from the Commission, a representative each of EBA and EIOPA and one representative of the ESRB. In addition, Norway, Iceland and Liechtenstein are attending as permanent observers. The ESMA Executive Director attends the Board but has no right to vote. The Board guides the work of the Authority and has the ultimate decision-making responsibility regarding the adoption of ESMA standards, opinions, recommendations, guidelines and any other decisions, including the issuance of advice to the EU institutions. The Board is supported by a number of ESMA standing committees and working groups who are dealing with technical issues (more detail pp.72).

The current Members of the Board and summaries of their 2013 meetings can be found on ESMA's website:

➤ [www.esma.europa.eu/bos](http://www.esma.europa.eu/bos)

## Management Board

In addition to the ESMA Chair, the Management Board of ESMA is composed of six members (and an alternate for each) selected from the Board of Supervisors by its members. The Executive Director, the ESMA Vice-Chair, Carlos Tavares, 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 focus on the management aspects of the Authority, such as the 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 2013 can be found on ESMA's website: ➤ [www.esma.europa.eu/mb](http://www.esma.europa.eu/mb)

## Securities and Markets Stakeholder Group

The Securities and Markets Stakeholder Group (SMSG) was established under the ESMA Regulation to help facilitate consultation with stakeholders in areas relevant to ESMA's tasks. ESMA is required to consult the SMSG on its draft technical standards and guidelines. The SMSG's 30 members first met in July 2011 and were appointed by ESMA for a period of two and a half years following an open call for candidates. They represent financial market participants and their employees', consumers and other retail users of financial services, users of financial services and small and medium sized enterprises.

Guillaume Prache, a consumer representative, chaired ESMA's first SMSG whose term ended on 31 December 2013. He was supported by joint Vice-Chairs Peter de Proft, a representative of users of financial services, and Judith Hardt, a representative of financial market participants. The Group met on seven occasions in 2013 and, on two of which it held meetings together with the ESMA Board of Supervisors. The Group has issued numerous advices, opinions and reports on issues concerning ESMA's policy-making activities. Summaries of these meetings, as well as the Group's annual report, can be found on ESMA's website. A newly composed SMSG was elected in late 2013 and has taken up work from January 2014.

➤ [www.esma.europa.eu/smsg](http://www.esma.europa.eu/smsg)

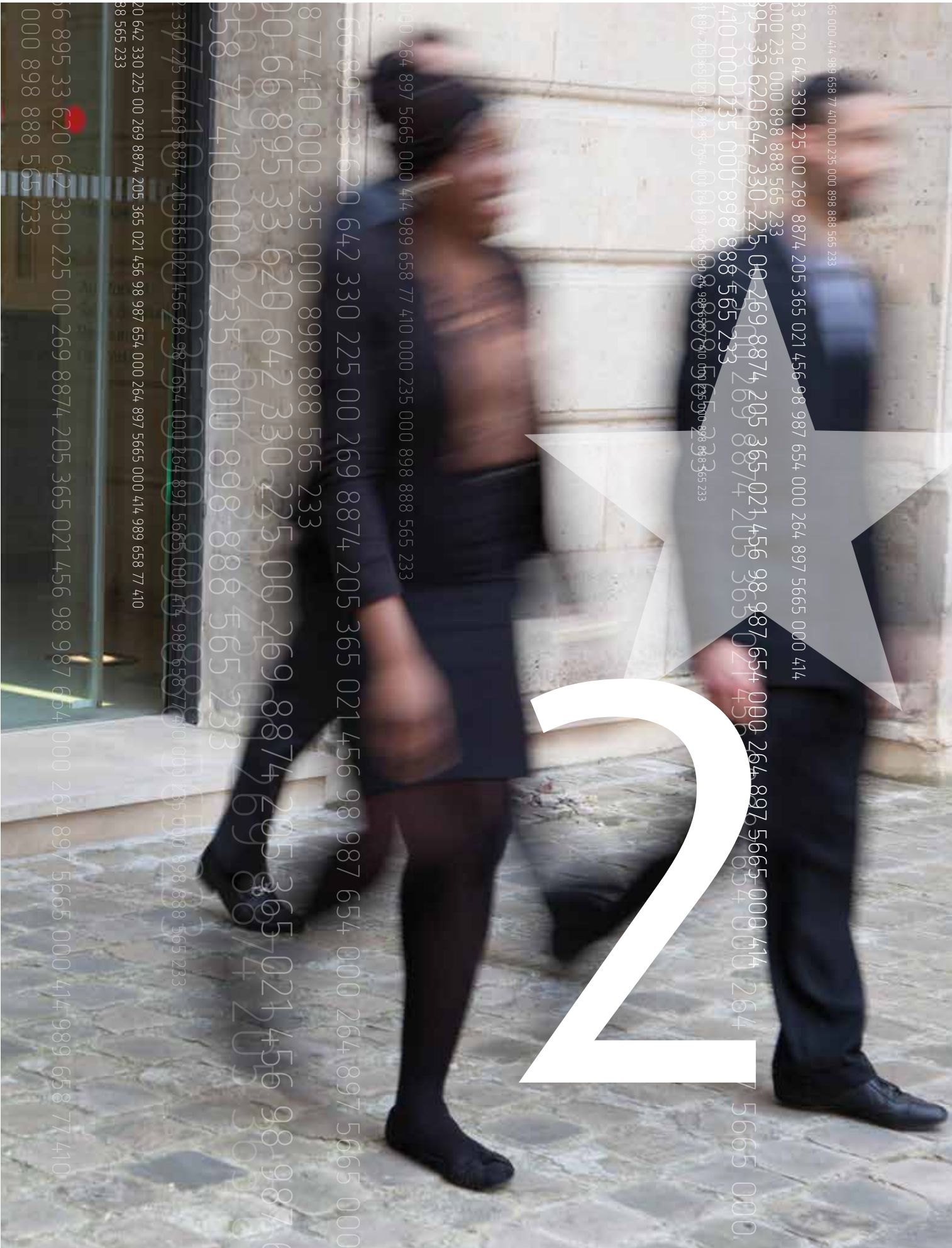


# ★ THE ORGANISATIONAL CHARACTERISTICS OF ESMA

The following six characteristics describe ESMA, and how it achieves its mission and objectives:

- **European:** When carrying out its tasks, ESMA acts in the interest of the EU. The organisation reflects the diversity of the EU;
- **Independent:** ESMA is independent from the EU institutions, national authorities and financial markets participants;
- **Co-operative:** ESMA forms, together with the national authorities, an EU network of financial markets supervisors. It co-operates with all relevant European bodies, including the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Systemic Risk Board (ESRB), and with regulators outside the EU;
- **Accountable:** ESMA's decision-making is transparent and it deals with its stakeholders in an open and inclusive manner. The organisation is accountable to the European Parliament, European Council, European Commission and the wider public;
- **Professional:** ESMA strives for professional excellence by employing high-quality staff with strong technical expertise, knowledge and experience of financial markets, and through following sound practices and procedures; and
- **Effective:** ESMA uses its resources efficiently in order to maximise its impact in promoting investor protection and stable and well-functioning markets in the EU.





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# ESMA'S ACHIEVEMENTS AGAINST ITS OBJECTIVES 2013

Effective, coherent and sound regulation is key in maintaining investors' confidence, and ultimately also in ensuring the growth, integrity and efficiency of EU Financial Markets.

# ★ FINANCIAL STABILITY

Financial stability is probably best defined as a situation where the financial system at large is running smoothly without any disruptions and where the system – comprising of financial intermediaries, markets and market infrastructures – is capable of absorbing financial and real shocks without impacting on the allocation of assets. Financial stability means that the financial system should be able to efficiently and smoothly transfer resources from savers to

investors and risks should be assessed, managed and priced accurately.

Understood this way, the safeguarding of financial stability requires identifying the main trends, risk and vulnerability in the allocation of financial resources from savers to investors and the mis-pricing or mismanagement of financial risks. This monitoring must be forward looking: inefficiencies in the allocation of capital or shortcomings in the pricing and management of risk can affect financial stability and ultimately economic stability. Monitoring developments at both micro and macro levels is key, which is reflected in the set-up of ESMA, its sister authorities EBA and EIOPA and ultimately the ESRB where the information comes together at macro level. This cooperation is key for stability matters as it is financial intermediaries, such as banks, insurance companies and other institutional investors that route assets from the investor to the borrower, and it is market infrastructures through which money and financial assets flow between buyers and sellers.

## ESMA monitors financial stability

Within its mandate to monitor financial markets and assess possible risks, ESMA regularly reports on financial market developments. In 2013, the Authority issued several periodic risk reports and trend summaries. ESMA also contributed to risk reports issued by other institutions such as the ESAs' Joint Committee's Risk Subcommittee and of the European Systemic Risk Board (ESRB).

### Reports on Trends, Risk and Vulnerabilities

In 2013 ESMA published two issues of its recently revamped report on Trends, Risk and Vulnerabilities (TRV). The reports include monitoring information on financial markets in general as well as assessment of individual market segments. The TRV also provides an assessment of risks in financial markets based on a thorough analytical framework. Finally, the report includes specific topics which are prone to affect the future risks in financial markets.



## 2013 market conditions improve but overall risks remain

The TRV report for the first half of 2013 looked into trends, risks and vulnerabilities of EU securities markets, investor trends and the development of market infrastructures. Overall, the report found that conditions in securities markets had improved moderately, with EU equity prices declining slightly over 2013, but liquidity on sovereign bond markets improved and volatility stabilised while overnight interbank EUR market activity increased.

The second quarter was marked by a general increase in borrowing costs for sovereigns and a spike in commodity market volatility.

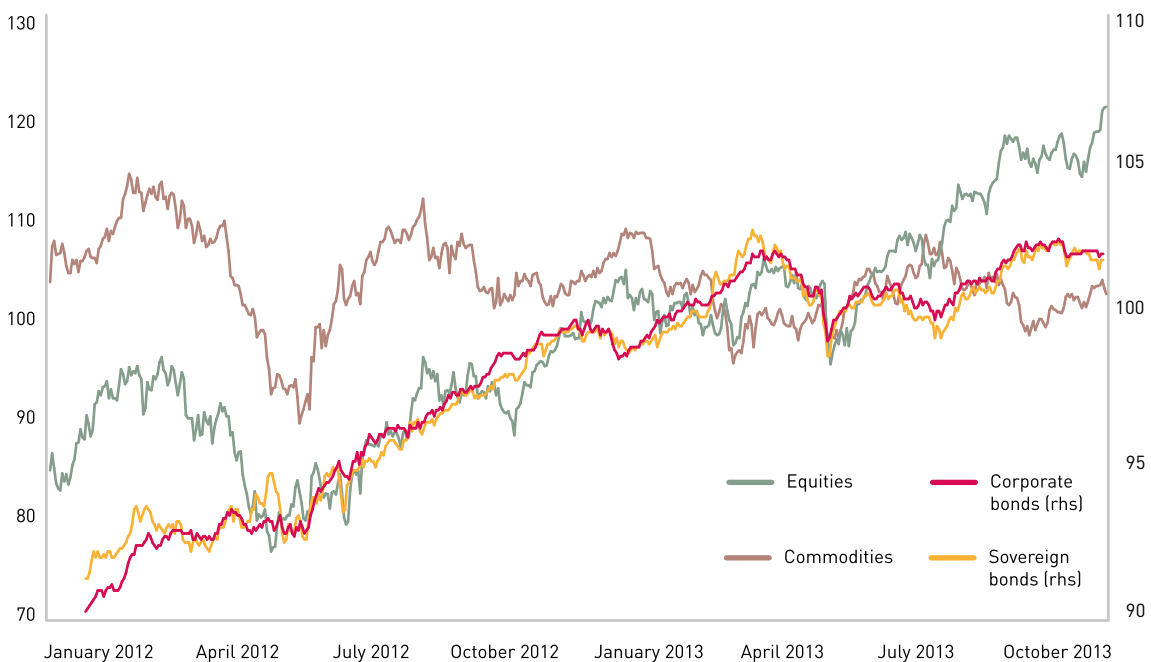
Concerning investor trends, in the first half of 2013, the EU fund industry benefited from positive trends in financial markets, although fund inflows were highly volatile. Bond and equity funds drove the sector's growth, but initial capital flows partly reversed in the second quarter for both types of funds. Money Market Funds (MMFs) assets and shares continued to decline. Alternative funds increased their share base. Leverage was moderate and stable for most fund types but fell for real estate funds and increased for hedge funds. While retail investors continued to enjoy above-long-term-average portfolio returns, general investor sentiment deteriorated. Activity on EU trading venues increased in

early 2013 as general market conditions picked up. Central clearing of interest rate swaps continued to gain ground. With regard to financial benchmarks, the number of banks in the Euribor panel dropped slowly but steadily since December 2012. Credit rating agencies' accuracy improved slightly on average in the course of 2012 but deteriorated for ratings on structured finance instruments. On the vulnerability analysis side, the reports included studies on the impact of the short-selling regulation, the UCITS industry, bail-in and contingent capital securities and a network analysis of the EU Credit Default Swaps (CDS) market.

In the TRV report for the second half, it was noted that conditions in EU securities markets improved supported by a combination of better macroeconomic prospects in many EU economies and on-going liquidity support measures from central banks. Temporary spikes in market uncertainty emanated mainly from speculation over the future of central bank support measures and the budget standoff in the US. EU equity markets performed strongly, and most bond markets experienced a downward trend in spreads, yields and volatility, especially in distressed sovereign markets and lower-rated corporate bonds. For sovereign bonds, this reflected an easing of tension regarding EU sovereigns, whereas for corporate bonds the trend was associated with a shift in risk assessments and a continued search-for-yield by investors. Issuance was subdued for equity as well as for debt markets.

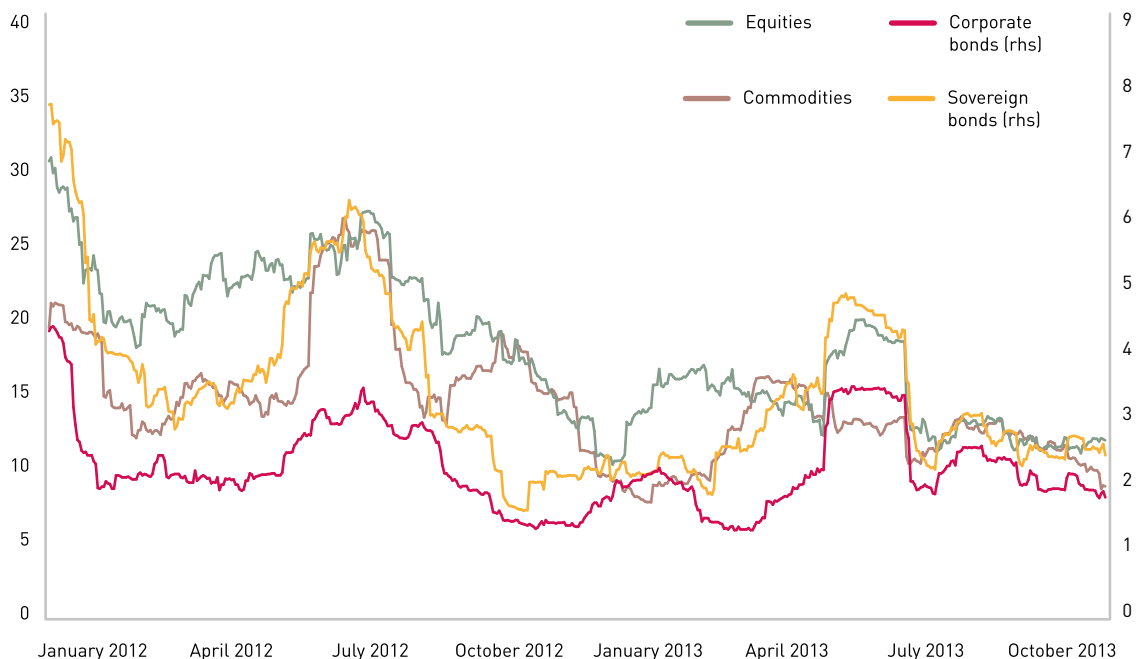
Market performance: broad-based increase

T.1



Note: Return indices on EU equities (Datastream regional index), global commodities (S&P GSCI), EA corporate and sovereign bonds (Iboxx Euro, all maturities), 1/7/2013=100. Sources: Thomson Reuters Eikon, Datastream, ESMA.

Market volatility: receded in 2013



Note: 40D volatility of return indices on EU equities (Datastream regional index), global commodities (S&P GSCI), EA corporate and sovereign bonds (Iboxx Euro all maturities), in %. Sources: Thomson Reuters Eikon, Datastream, ESMA.

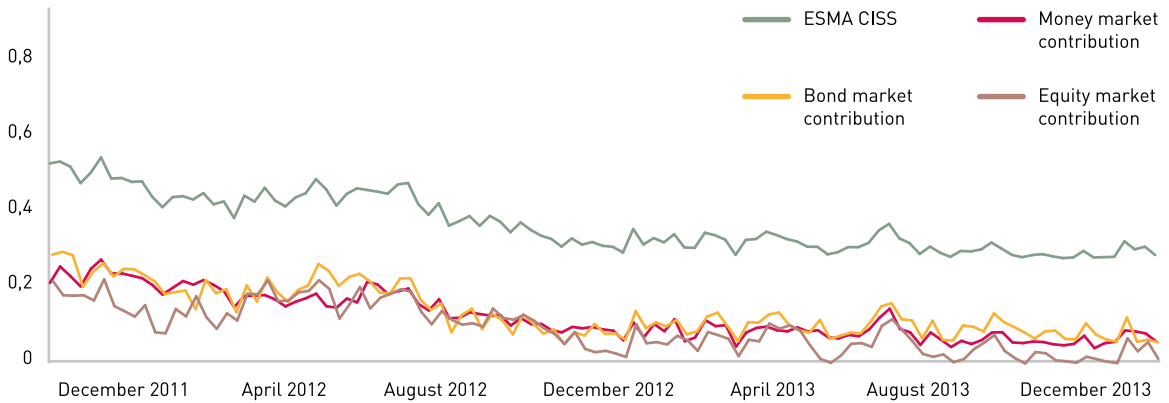
The EU shadow banking system expanded slightly and amounted to 20% of EU bank liabilities. Regarding investor trends, the EU fund industry was subject to outflows on aggregate, but equity funds as well as alternative funds were able to attract inflows. Market infrastructure developments were in line with the first half's developments. The cumulative value of trades cleared through continental European CCPs fell for the first time since 2009 and the continuity of key financial benchmarks in the EU remained a major concern for ESMA, even though the withdrawal of banks from interbank interest reference rate panels slowed during the second half of the year. Finally, the report included studies on high-frequency-trading, risks stemming from the low interest rates environment, EU central securities depositories, the credit rating agency industry and the stress-testing of investment portfolios.

## Risk Dashboards

In addition, ESMA published four Risk Dashboards. The Risk Dashboards assessed the risk situation in the four quarters of 2013. ESMA's 2013 risk evaluation started with an unchanged outlook on liquidity, market and contagion risks. However, market clustering and fragmentation, funding risk, the low interest rate environment and obstacles to orderly market functioning remained important sources of uncertainty for EU financial stability. At the beginning of the second quarter, systemic risk decreased, only to rebound to elevated levels at the end of the quarter. Other risks indicators as well as the general outlook remained stable. Only during the third quarter did market risk increase, as yield curves in advanced economies steepened, giving rise to valuation concerns. This triggered price changes and a reallocation of capital. Finally, tensions in EU financial markets eased during the last quarter of 2013 with systemic stress indicators falling to levels experienced only before 2007. This development was linked to improved macroeconomic prospects for some EU economies, reducing pressure on EU sovereign debt markets, whilst at the same time monetary easing and liquidity support measures continued. Overall risks remained at high levels: regarding market risk, ESMA observed increased signals of search-for-yield behaviour, potentially related to the on-going low interest-rate environment.

**Systemic stress indicator**

R.1



Note: ESMA version of the ECB-CISS indicator measuring systemic stress on securities markets. A detailed explanation is provided in the technical annex to the Risk Dashboard. Sources: ECB, ESMA.

**ESAs report on cross-sector risk to EU financial markets**

In 2013, ESMA contributed to two of the European Supervisory Authorities' (ESAs) Joint Committee reports on risks and vulnerabilities in the EU Financial System, considering all three sectors. The 2013 reports focused mainly on cross-sector risks.

➤ <http://www.esma.europa.eu/page/cema-documents>

**ESMA conducts tailored economic research and impact assessments**

In order to comply with its mandate to monitor financial markets in order to identify the development of risks and dangers for financial stability, as well as assessing impacts of new regulations and policy measures, in 2013 ESMA conducted in-depth research projects, such as:

- joint work with the ESRB on central counterparties and their contribution to systemic risk,
- an assessment of the impact of the regulation on short selling and certain aspects of credit default swaps,
- a review of the financial market benchmark principles; and
- a report on retailisation in the EU.



### ESMA contributes to ESRB work on central counterparties and systemic risk

In November 2013, the ESRB published a macro-prudential commentary on central counterparties and systemic risk to which ESMA contributed. This commentary provided an overview of the role of CCPs in the financial system and analysed the importance of CCPs' resilience for broader financial stability. Notwithstanding the benefits that resulted from the clearing requirement, the change in market organization may have led to new vulnerabilities related to risk concentration, complex interdependencies or potential collateral scarcity. In addition, uncoordinated micro-prudential risk management practices could have led to systemic

stress. This commentary also focused on macro-prudential concerns, such as pro-cyclicality, wrong-way risks and interdependencies that may have arisen from a CCP's risk management practices and market structure. Notwithstanding the various policy initiatives undertaken and achievements to date, further efforts were made and still more may be needed in order to achieve a safe and resilient clearing landscape. Essential work on recovery and resolution arrangements for CCPs is on-going at the international and EU levels.

### EBA-ESMA develop benchmark principles and recommendations

ESMA and EBA published a consultation paper on Principles for Benchmark-Setting Processes in the EU in January 2013 and the final ESMA-EBA Principles for Benchmark-Setting Processes in the EU in June 2013. These Principles provided a general framework for the benchmark setting process as well as additional detailed guidance for benchmark submitters, benchmark calculation agents, benchmark publishers, benchmark users, and Principles for the continuity of benchmarks.

After having conducted a joint EBA-ESMA review of the Euribor benchmark in October-November 2012, with the objective to gain an in-depth understanding of the Euribor setting process and the policies governing it, ESMA and EBA also published a joint Report on the Administration and Management of Euribor in January 2013. The Report included a set of Recommendations to Euribor-EBF to address what EBA and ESMA had identified as weaknesses and insufficiencies in the governance and technical framework of Euribor.

### ESMA looks into impact of the Short-Selling Regulation

ESMA published its evaluation of the impact of the Regulation on short selling and certain aspects of credit default swaps in response to the European Commission's request for technical advice to inform the European Parliament and Council on the impact of the regulation. Notwithstanding the review's limitations in terms of data and timespan, its key findings were the following:

- There were mixed effects on liquidity of EU stocks, with a slight decline in volatility, a decrease in bid-ask spreads and no significant impact on traded volumes. Price discovery speed seemed to have decreased compared to the period before the entry into force of the Regulation;





- Overall, settlement discipline has improved; and
- No compelling impact on the liquidity of EU single name CDS and on the related sovereign bonds markets could be noticed (except in a few countries). The liquidity in European sovereign CDS indices has been somewhat reduced.

ESMA's findings led to a series of recommendations in key areas of the Regulation that were conveyed to the Commission.

## ESMA review on retailisation in the EU

ESMA published, in July 2013, a report analysing the issue of retailisation, i.e. the sales of complex products to retail investors. The report focused on two subsets of this market:

- UCITS pursuing alternative investment strategies (alternative UCITS); and
- structured products targeted to retail investors.

Those two classes of products are particularly relevant given the sharp increase in Assets under Management (AuM) and given the size of the structured products market. The ESMA review showed that alternative UCITS experienced a significant growth since 2007, with a 325% increase in AuM from €20bn to €85bn at end-2012. The volumes of structured products sold to retail investors decreased from a peak of €250bn in 2007 to around €110bn in 2012, but outstanding amounts accounted for around €770bn at end-2012.

Notwithstanding the potential benefits brought by these products, trends linked to retailisation have been closely monitored by securities markets supervisors as it could increase risks for the financial system. From a consumer protection perspective, retail investors may have difficulties in understanding the drivers of risks and returns of complex products. As a result, it might be particularly challenging for investors to make proper investment decisions. If retail investors do not properly understand the risk and reward profile of complex products, unexpected losses might lead to complaints, reputational risks for issuers and a loss of confidence in the regulatory framework and, more broadly, in financial markets. From an issuer's perspective, complex products targeted at retail investors may be used to generate profits through fees and may also provide an alternative source of funding.

➤ [www.esma.europa.eu/system/files/2013-326\\_economic\\_report\\_-\\_retailisation\\_in\\_the\\_eu\\_0.pdf](http://www.esma.europa.eu/system/files/2013-326_economic_report_-_retailisation_in_the_eu_0.pdf)

# ★ FINANCIAL CONSUMER PROTECTION

Ensuring the protection of consumers is another important task for ESMA. It achieves this through promoting transparency, simplicity and fairness in securities markets for consumers of financial products or services. In order for investors to enjoy the same level of protection regardless of the point of sale or the product being sold, ESMA collects, analyses and reports on consumer trends, while

promoting both financial literacy and education initiatives and contributing to the enhancement of common disclosure rules so that consumers can make suitable investment decisions.

Should ESMA identify any product which may inherently present serious threats to investors, it will consider issuing warnings. If current legislative proposals come into force ESMA will have the power, as a last resort, to temporarily ban certain products. ESMA's work in this area includes a focus on ensuring that the financial information provided by market participants to investors is clear, understandable and in compliance with existing rules.

## ESMA expands work on monitoring markets and financial innovation

The core objectives of investor protection, and financial stability serve to ground the work ESMA has undertaken in building a financial innovation framework. First, in the monitoring of innovation ESMA seeks to identify investor protection concerns, e.g. information asymmetry, lack of transparency, and mis-alignment of interests. The Authority works to ensure that investors have sufficient information as to the risk/return profile of a product to make investment decisions appropriate to their circumstances and needs. Once analysed, ESMA may recommend action on either a supervisory basis or if needed a policy response. Second, through meetings and communications we seek to ensure that supervisors, policy makers and market participants are made aware of the types of innovations that may give rise to financial instability. Third, ESMA puts considerable efforts on analysing those innovations that lead to misinformation among market participants and could threaten market integrity which in turn could lead to a loss of confidence among investors and participant withdrawal.

ESMA coordinates the NCAs' treatment and response to new or innovative financial activities and decides what action should be taken in this field. In reaction to certain financial activities ESMA may adopt guidelines and recommendations with the aim of promoting regulatory convergence, to issue alerts and warnings



or conduct any regulatory action needed to prevent financial innovation causing customer detriment or threaten financial stability.

While certain issues are best addressed by individual national authorities, ESMA makes proposals for the co-ordination of national responses to any shared issues identified in the area of financial innovation. ESMA also contributes to the Joint Committee of ESAs' work on financial innovation and consumer related issues, through the JC Sub-committee on Consumer Protection. Besides the on-going work with NCAs, 2013 saw ESMA build up its own staff base fully dedicated to financial innovation.

### **ESMA discusses innovation and market activities with market participants**

In 2013, ESMA has established a consultative working group (CWG) made up of academics, buy and sell side firms and consultants who meet on a regular basis to share with ESMA relevant market developments. Additionally, the CWG meets with ESMA to conduct a deeper analysis of selected topics related to financial innovation. Moreover, ESMA has in place a programme where it meets with key participants including hedge funds, credit rating agencies and sell side firms to better understand trends and developments in financial markets, identifying areas of potential concern and risks to investor protection and/ or financial stability. The aim is to establish a system of market intelligence that allows ESMA to monitor financial activity especially in its most innovative aspects.

### **ESMA conducted in-depth analysis of innovative financial products and processes**

In 2013, ESMA has put in place a framework for identifying, categorising, filtering and analysing financial innovation. This has allowed ESMA to prioritise resources to focus on selected topics. ESMA has conducted analysis of bail-in securities and securitisation to better understand their status and likely evolution. ESMA has surveyed NCAs on the topics of captive placement and crowdfunding to better understand the scope of such activities in Member States and the regulatory response. A working group of NCAs and ESMA recently completed a paper on good practices to be followed when manufacturing and distributing structured retail products. Furthermore, ESMA has in place work streams focused on index innovation and collateral transformation.

### **ESMA monitors and analyses retail investor trends**

ESMA continues to monitor EU retail investment markets gathering data from different sources (ECB, Eurostat, EC, market participants, NCAs). As a result of the data collection among NCAs on product sales and complaints, ESMA has compiled a first internal retail investor trends report. ESMA staff provided analysis on retail investor's assets, financial asset composition, income, participation in different financial assets, problems and trust levels for ESMA's bi-annual Trends, Risks and Vulnerabilities report.

### **ESMA works on investor education**

While the primary responsibility for the work of investor education is best undertaken at the NCA level, ESMA is well placed to raise awareness as to the importance of educating investors across NCAs, and to encourage and communicate best practises. ESMA works to build a community of EU securities markets financial literacy specialists. On 27 November 2013, ESMA organised the first ESMA meeting on investor education. The meeting was well attended and the day's program examined topical aspects of investor education such as the effectiveness of financial education programmes. Among the speakers were academics and representatives from IOSCO, the OECD and EuroFinuse, a retail investor association.

In 2013, ESMA redesigned the information available for retail investors on its website (Investor Corner) with the aim of further streamlining the structure and content while identifying relevant subjects where ESMA can best add value such as on facilitating:

- access to investor education websites by country; and
- access to national registers to check whether an investment firm is registered.

In June 2013, ESMA became an associate member of the OECD International Network on Investor Education, which will allow both ESMA and the OECD to further broaden their respective expertise.

## ESMA prepares reinforced investor protection regime under MiFID II

Investor protection has a crucial role to play in re-building consumer confidence in financial markets and overcoming the financial crisis. The current Markets in Financial Instruments Directive (MiFID) legislation already ensures a harmonised and high degree of protection for investors in financial instruments, and is widely recognised to have brought about significant changes – including better protection and services for investors. Looking at the lessons learnt during the financial crisis and in order to adapt to changed market conditions, MiFID has undergone a review process since 2010. The MiFID review, which has led into a new MiFID II text which is accompanied by a regulation, MiFIR, recognises the need to further strengthen the relevant MiFID requirements both regarding financial instruments/venues (please refer to pp.38) and on investor protection. The latter of which aims to mitigate risks of investor detriment, especially in light of the rapid innovation and the growing complexity in financial instruments.

In addition to improved disclosure, the MiFID II/MiFIR proposals include:

- strengthening the substantive investor protection requirements (such as, banning inducements and establishing the concept of independent advice);
- broadening the regulatory focus from distribution to manufacturing of financial instruments (product governance);
- broadening the scope of this regulatory framework, also in order to start overcoming the traditional 'silo' approach (extending MiFID to structured deposits - i.e. bringing banking products into MiFID); and
- an emphasis on supervision and enforcement with new product intervention powers.

## ESMA prepares for future investor protection work

Having mapped the large number of potential Level 2 empowerments ESMA has to develop for the implementation of the revamped MiFID framework, ESMA undertook, throughout 2013 and using several working groups, a significant amount of preparatory work for the possible tasks that could be assigned to ESMA in 2014. The main topics arising out of the MiFID II/MiFIR conduct of business and investor protection related proposals, and on which much preparatory work has been put in place, included:

- conduct of business rules for investment firms (including independent investment advice, inducements, information on costs and charges), and product intervention;
- operational issues and co-operation between NCAs (including authorisation of investment firms, passporting, sanctions); and
- organisational requirements (including product governance), best execution, and recordings of telephone conversations and electronic communications.

### NEXT STEPS

Subject to delivery of the final MiFID/R text and by when ESMA will receive mandates to develop MiFID/R's Level 2 measures, ESMA will publish a Discussion Paper (for technical standards) and a Consultation Paper (for technical advice) before the summer of 2014.



## ESMA issues remuneration guidelines for investment firms

Having consulted in 2012 on proposed guidelines on remuneration policies and practices under the current MiFID, in June 2013 ESMA published its final report and final guidelines on MiFID remuneration policies and practices. The guidelines apply to relevant staff of investment firms, credit institutions and fund management companies when providing investment services, and to national securities regulators enforcing those rules. The guidelines strengthen investor protection across the EEA Member States by improving the implementation of the MiFID rules on conflicts of interest and conduct of business provisions in the area of remuneration by firms (single rulebook) as well as the respective supervision by NCAs (supervisory convergence).

### Guidelines cover governance, design and control of pay schemes

The focus of the draft guidelines is the remuneration of all persons involved in the provision of investment and/or ancillary services; they cover the governance and design of remuneration policies and practices in the context of the MiFID conduct of business and conflicts of interest requirements, and controlling risks that remuneration policies and practices create. Firms must ensure that they have appropriate remuneration policies and practices in place, bearing in mind the obligation to act honestly, fairly and professionally in the best interests of their clients.

Improving remuneration arrangements will help to create the right incentives and to prevent mis-selling. Remuneration practices that are not compatible with these obligations are not MiFID compliant, and national supervisors need to intervene accordingly when carrying out their supervisory duties.

### NEXT STEPS

NCAs had until 1 December 2013 to notify ESMA as to whether they comply or intend to comply with the guidelines. The guidelines are effective from 30 January 2014.

## ESMA-EBA warn investors about contracts for difference

Besides working on harmonised standards for firms selling financial products, another important area of ESMA's investor protection work is that of warning investors against risks associated with financial products. In February 2013, ESMA jointly with the EBA published a warning to retail investors about the dangers of investing in contracts for difference (CFDs). The two authorities were concerned that during the current period of low investment returns, inexperienced retail investors across the EU are being tempted to invest in complex financial products, which they may not fully understand and which can end up costing them money they cannot afford to lose.

## ESMA-EBA issue guidelines for complaints-handling for securities and banking

Consumers in the EU can purchase, and firms can offer, financial services and products in the investment, banking and insurance sectors across the EU Single Market. To ensure the adequate protection of complainants, and in order to increase market confidence of all participants, ESMA and the EBA published, on 6 November 2014, a consultation paper on draft guidelines for complaints-handling for the securities and banking sectors. The proposed guidelines build on the existing complaints-handling guidelines established by EIOPA for the insurance sector. The guidelines seek to ensure that arrangements for complaints-handling across all three sectors are subject to a minimum level of supervisory convergence across the EU. The objective is to enable EU consumers to refer to a single set of complaints-handling arrangements, irrespective of the type of product or service or the geographical location of the firm in question. This, in turn, will also enable firms to streamline and standardise their complaints-handling arrangements, and national regulators to supervise the same requirements across all sectors of financial services.

### NEXT STEPS

The public consultation will close in 7 February 2014. ESMA and the EBA expect to publish the final guidelines by Q1 2014.



## ESAs provide principles for manufacturers' product oversight and governance processes

The Joint Committee of the three ESAs published, on 28 November 2013, eight principles applicable to the oversight and governance processes of financial products. These principles cover:

- the responsibilities of manufacturers and producers in setting up processes;
- functions and strategies for designing and marketing financial products; as well as
- reviewing the products' life cycle.

The joint position of the ESAs highlights that the design of financial products and services poses risks to consumers when the target market is not correctly identified. These risks can also arise when the objectives and characteristics of the target market are not duly taken into account in the marketing of products to consumers. These issues have previously arisen at EU level across the three sectors of securities, banking, and insurance.

The principles developed by the three ESAs in their joint position stress the importance of the controls that manufacturers should put in place before launching their products, thereby discouraging products and services that may cause consumer detriment from entering the market and, ultimately, enhancing consumer confidence in financial markets. The joint position is not directly addressed to market participants and competent authorities, but it will provide a high-level, consistent basis for the development by each ESA in the respective sectors of more detailed principles addressed to manufactures.

## ESAs hold Joint Consumer Protection Day

Consumer protection is a core objective of each of the three ESAs. Accordingly, in 2013, the three ESAs organised and hosted a joint Consumer Protection Day on 25 June 2013, in Paris. In attendance were approximately 250 consumer representatives, academics, legal and financial consultants, national supervisors and experts from the EU institutions and financial services industry representing securities, banking and insurance and pensions sectors.

The approach for the day was to discuss important consumer cross-cutting issues so as to be able to address them jointly for the benefit of consumers across the EU. These include the need to:

- have more regulatory consistency across the three financial sectors;
- to develop simpler and more understandable products;
- to devote further attention to the fairness of contractual conditions;
- to review the charges and commissions applied ensuring that they are not disproportionate; and
- to internalise clients' interests and for business models to focus better on client needs.

# ★ SUPERVISION

With the establishment of the ESFS, it was also decided to promote a European approach to the supervision of pan-EU players, such as the supervisory colleges in the banking area and for post trading (CCPs). In addition, ESMA was tasked to be the sole supervisor for CRAs in the EU. The same approach was chosen for trade repositories – those data warehouses that collect, save and make available

data on clearing and settlement, for which ESMA took on supervisory responsibility in 2013. By undertaking supervision of financial market participants with pan-EU reach, who may have an impact on the integrity of the EU's markets, ESMA contributes to safe and sound financial markets which in turn supports investor protection.

## ESMA strengthens its CRA supervision

In 2013, ESMA completed its second full year as the single regulator responsible for registration, certification and supervision of CRAs in the EU. During the past year, both registration and supervision activities continued with an increasing number of CRAs being registered and thus falling under ESMA's direct supervision.

### 2013 saw an increase in applications for registration

Compared to 2012, CRA registrations increased in the past year. During 2013, ESMA registered three CRAs and one additional certification was granted. The following CRAs were registered:

- The Economist Intelligence Unit Ltd, based in the UK;
- Dagong Europe Credit Rating Srl, based in Italy; and
- Spread Research SAS, based in France.

One non-EU CRA was certified to do business in the EU, namely: the US-based CRA, Kroll Bond Rating Agency Inc.

Two further applications went through the full assessment process but were rejected by ESMA's Board of Supervisors, whilst three more applications were withdrawn during the registration phase. This compares to 2012 where one single application had been assessed by ESMA.

Overall at the end of 2013, there were 22 registered CRAs (on a group basis) and two certified CRAs.





### ESMA's supervision of CRAs: proactive and preventive

ESMA's supervisory approach for CRAs is a combination of on-going supervision and dedicated investigations on either individual or multiple CRAs. Thematic or individual investigations typically require both desk-based assessments and on-site visits. Follow-up to investigations include individual action plans for CRAs and, if appropriate, the release of a public report providing ESMA's view to the wider public.

Following the cross-CRA investigation on the bank rating methodologies which took place in 2012 (on which ESMA reported in last year's report), the implementation of the resulting remedial actions was monitored in 2013 as part of on-going supervision.

ESMA continued to assess the transparency and integrity of the credit rating industry through its sovereign ratings investigation in 2013, which, like previous reviews, resulted in the imposition of action plans for each CRA included in the investigation. ESMA published a report on its sovereign ratings investigation in December 2013, highlighting its major concerns, including:

- independence and avoidance of conflicts of interests;
- confidentiality of sovereign rating information;
- timing of publication of rating actions; and
- resources allocated to sovereign ratings;

as well as cases of good practice, including:

- dedicated training programmes for analytical staff;
- enhanced challenge in rating committees; and
- consistency and continuity in the allocation of analysts to sovereign portfolios.

During 2013, ESMA also carried out an assessment of 14 small and medium-sized CRAs. Amongst the areas of focus of that investigation were the systems and controls put in place by the CRAs to ensure compliance with the regulation, including:

- independence and effectiveness of internal review and compliance functions or alternative arrangements implemented (when an exemption from having a particular function in place was granted); as well as
- their business strategies.

With regard to investigations on individual CRAs, ESMA analysed the controls surrounding the publication of credit ratings, including the timely disclosure of ratings information.

### ESMA looked into CRAs implementation of regulatory rule changes

Following the entry into force of the CRA III Regulation in June 2013, supervisory work was done to assess CRAs' compliance with the new requirements, with particular focus on the disclosure aspects of sovereign ratings, including those ratings issued in third countries and endorsed, and pricing policies and procedures.

#### NEXT STEPS

During 2014, ESMA will finalise its assessment of the smaller and medium-sized CRAs which were not included within the scope of the 2013 review because they were registered either at the end of 2012 or during 2013. The remedial action plans defined for the CRAs included in the first verification will also be finalised during 2014.

Supervisory work will continue on monitoring CRAs' implementation of the individual actions plans following the completed investigations.

During 2013, ESMA started a further thematic investigation assessing the organisation and processes of the CRAs' structured finance monitoring function. This review will be completed during 2014. Supervisory work will continue on CRAs' compliance with CRA III Regulation's additional requirements.

## ESMA enhances its CRA risk analysis framework

ESMA established a CRA-related risk analysis framework which identifies industry trends and major risks in the CRA marketplace and which contribute to the development of ESMA's CRA supervisory strategy. Currently, it consists of risk-analysis activities such as:

- monitoring of market intelligence;
- data analysis; and
- increasing interaction and coordination with ESMA's CRA supervisory function (e.g. risk impact analysis of supervisory activities).

The outcome of the risk analysis activity feeds into the preparation and the implementation of the annual supervision work plan.

## ESMA furthers co-operation and coordination with the other ESAs and international authorities on CRA matters

During 2013, the ESAs concluded a joint project aimed at removing from their guidelines and recommendations references to credit ratings; the objective is to reduce the risk that market participants solely and mechanically rely on credit ratings. During the year, ESMA also co-operated with the EBA on the development of draft Implementing Technical Standards (ITS) to specify the correspondence between the credit quality steps (CQS) and the credit ratings categories of registered and certified CRAs (mapping).

ESMA continued to exchange supervisory information on a regular basis with several third country regulators in the course of the year. The cooperation with third-country regulators was reinforced in 2013 with the establishment of supervisory colleges for the large international CRAs, which met for the first time in November 2013.

## Trade Repositories

Besides supervising CRAs, in 2013, ESMA also became responsible for supervising trade repositories (TR) active within the European Union. TRs collect and store post-trade information on derivative transactions with the aim of providing transparency and enabling regulators to better identify possible risks stemming from derivative trading. Under the European Markets Infrastructure Regulation (EMIR), ESMA is responsible for the registration and supervision of EU-based TRs as well as for the recognition of non-EU TRs.

## ESMA authorised six trade repositories and takes on supervision

Under the EMIR, ESMA has direct and exclusive responsibilities regarding the registration and supervision of TRs. Those data warehouses play a central role in enhancing the transparency of the derivatives markets in Europe.

ESMA received the first TR applications in March 2013. In the following months, ESMA assessed the applicants' compliance with the regulatory requirements set out under the EMIR framework. Following a thorough assessment of the applications received, in November 2013, ESMA gave the green light to six TRs to offer their services within the European Union. The registered TRs cover all derivative asset classes – commodities, credit, foreign exchange, equity, interest rates and others – irrespective of whether the contracts are traded on or off exchange. Four of the TRs are UK-based legal entities while the other two are registered in Luxembourg and Poland respectively. A list of the currently registered TRs, which can be used for reporting purposes under EMIR is available on ESMA's website:

➤ [www.esma.europa.eu/page/Registered-Trade-Repositories](http://www.esma.europa.eu/page/Registered-Trade-Repositories)

The registration of the TRs means that they can be used by EU counterparties to a derivative transaction to fulfil their trade reporting obligations under EMIR. The obligation for counterparties to report their derivative trades to registered TRs started on 12 February 2014, e.g. 90 days after their registration. Registering the first European trade repositories is an important milestone in making derivative markets more transparent and resilient. TRs play a fundamental role in the surveillance of derivatives markets and in risk monitoring. The data gathered by TRs will enable regulators to identify and reduce the risks associated with derivative markets. Following the registrations, ESMA's focus moved to the on-going supervision of the six EU-based TRs.

## ESMA participates in CCPs supervisory colleges

Central counterparties (CCPs) play a key role in mitigating risks. Under EMIR, EU-based CCPs are authorised and supervised by specific colleges of supervisors (one per CCP), which are made up of national regulators and ESMA. ESMA's role within these colleges is to ensure consistent approaches between competent authorities and across different colleges. In 2013, ESMA has finalised the following:

- a framework written agreement for the establishment and functioning of the colleges (see pp.37); and
- a common risk assessment template.



Overall, 20 EU-based CCPs have applied for authorisation, mainly in September 2013, to benefit from the EMIR transitional provisions. Most corresponding colleges have been formed in 2013; the remaining ones were set up in 2014. Since their establishment, ESMA actively participates in the colleges during the authorisation phase.

### ESMA begins recognition of third-country CCPs

Third-country CCPs are able to provide services to entities established in the Union only if recognised by ESMA and if the third-country regime has been deemed equivalent by the Commission.

ESMA is therefore expected to:

- verify that the CCP is subject to an equivalent regime. In this respect technical advice to the Commission has been provided (see EMIR Implementation section on pp.35);
- establish the relevant co-operation arrangements with the third country competent authorities;
- assess the application of the third country CCP;
- consult a number of authorities within the Union; and
- take a decision on the recognition.

In the third and fourth quarter of 2013, 35 third-country CCPs applied for recognition, most of them to benefit from transitional provisions under EMIR but also under Regulation (EU) No 575/2013 ("CRR")<sup>(1)</sup> which introduces differential capital requirements for trade

exposures and default fund contributions to third-country CCPs dependent upon whether or not it has been recognised by ESMA. It also contains transitional provisions according to which third-country CCPs will benefit from a lower capital treatment until 15 June 2014, with the possibility for a further extension until 15 December 2014, while their applications for recognition are under consideration by ESMA.

In December 2013, ESMA commenced negotiations to establish cooperative arrangements with the home competent authorities responsible for supervising the third-country CCPs that have applied for recognition. For EU clearing members of third country CCPs which have not applied and thus do not benefit from the transitional provisions, but which continue to provide clearing services to clearing members and trading venues established in the EU in breach of EMIR, ESMA is following-up closely with the relevant NCAs responsible for the supervision of those clearing members.

### NEXT STEPS

In 2014, the Commission is expected to adopt the implementing acts on equivalence and ESMA will carry on processing new and existing applications for recognition and negotiate memoranda of understanding with the relevant local authorities. Furthermore, EU CCPs commence to be authorised through the supervisory college process.

(1) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012

# ★ SINGLE RULEBOOK

The financial crisis exposed the negative effects that unevenly applied legislation can have for the financial markets, its consumers and the economies at large. Therefore, it was felt necessary to introduce effective instruments to establish more harmonised applications of EU law. In order to foster more coherence in securities legislation and its application, ESMA can issue regulatory and implementing

technical standards (TS) to ensure a level playing-field and adequate protection of investors, which further detail and clarify the Level-1 EU legislation.

Those TS 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. ESMA fulfils this role, for those legal texts framing the European securities markets (MiFID), their infrastructure (EMIR) and orderly functioning (short-selling, MAD), but also with RTS for key financial market participants such as CRAs and investment funds (UCITS, AIFMD).

## ESMA conducts CRA policy-related work

CRA policy-related work during 2013 included several publications, such as Guidelines and Recommendations (published in June 2013) to provide clarity on the scope of the CRA Regulation. ESMA also issued a list of registered CRAs, indicating their market share and type of credit rating issued, as required by the CRA III Regulation. The CRAs' market shares were published for the first time in December 2013, covering the 2012 calendar year.

With regard to the CRA III Regulation, in 2013, ESMA published its discussion paper on the CRA III implementation in order to gather information from market participants on the three draft Regulatory Technical Standards (RTS) it will have to submit to the Commission in 2014. These RTS will be on:

- information on structured finance instruments;
- the new European Rating Platform; and
- the periodic reporting on fees charged by credit rating agencies.

Follow-up activities included a public hearing organised by ESMA to gather early views from stakeholders.

In December 2013, ESMA published Q&As on the implementation of the CRA III Regulation, in order to provide more clarity on the practical application of the new regulatory requirements.



The Regulation also requires ESMA to submit a number of technical advices documents and reports to the Commission in the course of the next few years.

In November 2013, ESMA published the first piece of advice concerning the feasibility of a network of smaller credit rating agencies.

During 2013, ESMA also published further advice on the equivalence between the EU regulatory regime for CRAs and the respective legal and supervisory frameworks of Argentina, Brazil, Mexico, Hong Kong and Singapore.

## ESMA provides implementing rules for EMIR

The financial crisis laid bare shortcomings in the field of securities clearing and OTC derivatives trading, identifying a need for stringent regulatory standards and consistent and proactive supervision of CCPs and TRs, due to the risks they might entail with regards to financial stability and integrity. The EC put together a tailored European regulation covering three areas: OTC derivatives, CCPs and TRs. The European Markets Infrastructure Regulation (EMIR), which entered into force in August 2012, aims at contributing to financial stability by requiring certain products to be centrally cleared where no such requirements previously existed and by strengthening the oversight of CCPs and TRs. ESMA was given a key role as the EU standard setter, developing technical standards (TSs) in areas such as the clearing obligation for OTC derivatives, exemptions from it, and standards for CCPs and TRs. ESMA also has direct responsibilities in determining the classes of derivatives subject to the clearing obligation, in supervising TRs, and in participating in the supervision of CCPs through supervisory colleges led by national supervisors.

## ESMA publishes Q&A to promote consistent implementation of EMIR

Following the adoption of ESMA's regulatory and implementing technical standards by the European Commission on December 2012 and February 2013 respectively, ESMA started developing Questions and Answers (Q&As) to ensure the consistent application of EMIR. The Q&As promote common supervisory approaches and practices by providing responses to questions posed by stakeholders and competent authorities as well as clarity on the implementation of EMIR requirements.

The first version of the Q&A document was published on 20 March 2013, a few days after the entry into force of ESMA's technical standards, and was updated five times throughout the rest of the year when a need to expand the scope of answers was identified.

## ESMA prepares technical details for clearing obligation

With the overarching objective of reducing systemic risk, EMIR establishes the obligation to clear certain OTC derivative contracts through CCPs (clearing obligation). In 2013, ESMA has prepared for the determination of the OTC derivatives contracts which will be subject to the clearing obligation. This includes determining which classes of OTC derivative contracts are appropriate to be mandatory for central clearing – a decision which will be based on a number of EMIR criteria, such as liquidity and standardisation.

The clearing obligation procedure only begins when a CCP is authorised under EMIR, or when ESMA has accomplished a procedure for recognition of a third-country CCP. Out of the 20 European CCPs that have applied for authorisation under EMIR in 2013, eleven are clearing OTC derivatives. The authorisation of each of those eleven CCPs will trigger the clearing obligation procedure during the course of 2014. Based on the OTC derivative contracts cleared by CCPs, ESMA will issue draft RTS setting out the classes of OTC derivatives to be subject to the clearing obligation and the dates from which this obligation applies. In 2013, ESMA has been working with competent authorities and CCPs to prepare for this process by developing a template for the identification of the classes of OTC derivatives based on industry taxonomies, and running a first round of notifications. Following this, ESMA published a discussion paper on the clearing obligation in August 2013. The consultation closed on 16 September 2013 and ESMA received a total of 58 responses. The analysis of the responses helped ESMA to identify the main challenges faced by stakeholders in the context of the clearing obligation e.g.:

- the importance of international convergence for all OTC derivative rules;
- issues related to frontloading (i.e. the obligation to clear some contracts that were entered into before the clearing obligation enters into force);
- the case of covered bond derivatives; and
- the number of CCPs clearing the same class of OTC derivatives.

### NEXT STEPS

In 2014, after the authorisation or recognition of CCPs under EMIR, ESMA will draft and consult on regulatory technical standards establishing the clearing obligation in Europe, and submit those draft RTS to the European Commission for endorsement.

To ensure that stakeholders are adequately informed, ESMA will publish and maintain all information related to the clearing obligation in the Public Register to be made available on ESMA's website.

### ESMA starts looking into pension scheme arrangements and intra-group transactions

Pension scheme arrangements benefit from a temporary exemption from the clearing obligation for those OTC derivative contracts that reduce investment risks. For some of them, ESMA is required to provide an opinion to the competent authority responsible for the approval, assessing the compliance of the type of entities or type of arrangements with requirements set in EMIR as well as the reasons why an exemption is justified. Given that ESMA has 30 days to consult on this with EIOPA and provide its opinion, ESMA, in 2013, already performed some preparatory work. In cooperation with EIOPA, it conducted a survey and a simulation exercise with NCAs in order to develop the framework for the future opinions that will need to be adopted.

EMIR also foresees that under certain conditions, intra-group transactions may be exempted from the clearing obligation as well as from the requirement to exchange collateral. In view of the significant number of notifications expected to be received by NCAs and ESMA, and the complexity of the information to be received, in 2013 ESMA has set up an IT project to build a tool which will handle the exchange of information between NCAs and ESMA.

### Non-financial counterparties

In 2013 ESMA has raised the awareness of non-financial counterparties (NFC) on their EMIR obligation, involving their associations through meetings and by publishing dedicated material addressed to NFC on its website.

ESMA has started receiving notifications from NFCs being above the clearing threshold. ESMA is ensuring a consistent approach among NCAs.



### **ESMA issues regulatory technical standards on CCP colleges**

On 27 September 2012, ESMA submitted draft standards on CCP colleges. ESMA was concerned that a NCA which participates in a CCP college might elect not to agree to the terms for the operation of the CCP college, thus preventing the establishment of the CCP college and possibly the authorisation of the CCP. ESMA considered that such a veto power on the authorisation of CCPs, is not consistent with the extensive provisions governing the authorisation of a CCP as set out under EMIR. ESMA's revised standards on CCP colleges were published in the Official Journal on 13 September 2013 and entered into force on 11 October 2013. NCAs are in the process of establishing CCP colleges pursuant to the regulatory technical standards on CCP colleges. ESMA is playing a leading and on-going role in the coordination of these colleges (please refer to pp.32).

### **ESMA clarifies nature of agreements between members of CCP colleges**

On 4 June 2013, ESMA published its guidelines and recommendations regarding written agreements between members of CCP colleges as envisaged in the Opinion issued by ESMA on 14 March 2013. ESMA's guidelines define the written agreement that the competent authority should propose as part of its establishment of a college under EMIR to facilitate the exercise of the tasks college members has to perform under EMIR. The Guidelines and Recommendations do not introduce new requirements for CCPs in addition to the ones specified in EMIR or the relevant technical standards. They only specify requirements for NCAs in the establishment, management and chairing of CCP colleges under EMIR.

ESMA published the official translations of the Guidelines and Recommendations on 3 October 2013. This publication triggered a transitional period of two months within which national supervisors had to declare whether they intend to comply with the guidelines or otherwise explain the reasons for non-compliance. NCAs are in the process of establishing CCP colleges pursuant to the regulatory technical standards on CCP colleges. ESMA is playing a leading and on-going role in the coordination of these colleges.

### **ESMA establishes consistent, efficient and effective assessments of interoperability arrangements**

Interoperability arrangements will contribute to the efficiency of CCPs in Europe and will facilitate access to different trading venues. On 15 March 2013, ESMA published its guidelines and recommendations for consistent, efficient and effective assessments of interoperability arrangements, as mandated under EMIR. The guidelines define what NCAs should analyse in assessing CCPs' interoperability arrangements and on what aspects the relevant CCPs will need to focus their attention.

ESMA's guidelines do not introduce additional requirements for CCPs in addition to the ones specified in EMIR or the relevant technical standards. However, they specify how those requirements should be met for the purpose of establishing robust and stable interoperability arrangements.

ESMA published the official translations of the Guidelines and Recommendations on 10 June 2013. This publication triggered a transitional period of two months within which national supervisors had to declare whether they intend to comply with the guidelines or otherwise explain the reasons for non-compliance. NCAs are in the process of authorising CCPs under EMIR, including the assessments of interoperability arrangements where such arrangements were in place at the time of application for authorisation.

### **ESMA issues standards on OTC derivatives entered into by non-EU counterparties**

Following public consultation during the third quarter of 2013, ESMA, on 15 November 2013, delivered to the Commission a final report including draft RTS related to the OTC derivative contracts that are considered to have a direct, substantial and foreseeable effect within the Union and those cases where it is necessary or appropriate to prevent the evasion of any provision of EMIR. The standards include in the scope of EMIR OTC derivative contracts between non-EU counterparties when the resulting exposure of a counterparty is guaranteed by an EU financial for an amount above a set threshold, as well as derivative contracts between EU branches of non EU counterparties. The standards also set a criteria based approach to determine cases of evasion.

## ESMA's technical standards on bilateral margining

In September 2013, the BCBS-IOSCO Working Group on Margin Requirements (WGMR) has finalised its report on margin requirements. During 2013 ESMA, together with EBA and EIOPA has continued its preparatory work for the development of draft regulatory technical standards on bilateral margins. This work will follow closely the agreed international technical standards.

## ESMA advises Commission on equivalence of third-country rules and EMIR

The Commission mandated ESMA on 11 October 2012 to provide technical advice on the equivalence between various third-country regulatory regimes and different aspects of the EU regulatory regime under EMIR. The mandate's deadline was subsequently extended twice to increase the scope of ESMA's advice to additional jurisdictions and to extend the deadline for transmission of ESMA's advice.

The specific areas covered in the advice were:

- the recognition of third country CCPs;
- the recognition of third country TRs; and
- the identification of potentially duplicative or conflicting requirements regarding the clearing obligation, reporting obligation, requirements for non-financial counterparties and risk-mitigation techniques for OTC derivative contracts not cleared by a CCP.

In September and October 2013, ESMA delivered all of the technical advice requested by the Commission, that being in respect of Australia, Hong-Kong, Japan, India, Singapore, South Korea, Switzerland and the U.S. These pieces of advice are important for the recognition of third-country CCPs as only non-EU CCPs which are based in an equivalent country would ultimately be able to offer services to EU clients.

## ESMA prepares for Central Securities Depositories Regulation

The Regulation on improving securities settlement and on central securities depositories (CSDs), which also amends the Settlement Finality Directive (SFD), is expected to introduce:

- an obligation of dematerialisation for most securities;
- harmonised settlement periods for most transactions in such securities;
- settlement discipline measures; and
- common rules for CSDs.

According to the draft proposal at the date of drafting of this Report, around 35 technical standards, are expected to be developed by ESMA.

The foreseen technical standards cover three main topics:

- Settlement Discipline;
- CSD Registration; and
- Requirements for CSDs.

In addition, ESMA may be asked to provide the European Commission with technical advice on a certain aspects, such as:

- penalties for settlement fails; and
- co-operation between authorities.

## ESMA prepares CSDR implementation

In 2013, ESMA worked to identify commonalities and gaps between national regimes in the field of settlement and considered the first elements that would ultimately result in its draft technical standards under the possible CSDR. ESMA also prepared a Discussion Paper on CSDR implementing measures. This work started before the closing of the CSDR negotiations given the complexity of the topics and the short time for ESMA to deliver the technical standards to the European Commission (likely nine months after CSDR enters into force). ESMA is expected to release this Discussion Paper at the beginning of 2014, as soon as the negotiations on the text of the CSDR will be concluded.

## Markets Legislation - MiFID

The Markets in Financial Instruments Directive (MiFID) is one of the cornerstones of financial market regulation in the EU and its review is one of the key responses of the EU to the financial crisis. The review (commonly referred to as MiFID II) contains an ambitious set of new rules which are intended to make EU markets safer, more transparent and increase the overall degree of harmonisation to ensure a level-playing field among all market participants. MiFID II, which will be accompanied by a new regulation, MiFIR, will also further strengthen the relevant MiFID requirements on investor protection (please refer to pp.16). MiFID II/MiFIR have been going through triologue discussions in 2013. The European co-legislators are expected to come to a political agreement in early 2014 and it is also expected that the final text contains a large number of empowerments for implementing measures where ESMA expects either to be mandated to draft technical standards or advice.





## ESMA prepares to detail MiFID II

In light of the rapid innovation and the growing complexity in financial instruments the MiFID review recognises the need to strengthen the relevant requirements to mitigate risks of investor detriment. ESMA is committed to minimising, where appropriate, discretions available to Member States across EU financial services directives. In reviewing MiFID, it is clear that, notwithstanding some remaining room for national discretions, this aim holds true, and MiFID II should contribute to:

- establishing a single rulebook for EU financial markets;
- help level the playing field between Member States;
- improve supervision and enforcement;
- reduce costs for market participants; and
- improve conditions of access and competition across the EU.

ESMA expects the deadlines for delivering these standards and advice in 2014 to be demanding and has already established multiple task forces, each of them dealing with a significant number of MiFID topics. ESMA intends to consult twice for the technical standards: one early consultation in the form of a discussion paper and one subsequent full consultation including the legal text. Depending on the timing of the adoption of MiFID II, both will probably be launched in 2014.

## ESMA will update transparency and trading obligations

Under this heading, ESMA is evaluating and updating the existing MiFID pre- and post-trade transparency regime for shares as well as developing the pre- and post-trade rules for instrument classes similar to shares and a multitude of other asset classes. This requires designing a framework applicable to all secondary markets trading in Europe for a potentially long period. For non-equities, all the rules will need to be created from scratch and take into account the specificities of:

- bonds trading;
- structured finance products; and
- emission allowances and derivatives, including sub-asset classes.

MiFID II will also ask ESMA to develop a procedure to put the trading obligation for OTC derivatives in place which will ensure that certain instruments shall only be traded on certain eligible venues. Over 2013, ESMA has produced an extensive number of draft papers with proposals on how the future transparency regimes and trading obligation could be calibrated for inclusion in the discussion paper, testing ideas in discussions with market participants. Further, in 2013 ESMA started in earnest the critical and challenging task of performing the initial calculations of thresholds and liquidity which will go into the Level 2 implementing measures for MiFIR for a large group of asset classes, covering a vast number of individual financial instruments.

ESMA completed a data collection exercise and analysis of the liquidity of bonds admitted to trading in 21 Member States using transaction data and also analysed equity data collected under MiFID I between 2007 and 2013 to assess changes in patterns regarding average value of trades and average daily turnover. The results of these two exercises will be included in the ESMA MiFID II discussion paper.

### ESMA prepares organisational requirements of trading venues

In relation to preparing organisational requirements for trading venues, ESMA in 2013 started the drafting of the appropriate rules for a new trading segment created in Europe, specifically catering for the needs of Small and Medium-sized Enterprises (SMEs). The new SME Growth Markets will help increase the liquidity of SME stocks and debt instruments, promoting the visibility of SMEs across Europe and therefore facilitating the access of SMEs to capital markets. There are also a variety of other issues which fall within the scope of trading venues' organisational requirements, such as the admission of financial instruments to trading or the suspension of instruments from trading which are crucial for the orderly functioning of markets across the EU on the basis of a level-playing field.

### Future provisions on data publication and open access

In addition, in 2013 ESMA started work on possible Level 2 provisions in the context of MiFID II regarding publication of data by data reporting service providers and trading venues, and non-discriminatory access to trading venues and CCPs. These two themes are core to the new market discipline MiFID II intends to introduce. Data publication topics include:

- data disaggregation;
- the regimes of data reporting services providers known as consolidated tape providers (CTPs);
- approved publication arrangements (APAs) and authorised reporting mechanisms (ARMs); and
- the sale of data by trading venues.

Under the access work stream, ESMA is elaborating the grounds on which access to a trading venue by a CCP, or to a CCP, by a trading venue could be denied and the conditions that should be respected when access is granted. To aid its work, ESMA has held a number of roundtables with industry representatives to discuss the issues of reasonable commercial basis and data disaggregation as well as engaging with the Consultative Working Group of the SMSC.

### ESMA works on MiFID's micro-structural issues

MiFID II will introduce a number of provisions concerned with algorithmic trading and high frequency trading (HFT) which require further elaboration at Level 2. The key pillars of this work will be creating a new framework for trading venues and entities engaged in algorithmic trading.

The focus of ESMA's Level 2 work will mainly be on rules governing the organisational requirements of trading venues and firms, covering aspects such as, market making schemes and strategies, fee structures, tick sizes and maximum order to trade ratios. Over 2013, ESMA monitored the evolution of the political discussion and continued its preparatory work for the forthcoming discussion and consultation papers. For those provisions which introduce an entirely new area of competence for regulators (such as tick sizes), considerable attention has been given to the identification of data sources and to the performance of preliminary analysis about the potential impact of the different approaches to be taken.

### ESMA looks into commodity derivatives

In relation to this topic, the MiFID review introduces for the first time mandatory position limits and position reporting across the EU. However, given the breadth of regulation targeting commodity derivative markets, ESMA has kept abreast of developments through discussions with stakeholders and its Consultative Working Group. In order to develop relationships with other commodity authorities, ESMA signed a memorandum of understanding with the Agency for the Co-operation of Energy Regulators (ACER) and now regularly attends the Commission's relevant DG Agri expert group.

### NEXT STEPS

In 2014, ESMA will continue work on implementing MiFID II: the complexity of these tasks, given the size of the instrument universe and the challenges in obtaining data on instruments which are traded OTC, cannot be overstated. ESMA intends to finalise its draft consultation papers following the political agreement on MiFID II with a view to deliver advice to the Commission and technical standards, leading ultimately to more harmonised, efficient and robust market structures in Europe.

### ESMA proposes standards on acquisitions and increases in holdings in investment firms under current MiFID

In July 2013, ESMA published its consultation paper on draft RTS on information requirements for assessment of acquisitions and increases in holdings in investment firms under the current MiFID. The draft RTS establish an exhaustive list of information to be provided by the proposed acquirer of an investment firm. This information is aimed at ensuring that NCAs are provided with adequate and proportionate information in order to assess the acquisition. The draft RTS are largely based on the CEBS, CESR and CEIOPS 'Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by MiFID. There are no fundamental changes to the Guidelines, although ESMA expects the information requirements to be clearer and standardised.

ESMA has also finalised final draft implementing technical standards (ITS) which determine standard forms, templates and procedures for the co-operation and exchange of information between the relevant competent authorities when carrying out the assessment of a proposed acquirer of an investment firm. ESMA expects the draft ITS to facilitate the co-operation between competent authorities and ensure efficiency in their exchange of information.

On 17 December 2013, ESMA submitted to the Commission for endorsement, its final report and final draft standards.



## Data reporting – MiFID/EMIR

### ESMA reviews and clarifies data reporting rules from a cross-regulatory perspective

In 2013, ESMA formed a new working group to contribute to the review and implementation of reporting requirements resulting from two important markets-related legislations: the European Market Infrastructure Regulation (EMIR) and the second iteration of MiFID, which will be accompanied by a regulation, MiFIR. The main purpose of the working group is to foster consistency by avoiding reporting conflicts between the two regimes and to enhance the quality of the data reported to National Authorities and Trade Repositories. This will ultimately provide the EU supervisors with improved tools to fulfil their supervisory duties. In particular, the group works on issues related to market data reporting of trades, transactions, positions, record keeping of order book and instrument reference data<sup>(2)</sup>.

### ESMA clarifies reporting of on-exchange derivatives

At the end of 2013, ESMA asked the Commission to delay the reporting of Exchange Traded Derivatives (ETD) under EMIR, but then decided not to allow an extension. Given the complexity of ETD reporting, following the Commission's refusal, ESMA issued further guidance via the Q&As process to assist firms in their preparations for ETD reporting.

Derivatives traded on EU trading venues are covered by reporting rules under both EMIR and MiFID. The Q&As align EMIR reporting with the MiFID one to the extent possible, in particular with respect to the identification of the counterparties subject to the reporting obligation. This is especially challenging in typical ETD trading scenarios, which involve a chain of contracts between different intermediaries being part of the same derivative transaction. In addition, in order to establish a clear audit trail from execution to clearing, the Q&As seek to ensure that a link is maintained throughout the chain of reports. In addition, the Q&As clarify reporting obligations for outstanding positions related to contracts concluded between 16 August 2012 and 11 February 2014 (Backloading), the starting date for trade reporting under EMIR.

### ESMA prepares details for transaction reporting, order record keeping and reference data

Among other things, MiFIR will broaden the range of instruments for which market participants are required to store or report data. These, among others, include emission allowances and any instruments where the underlying is a financial instrument admitted to trading on trading venues or where the underlying is an index or a basket composed of financial instruments traded on a trading venue. In particular, this implies complex technical work in relation to the development of the data standards for transaction reporting, the criteria for the compilation of the list of financial instruments to be reported as well as the relevant elements of the reference data thereof.

The new regulation will also extend the data set monitored and surveyed by the competent authorities by increasing the number of reporting fields; significant new additions will include:

- trader or algo identifier to detect the individual trader executing the transaction or the algorithm used;
- a flag to identify when the trader is short selling; and
- client IDs will also be required throughout the EU.

ESMA is responsible for developing Draft RTSs on these matters and will also be responsible for elaborating a common European format and content for transaction reporting. This will lead to significant changes in the way firms report to competent authorities.

## Short-Selling Regulation

### ESMA advises Commission on review of the Short-Selling Regulation

The Short-Selling Regulation (SSR) has been in application since 1 November 2012. On 22 October 2012, ESMA received a mandate from the Commission to provide technical advice on the evaluation of the SSR by end of May 2013. The aim was to contribute to the review the Commission had to submit to the European Parliament and the Council by mid-June 2013 in accordance with the SSR.

Within this short period of time, ESMA conducted both a quantitative and a qualitative analysis of the impact of the application of the SSR on markets, actors and practices as well as a five-week public call for evidence for preparing this technical advice. The advice was delivered to the Commission on time and published in early June<sup>(3)</sup>.

(2) Foreseen, among others, under Article 9 of the EMIR, Article 25 of MiFID/Article 23 and 22 of future MiFIR, Article 2 and Article 23a of future MAR and MiFIR respectively

(3) [http://www.esma.europa.eu/system/files/2013-614\\_final\\_report\\_on\\_ssr\\_evaluation.pdf](http://www.esma.europa.eu/system/files/2013-614_final_report_on_ssr_evaluation.pdf)

Although acknowledging the limitation of its review in terms of data availability and time span, and recommending to re-assess the SSR at a later stage, ESMA's advice suggested possible technical changes to the legislative framework. They aimed at improving the operations and application of the regime without challenging the policy objectives the co-legislators assigned to the SSR or questioning the main requirements of the short-selling regime.

The Commission's review report has been issued in December 2013 and recommends another evaluation exercise to be conducted by 2016, without proposing any adjustment to the current legal framework for the time being. This second review is sought to be based on further ESMA input.

### ESMA updates SSR Q&A

To promote common supervisory approaches and practices, in January 2013, ESMA issued a second update of its Q&A document on the implementation of the SSR<sup>(4)</sup>. It provides responses to the questions posed by the general public, market participants and competent authorities in relation to the practical application of the short selling framework.

### ESMA finalises guidelines on market making activities

The SSR foresees exemptions for primary market operations on sovereign debt and market making activities, provided that the entity wishing to be exempted notifies its intent to the relevant competent authority.

In order to ensure a level playing field, consistency of market practices and convergence of supervisory practices across the EEA, on 2 April 2013, ESMA published guidelines on the exemption for market making activities and primary market operations, which were primarily, addressed to NCAs<sup>(5)</sup>. The guidelines' objective are to assist investment firms, credit institutions and other concerned firms in the process of notifying to relevant competent authorities their intention to use the exemption and to develop a common approach for:

- the submission of the notification form;
- the assessment of the eligibility for the exemption of the notifying entity's activities; and
- the monitoring of the conditions of eligibility once the exemption is used.

The guidelines became applicable two months after their publication although some competent authorities, namely:

- Finanstilsynet (DK);
- BaFin (DE);
- Finansinspektionen (SE);
- the Financial Conduct Authority (UK); and
- The Autorité des marchés financiers (FR)

have indicated they are not fully complying with them at the date of the application of the guidelines. The reasons of each NCA were published by ESMA<sup>(6)</sup>.

## Market Abuse Regulation

### ESMA prepares implementing measures of future Market Abuse Regulation

In autumn 2012, the Council's general approach to the Market Abuse Regulation was agreed and the European Parliament's legislative report was issued. They entered into negotiations and reached a political agreement on the Market Abuse Regulation on 24 June 2013. The trilogue text requires ESMA to draft seven RTSs and eight ITS as well as to issue three sets of guidelines.

On 21 October 2013, ESMA received the official request from the Commission to submit technical advice on five particular elements of MAR where the Commission should prepare and adopted delegated acts. ESMA should deliver its advice within eight months from the entry into force of the text. However, the timeline for the delivery of the draft technical standards should be set in the final MAR text that has not been published by the time this report was drafted.

In the course of 2013, ESMA intensified the preliminary work initiated in 2012 on the possible technical standards and advice on delegated acts. As a first step in the preparation of the implementing measures, ESMA worked on a Discussion Paper in order to gather input from interested stakeholders on the key elements of the upcoming ESMA technical advice to the Commission and draft technical standards.

### ESMA consults on MAR policy options for certain implementing measures

On 14 November 2013, ESMA launched a ten-week public consultation on its MAR Discussion Paper on ESMA policy orientations on possible Level 2

(4) <http://www.esma.europa.eu/system/files/2013-159.pdf>

(5) <http://www.esma.europa.eu/system/files/2013-74.pdf>

(6) The detailed explanations by each NCA are available under: [www.esma.europa.eu/system/files/2013-765\\_guidelines\\_compliance\\_table\\_-\\_market\\_making\\_guidelines.pdf](http://www.esma.europa.eu/system/files/2013-765_guidelines_compliance_table_-_market_making_guidelines.pdf)

measures<sup>(7)</sup>, including an open hearing to be held in mid-January 2014. The paper presents positions and regulatory options on ten main sections of MAR where ESMA will have to develop MAR implementing measures (RTS, ITS, advice on Delegated Acts and Guidelines):

- conditions to be met by buyback programmes and stabilisation measures to benefit from the exemption from market abuse prohibitions;
- arrangement and procedures required for market soundings, from the perspective of both the market participants conducting market soundings and the participant being sounded out;
- indicators and signals of market manipulation;
- criteria to establish accepted market practices;
- arrangement, systems and procedures to put in place for the purpose of suspicious transactions and order reporting as well as content and format;
- issues relating to public disclosure of inside information and the conditions for delay;
- format for insider lists;
- issues concerning the reporting and public disclosure of managers' transactions;
- arrangements for fair presentation and disclosure of conflicts of interests by producers and disseminators of investment recommendations; and
- reporting of violations to the competent authorities and related procedures.

In developing these regulatory options ESMA, where similar requirements already exist under the current Market Abuse Directive (MAD), has taken into consideration the existing MAD Level 2 texts and ESMA/CESR guidelines to set out the DP positions in light of the extended scope of MAR.

## Investment Management – UCITS, AIFMD

### ESMA strengthens framework for retail investment funds

In December 2012, ESMA clarified certain provisions of the guidelines on ETFs and other UCITS issues and consulted on the revision of the provision on collateral diversification by issuing guidelines on Exchange-Traded Funds (ETFs) and other UCITS issues<sup>(8)</sup>. These guidelines apply to national securities markets regulators and UCITS management companies. UCITS are authorised funds which can be sold to retail investors across the European Union. The guidelines set out the information that should be

given to investors about index-tracking UCITS and UCITS ETFs, together with specific rules for UCITS when entering into over-the-counter (OTC) financial derivative transactions and efficient portfolio management (EPM) techniques. The guidelines also set out the criteria for financial indices in which UCITS may invest. Following the entry into force of the guidelines in February 2013, ESMA clarified certain provisions of the guidelines by issuing a Q&A<sup>(9)</sup>, then in December ESMA published a consultation paper seeking stakeholders' views on the merit of amending the provision on the diversification of collateral received by UCITS in the context of EPM techniques and OTC transactions.

### ESMA clarifies impact of EMIR on the calculation of counterparty risks for UCITS

In December 2013 ESMA updated the Q&A on the guidelines on Risk Measurement and Calculation of Global Exposure and Counterparty Risk for UCITS<sup>(10)</sup>. In this new version of the Q&A ESMA gives guidance on how UCITS should calculate the counterparty risk for exchange-traded derivatives and centrally-cleared OTC transactions.

### ESMA concludes supervisory cooperation arrangements for alternative investment funds with 46 non-EU authorities

Building on work that began the previous year, in 2013 ESMA successfully negotiated and agreed the supervisory cooperation arrangements required by the AIFMD with 46 non-EU securities regulators. These cooperation arrangements facilitate the supervision by EU authorities of managers of alternative investment funds (AIFMs) established outside the EU. The existence of these agreements is a condition imposed by the AIFMD in order to allow EU managers to delegate management activities outside the EU, and to permit non-EU AIFMs to market AIFs in the EU. The aim of the cooperation arrangements is to facilitate the exchange of information between the authorities, cross-border on-site visits and assistance in the enforcement of the respective laws. In 2012 the 28 EU and 3 EEA securities supervisors delegated to ESMA the negotiation of these supervisory arrangements with the non-EU authorities.

(7) [http://www.esma.europa.eu/system/files/2013-1649\\_discussion\\_paper\\_on\\_market\\_abuse\\_regulation\\_0.pdf](http://www.esma.europa.eu/system/files/2013-1649_discussion_paper_on_market_abuse_regulation_0.pdf)

(8) [http://www.esma.europa.eu/system/files/esma\\_en\\_0.pdf](http://www.esma.europa.eu/system/files/esma_en_0.pdf)

(9) <http://www.esma.europa.eu/content/ESMA%E2%80%99s-Guidelines-ETFs-and-other-UCITS-issues-1>

(10) <http://www.esma.europa.eu/content/Risk-Measurement-and-Calculation-Global-Exposure-and-Counterparty-Risk-UCITS>



### More than 1,000 MoUs signed between EU and non-EU authorities

In addition to its negotiation role, ESMA facilitated the signature of the MoUs. By 31 December 2013, 1,083 MoUs had been signed between EU and non-EU authorities<sup>(11)</sup>.

#### NEXT STEPS

Although the main bulk of the work has been completed, ESMA will continue discussing the MoU with the remaining non-EU authorities interested in this process, in particular with the Chinese securities authority, with a view to reaching an agreement as soon as possible.

### ESMA continues its work to clarify rules for alternative investment funds

On 2 April 2013, ESMA published a final report on Draft regulatory technical standards on types of AIFMs<sup>(12)</sup> and submitted it to the Commission for endorsement.

The AIFMD provides that ESMA shall develop draft regulatory technical standards (RTS) to determine types of AIFM for the application of the AIFMD provisions. The draft RTS issued by ESMA in April 2013 distinguished between managers of AIFs whose investors have the right to redeem their shares at least annually (open-ended AIFs), and those whose investors have less frequent redemption rights (closed-ended AIFs). The distinction between open-ended and closed-ended AIFs is relevant for several of the provisions of the AIFMD, such as those on liquidity management, valuation procedures and the transitional provisions of Directive 2011/61/EU.

### Distinction focuses on open-ended and closed-ended funds

In a letter dated 4 July 2013<sup>(13)</sup> the Commission expressed doubts on whether the frequency of redemptions is a criterion that can be employed to distinguish an open-ended AIF from a closed-ended one. DG MARKT was ultimately of the view that closed-ended AIFs are those AIFs that do not offer any redemptions before their winding-up.

In line with the procedure set out in the ESMA Regulation, on 13 August 2013 ESMA sent an opinion to the Commission explaining the reasons why the draft RTS sent in April 2013 were, in the Authority's view, not against the AIFMD provisions and also provided new draft RTS in line with the Commission's comments<sup>(14)</sup>. On 17 December 2013, the Commission

(11) Detailed information can be found here: <http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities>

(12) [http://www.esma.europa.eu/system/files/2013-413\\_0.pdf](http://www.esma.europa.eu/system/files/2013-413_0.pdf)

(13) [http://www.esma.europa.eu/system/files/ec\\_letter\\_to\\_esma\\_re\\_draft\\_rts\\_on\\_types\\_of\\_aifmd\\_4\\_july\\_2013.pdf](http://www.esma.europa.eu/system/files/ec_letter_to_esma_re_draft_rts_on_types_of_aifmd_4_july_2013.pdf)

(14) [http://www.esma.europa.eu/system/files/2013-1119\\_opinion\\_on\\_draft\\_rts\\_on\\_types\\_of\\_aifms.pdf](http://www.esma.europa.eu/system/files/2013-1119_opinion_on_draft_rts_on_types_of_aifms.pdf)

adopted a Delegated Regulation endorsing the draft RTS sent by ESMA in August 2013<sup>(15)</sup>.

### NEXT STEPS

'The ESMA Regulation foresees an objection period for the European Parliament and the Council to any RTS endorsed by the Commission. If there are no objections before this period expires, the Delegated Regulation adopted by the Commission will enter into force following its publication in the Official Journal.'

### ESMA clarifies scope of AIFMD

On 24 May 2013, ESMA published a final report on guidelines on key concepts of the AIFMD<sup>(16)</sup>. The translated guidelines were published on 13 August 2013<sup>(17)</sup>. The guidelines aim at further clarifying the rules applicable to hedge funds, private equity and real estate funds. They help to clarify which entities are captured by the AIFMD, thereby providing for consistent application of the provisions throughout Europe. According to the definition in the AIFMD, 'AIFs' means collective investment undertakings which raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which do not require authorisation under the UCITS Directive. The guidelines provide clarifications on each of the notions included in this definition ('collective investment undertaking', 'raising capital', 'number of investors' and 'defined investment policy').

### ESMA adopts remuneration guidelines for alternative investment fund managers

On 11 February 2013 ESMA published a final report on guidelines on sound remuneration policies under the AIFMD<sup>(18)</sup>. The translated guidelines were published on 3 July 2013<sup>(19)</sup>. The AIFMD obliged ESMA to develop such guidelines. The AIFMD sets out principles which AIFMs have to follow when establishing and applying the total remuneration policies for certain categories

of their staff. These principles are broadly in line with those on governance of remuneration and risk alignment which were introduced in 2010 in the banking sector. For this reason, the AIFMD also required ESMA to cooperate closely with EBA in developing the guidelines. By clarifying certain of the remuneration provisions of the AIFMD, the guidelines aim to ensure common, uniform and consistent application of these provisions across Europe.

### ESMA clarifies reporting requirements for alternative investment fund managers

In October 2013 ESMA published guidelines on reporting obligations under the AIFMD<sup>(20)</sup>. These guidelines supplement Regulation 231/2013 implementing the AIFMD. The guidelines provide clarification on the information that AIFMs should report to NCAs, the timing of such reporting together with the procedures to be followed when AIFMs move from one reporting obligation to another. The guidelines include a diagram which summarises the reporting obligations of AIFMs, as determined by the total value of assets under management and the nature of the AIFs managed or marketed.

#### Additional information considered desirable by ESMA

The publication of the final report was accompanied by the publication of an ESMA opinion<sup>(21)</sup> to NCAs (NCAs) on the collection of information under the AIFMD. In this opinion, ESMA provides details on a set of additional information that, in its view, NCAs could require AIFMs to report on a periodic basis pursuant to Article 24(5).

### ESMA addresses late transposition of the AIFMD

In August 2013 ESMA issued an opinion<sup>(22)</sup> on practical arrangements for the late transposition of the AIFMD. In this opinion, the Authority states that if the AIFMD has been transposed in the home Member State of the AIFM, the competent authority of the host Member State may not refuse a valid notification under the Directive on the ground that the Directive has not yet been transposed in the host Member State. The same principle should apply for the management of an EU AIF via the management passport.

(15) [http://ec.europa.eu/internal\\_market/investment/docs/alternative\\_investments/131217\\_delegated-regulation\\_en.pdf](http://ec.europa.eu/internal_market/investment/docs/alternative_investments/131217_delegated-regulation_en.pdf)

(16) [http://www.esma.europa.eu/system/files/2013-600\\_final\\_report\\_on\\_guidelines\\_on\\_key\\_concepts\\_of\\_the\\_aifmd\\_0.pdf](http://www.esma.europa.eu/system/files/2013-600_final_report_on_guidelines_on_key_concepts_of_the_aifmd_0.pdf)

(17) [http://www.esma.europa.eu/system/files/2013-611\\_guidelines\\_on\\_key\\_concepts\\_of\\_the\\_aifmd\\_-\\_en.pdf](http://www.esma.europa.eu/system/files/2013-611_guidelines_on_key_concepts_of_the_aifmd_-_en.pdf) (English version)

(18) <http://www.esma.europa.eu/system/files/2013-201.pdf>

(19) [http://www.esma.europa.eu/system/files/2013-232\\_aifmd\\_guidelines\\_on\\_remuneration\\_-\\_en.pdf](http://www.esma.europa.eu/system/files/2013-232_aifmd_guidelines_on_remuneration_-_en.pdf) (English version)

(20) [http://www.esma.europa.eu/system/files/2013-1339\\_final\\_report\\_on\\_esma\\_guidelines\\_on\\_aifmd\\_reporting\\_for\\_publication\\_revised.pdf](http://www.esma.europa.eu/system/files/2013-1339_final_report_on_esma_guidelines_on_aifmd_reporting_for_publication_revised.pdf)

(21) [http://www.esma.europa.eu/system/files/2013-esma-1340\\_opinion\\_on\\_collection\\_of\\_information\\_under\\_aifmd\\_for\\_publication.pdf](http://www.esma.europa.eu/system/files/2013-esma-1340_opinion_on_collection_of_information_under_aifmd_for_publication.pdf)

(22) <http://www.esma.europa.eu/content/Practical-arrangements-late-transposition-AIFMD>



(21) (26) Directive 2013/50/EC.

## Corporate Finance

### ESMA delivers first standards under Prospectus Directive

The Omnibus I Directive<sup>(23)</sup> mandated ESMA to develop draft RTS specifying situations in which significant new factors, material mistakes or inaccuracies relating to information in a prospectus require publication of a supplement. In 2013, ESMA published a consultation paper<sup>(24)</sup> including a first draft of the technical standards. Based on consultation responses, ESMA finalised the draft standards and an accompanying report. The draft standards set out nine situations which according to ESMA will always be significant for the assessment of a security and should be subject to a systematic supplement requirement. Situations not mentioned in the draft standards continue to be subject to a case-by-case analysis. The draft RTS were the first to be delivered by ESMA within the prospectus regime. They were submitted to the Commission on 20 December 2013 and published<sup>(25)</sup> on the same day.

#### NEXT STEPS

ESMA continues to develop draft technical standards within the prospectus regime and is currently commencing work on four draft technical standards for which the mandate is expected to be adopted with the Omnibus II Directive.

### ESMA updates framework for equivalence of third-country prospectuses

Following the 2012 entry into force of the amended PD<sup>(26)</sup> and the first and second Commission Delegated Regulations<sup>(27)</sup>, ESMA updated its framework for third country prospectuses in 2013. The framework promotes a uniform application of the PD by presenting ESMA's view on how a third country issuer with a prospectus drawn up in accordance with third country legislation can meet the PD requirements. Where the Directive requires more information than third country

(23) Directive 2010/78/EU

(24) <http://www.esma.europa.eu/system/files/2013-316.pdf>

(25) [http://www.esma.europa.eu/system/files/2013-1970\\_report\\_on\\_draft\\_rts\\_for\\_supplements\\_to\\_prospectuses.pdf](http://www.esma.europa.eu/system/files/2013-1970_report_on_draft_rts_for_supplements_to_prospectuses.pdf)

(26) Directive 2010/73/EU

(27) Commission Delegated Regulation (EU) No 486/2012; Commission Delegated Regulation (EU) No 862/2012

legislation, the framework identifies information that can be added to the third country prospectus so the resulting document meets the Directive's requirements. ESMA's update took into consideration the amended prospectus regime's new annexes regarding the summary, the proportionate disclosure regime and retail cascades and was published<sup>(28)</sup> in March 2013.

#### NEXT STEPS

As a consequence of the updated framework, ESMA is revising its assessment of the prospectus legislation of Israel. In case of changes to the EU prospectus regime, ESMA may further update the framework as appropriate.

### ESMA prepares standards on transparency requirements for major shareholdings

The revised Transparency Directive (TD)<sup>(29)</sup> entered into force on 27 November 2013, mandating ESMA to develop several draft regulatory technical standards. In anticipation of the adoption of the revised Directive, ESMA began working on the technical standards in the summer of 2013, developing a first draft of the standards along with an accompanying consultation paper. To obtain input on specific elements of the drafting, a round table with market participants was conducted in September.

#### NEXT STEPS

Based on responses to a public consultation to be launched in the first quarter of 2014, ESMA will finalise the draft technical standards along with a report analysing consultation responses and presenting the reasoning behind the final draft standards. The deadline for delivering the standards to the European Commission is 27 November 2014.

(28) <http://www.esma.europa.eu/system/files/2013-317.pdf>

(29) Directive 2013/50/EC

## ESMA prepares standards for financial information

As required by the Amended Transparency Directive (TD) published in 2013, ESMA has to prepare regulatory technical standards with respect to the specification of the European single electronic reporting format and the operation of a central access point for regulated information at Union level. The timeline for these projects is spread over several years, but ESMA has already launched the preparatory work in 2013 by setting up the specialised working groups to work on these subjects.

### NEXT STEPS

According to the tasks assigned by the Amended TD in relation to electronic format and storage of regulated information, ESMA will publish consultation papers with the aim to seek market participants' views as part of the preparation of the future regulatory technical standards.

## Corporate Reporting

### ESMA participates in the development of IFRS

ESMA continues to monitor developments in IFRSs proposed by the IASB and the IFRS IC and to respond to calls for market input from these bodies by putting forward the views of European securities regulators.

In 2013, ESMA submitted fourteen comment letters from which the most important related to the IASB's proposals on the main projects Financial Instruments, Leases, Insurance and Conceptual Framework. ESMA has also commented on the proposal to use IFRSs for SMEs by indicating its support for issuers only trading on Multilateral Trading Facilities but not those with securities listed on regulated markets.

## ESMA strengthens European voice on IFRS issues

ESMA has been following closely the discussions on the ways of reinforcing the EU's contribution to the IASB and enhancing the governance of the European bodies involved in the development of the IFRS which have been included in the Maystadt Report – 'Should IFRS standards be more European?'. ESMA commented on those proposals by welcoming the continued commitment to the use of IFRS, as the right approach in the context of global markets.

However, with respect to the recommendations for the body to be entrusted with providing advice to the EC on the IFRS endorsement, ESMA as the other three ESAs expressed concerns about the recommended option on the revised structure of the EFRAG SB and pointed out to the importance of ensuring that the body entrusted with those responsibilities should serve the public interest.

## ESMA monitors proposed rules on audit

In 2013, the European co-legislators discussed the proposal for a regulation on the quality of audits of public-interest entities and proposal for a directive to enhance the single market for statutory audits. The proposed legislation brings significant changes to the audit European regulation, including giving ESMA responsibilities in the area of contributing to the technical assessment of public oversight systems of third countries and to the international cooperation between EU audit oversight authorities and third countries.

# ★ CONVERGENCE

ESMA was set up to foster supervisory convergence by reducing regulatory arbitrage resulting from different supervisory practices across the EU, which may have the potential of undermining not only the integrity, efficiency and orderly functioning of markets but ultimately also financial stability.

The Authority aims to use its convergence work to drive its activities in other areas of the Work Programme, including enhancing the single rulebook, through issuing guidelines and recommendations in areas where difference of application exist, and through providing advice to the EC on areas where revised legislation might be necessary to align supervisory practices.

## ESMA promotes convergent application of Short-Selling Regulation

Since the entry into application of the SSR on 1 November 2012, ESMA has continued to maintain information published on its website, notably a list of the national information needed to fulfil the transparency requirements on significant net short positions in shares and sovereign debt, as well as a list of the notification thresholds for each EU sovereign debt issuer<sup>(30)</sup>.

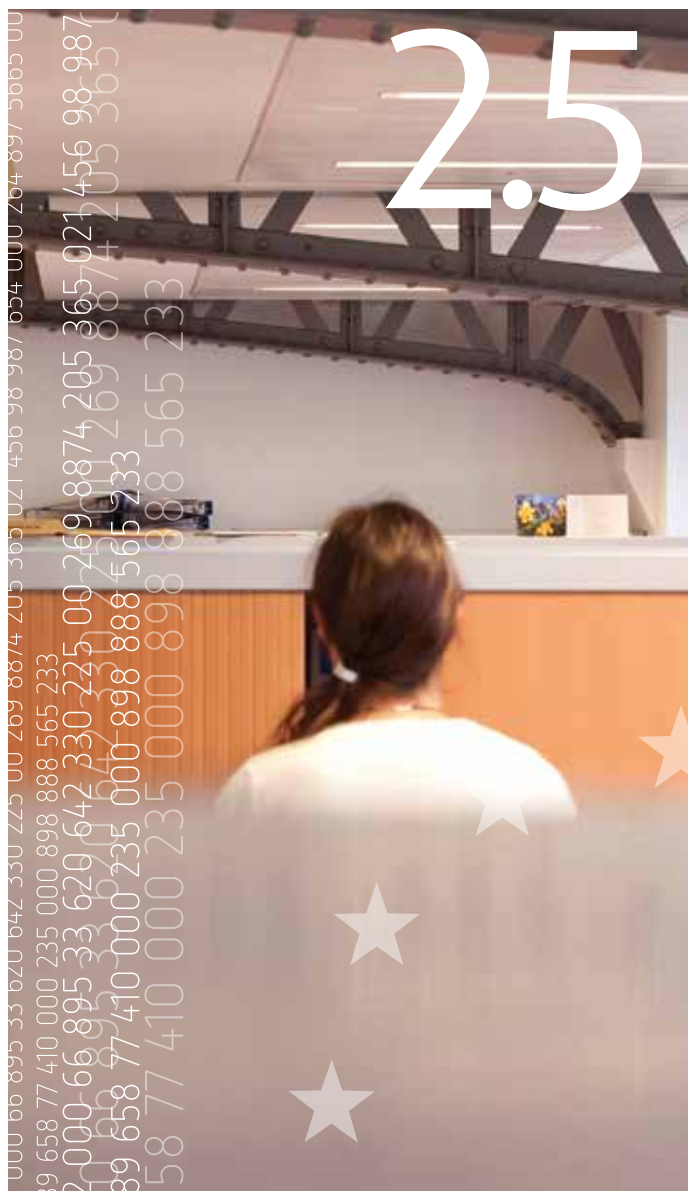
## ESMA facilitates and coordinates the implementation of temporary bans

In accordance with the new coordination role assigned to ESMA under the SSR, on 29 January 2013, ESMA issued a positive opinion on the emergency measures that the Greek regulator (HCMC) intended to introduce on 1 February 2013. On 30 April 2013, ESMA issued another favourable opinion on the renewal of the Greek ban for another three-month period, which was eventually lifted by the HCMC on 15 July 2013.

Article 23 of the SSR grants competent authorities powers to introduce temporary measures in a financial instrument which is traded on a trading venue under their supervision, where the price of a financial instrument has fallen significantly during a single trading day. These powers are given in order to prevent a disorderly decline in the price of the financial instrument. In line with the SSR, ESMA has played its coordination role in eight instances in 2013, when the Italian supervisor, Consob, as well as the Portuguese supervisor, CMVM, adopted short term bans on short sales of specific shares on their respective markets<sup>(31)</sup>.

(30) <http://www.esma.europa.eu/page/Short-selling>

(31) This covered eight shares on the Italian market and four on the Portuguese market



### NEXT STEPS

As required by the SSR, ESMA will proceed with the first periodic review of the list of the shares exempted from the regime. Based on the information to be provided by NCAs, the updated list will be published on ESMA website and becomes effective as of 1 April 2014.

## Post-Trading

### ESMA monitors settlement discipline and fails

In 2013, ESMA has continued to monitor settlement fails in the EU, for the benefit of regulators and in the context of ESMA's role on financial stability and systemic risk monitoring and mitigation.

ESMA launched EU joint regulatory action with a view to collect and aggregate data, monitor settlement fails and analyse any increase in fail rates. In 2013, the number of countries which are contributing to this voluntary reporting grew from 21 to 25.

Every two weeks, the reporting countries submit daily settlement fails rates, with a breakdown per type of instrument (Equities, Corporate bonds and Government bonds). The reports also contain data on volumes (number of transactions) and values (in EUR-equivalent), with a distinction between failures to deliver cash, and failures to deliver securities. ESMA has developed a tool to aggregate and analyse those data, and produces periodic and confidential reports to monitor the fails rates at European level.

In 2013, aggregate data on settlement fails was also used in the context of the review of the Short-Selling Regulation.

### ESMA and the Commission participate in international derivatives dialogue

ESMA maintains an active dialogue with third-country authorities responsible for regulating post-trading market infrastructures and derivatives markets. In particular, ESMA, together with the European Commission, have been keeping an on-going dialogue with the US regulators on the rules implementing the Dodd-Frank Act and their possible effects for European market participants and market infrastructures, as well as the impact of EMIR and relevant technical standards on US entities.

The 2013 dialogue, conducted together with the Commission, has been focusing mainly on:

- the registration in the US of swap dealers and major swap participants;
- the registration and recognition of non-EU CCPs;
- the registration and recognition of non-EU trade repositories; and
- access to data by relevant authorities.



Active dialogue took place in 2013 with regulators in other jurisdictions, both within the OTC Derivatives Regulators Group (ODRG) and bilaterally. Within the ODRG the main focus has been to identify gaps and inconsistencies on the rules implementing the G20 commitments and ways to address them. Bilaterally, the focus was on the technical advice on equivalence that ESMA has developed under EMIR.

In December 2013, ESMA commenced negotiations to establish cooperative arrangements with the home competent authorities responsible for supervising third-country CCPs that have applied for recognition under EMIR.

ESMA has also actively contributed to the work of the following international fora in charge of ensuring international consistency across regulatory standards related to derivatives markets and post-trading market infrastructure, where EMIR and its standards have been accepted in numerous occasions as critical building blocks for agreeing international standards. This also mirrors the international importance of EU financial markets and the quality of the EU rules on derivatives. This work included:

- FSB draft feasibility study on TR data aggregation approaches;
- CPSS-IOSCO fora dealing with the monitoring of Principles for Financial Market Infrastructures, recovery and resolution of Financial Market Infrastructures, public quantitative disclosure requirements for central counterparties and access to TR data by authorities;
- OTC Derivatives Regulators Forum;
- OTC Derivatives Regulators Working Group; and
- LEI Regulatory Oversight Committee.

### **ESMA coordinates the consistent application and enforcement of IFRS**

ESMA works on issues related to financial reporting, audit, period reporting and storage of regulated information. In particular it contributes to the consistent application of International Financial Reporting Standards (IFRS) in the EU and to build a common supervisory culture and consistent approaches between NCAs in the EU. In the report on the IFRS enforcement activities in Europe, ESMA provides details accounting related activities of enforcers.

#### **Convergence of IFRS enforcement activities**

The European Enforcers Coordinated Sessions (EECS) is a forum within ESMA in which European enforcers exchange views and discuss experiences relating to

the enforcement of financial reporting standards and in particular IFRS. The harmonisation of enforcement in Europe is necessary in order to contribute to the creation of a single efficient capital market. A key function of EECS lies in analysing and discussing emerging issues and decisions taken by independent European national enforcers in respect of IFRS financial statements published by issuers with securities traded on a regulated market.

In November 2013, in order to promote consistent application of IFRS, ESMA together with the NCAs identified and published common financial reporting topics which they believed were particularly significant for European IFRS listed companies on the basis of the economic and market situation. Those priorities for the 2013 annual financial statements focused on:

- impairment of non-financial assets;
- measurement and disclosure of post-employment benefit obligations;
- fair value measurement;
- disclosures related to significant accounting policies, judgments and estimates; and
- measurement of financial instruments and disclosure of related risks.

Following ESMA's Consultation Paper on Materiality and the organisation of a public roundtable in 2011 and 2012, ESMA published in 2013 a feedback statement. Consistent with the results of this consultation, ESMA did not publish any guidance on materiality. However, ESMA shared evidence with the IASB and the IAASB and encouraged them to address the aspects of materiality that are seen to be problematic in practice, notably with regards to the relevance of disclosures and the qualitative assessment of materiality.

#### **ESMA consults on draft guidelines on enforcement of financial information**

On 19 July 2013, ESMA published a consultation paper on proposed guidelines on the enforcement of financial information. The draft guidelines are for the use of enforcers and provide for the principles to be followed along the enforcement process, by defining in a consistent manner the objectives, the characteristics of the enforcers, some elements of the enforcement steps and to introduce more prominently the role that ESMA would play in this context.

In 2004, ESMA's predecessor CESR had published two standards on the enforcement of financial information

whose objective was to promote harmonisation of enforcement practices in the EU. With the coming into force of the ESMA<sup>1</sup> Regulation and based on the experience accumulated over the last almost 10 years on that matter, ESMA decided to review the content of the enforcement standards and identify new means to ensure supervisory convergence.

### ESMA compares IFRS financial statements of EU financial institutions

In 2013, ESMA performed and published a review of some of the key areas of the IFRS financial statements of 39 listed financial institutions across the EU in order to assess their comparability and the quality of their disclosures.

While finding that the required disclosures under IFRS were generally observed, ESMA identified broad variations in the quality of the information provided and found some cases where this was insufficient to allow comparability among financial institutions. ESMA expects enhanced disclosures to be provided in the future on exposures to credit risk, its mitigation, analysis of specific concentrations of credit risk and disclosure of impairment policies in order to enable investors to assess the overall credit risk.

### ESMA reviews accounting practices related to impairment of goodwill

As a result of the financial and economic crisis and the poor economic outlook, assets in many industries may generate lower cash flows than expected when these assets were acquired. In order to assess the potential consequences of additional impairment losses, ESMA performed in 2012 a review of the IFRS accounts of more than 200 listed issuers from 23 European jurisdictions with total goodwill amounting to around €800 billion.

The report, published beginning of 2013, identified that impairment losses of goodwill recognised in 2011 were limited to a handful of issuers, concentrated in a few industries. Although the major disclosures were generally provided, in many cases these were not sufficiently specific, in particular in relation to key assumptions of the management, determination of growth rate and discount rate used in the goodwill impairment test and the sensitivity analysis. ESMA expects that, in the future, the findings of the review will be helpful for issuers and their auditors when preparing and auditing their IFRS financial statements.



### NEXT STEPS

Supervisory convergence work in financial reporting will continue in 2014 with the objective of strengthening it through the publication of the final guidelines on enforcement, which are to follow as a result of the consultation conducted in 2013. That will be supported by continuing the regular EECS meetings (nine meetings planned) to discuss enforcement decisions taken and to be taken by NCAs and publication of regular extracts, and where necessary statements and/or opinions.

In 2014, ESMA, together with EU NCAs, will continue to monitor the level of transparency of issues identified and communicated in 2013 in the common enforcement priorities or in other reviews performed such as on the comparability of financial statements of financial institutions and will consider whether further actions are required in 2014 and report on those findings.

In addition, a consultation paper on Alternative Performance Measures will also be published in 2014 as ESMA found that different practices were used by issuers. As such, ESMA intends to reinforce comments and participation received from market participants in its work.

The first of its kind, the report created an overview of national rules in the non-harmonised area of prospectus liability, providing transparency to market participants and enabling the Commission to identify and monitor the different regimes in place.

### NEXT STEPS

The final part of ESMA's mandate<sup>(34)</sup> to deliver technical advice to the Commission concerning the Prospectus Directive concerns criteria for assessing the equivalence of a third country financial market. This work is postponed until the revised Market Abuse Directive and MiFID are finalised.

## ESMA clarifies concept of 'acting in concert' to international investors

In its 2012 report<sup>(35)</sup> as well as in an Action Plan<sup>(36)</sup> later that year, the Commission suggested that a clarification of the concept of "acting in concert" within the Takeover Bids Directive<sup>(37)</sup> would enhance legal certainty for international investors regarding the extent to which they can cooperate without being regarded as acting in concert and possibly having to make a mandatory bid.

Sharing this analysis, ESMA worked on the issue with the Take Over Bids network and published in 2013 a statement<sup>(38)</sup> containing information on shareholder cooperation and acting in concert under the Directive. The statement presented a 'white list' of activities on which shareholders can cooperate without that cooperation leading to the assumption that they are acting in concert. It furthermore contained information on how shareholders may cooperate on appointing and removing board members by presenting factors that NCAs may take into account when considering whether shareholders are acting in concert.

## Corporate Finance

### ESMA publishes report on liability regimes under PD

In 2013, ESMA continued its work to provide technical advice to the European Commission regarding the Prospectus Directive. Based on input from NCAs, ESMA developed a report<sup>(32)</sup> comparing the sanctioning regimes for infringements of national legislation and rules transposing the Prospectus Directive (PD) and of the Prospectus Regulation<sup>(33)</sup> as well as national liability regimes (civil, administrative and government liability, criminal liability and sanctions) applied by the Member States in relation to the Prospectus Directive. The report also encompassed national regimes setting out the conditions for investors' right of restitution for losses from the author of the violation and from the government.

(32) [http://www.esma.europa.eu/system/files/2013-619\\_report\\_liability\\_regimes\\_under\\_the\\_prospectus\\_directive\\_published\\_on\\_website.pdf](http://www.esma.europa.eu/system/files/2013-619_report_liability_regimes_under_the_prospectus_directive_published_on_website.pdf)

(33) Commission Regulation (EC) No 809/2004

(34) [http://ec.europa.eu/internal\\_market/securities/docs/prospectus/esmaadv\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/prospectus/esmaadv_en.pdf)

(35) [http://ec.europa.eu/internal\\_market/company/docs/takeoverbids/COM2012\\_347\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/takeoverbids/COM2012_347_en.pdf)

(36) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0740:FIN:EN:PDF>

(37) Directive 2004/25/EC

(38) [http://www.esma.europa.eu/system/files/2013-1642\\_esma\\_public\\_statement\\_-\\_information\\_on\\_shareholder\\_cooperation\\_and\\_acting\\_in\\_concert\\_under\\_the\\_takeover\\_bids\\_directive.pdf](http://www.esma.europa.eu/system/files/2013-1642_esma_public_statement_-_information_on_shareholder_cooperation_and_acting_in_concert_under_the_takeover_bids_directive.pdf)

## ESMA facilitates development of code of conduct for EU proxy advising industry

Following a 2011 fact-finding exercise and a 2012 public consultation, ESMA published a report<sup>(39)</sup> on the EU proxy advising industry in 2013, identifying areas in this industry which would benefit from enhanced transparency and encouraging the industry to develop a code of conduct. Several industry members voiced their support for such a code and formed a committee to undertake drafting. ESMA offered logistical support to the committee to take into account the absence of an industry organisation to provide such support; however, the committee is independent and ESMA does not take part in drafting the code.

distinguishing between short-term money market funds and money market funds, and including a list of criteria for both categories of funds which must comply with it should they want to use the label "Money Market Fund". In February 2012, ESMA published Questions and Answers with a view to promote common supervisory approaches and practices in the application of these Guidelines by providing responses to questions posed by the general public and competent authorities.

The review showed a varying level of applications. It showed that a number of NCAs have not transposed the Guidelines into their national legal system within the period set by the Guidelines. Finally, the review identified a number of good practices which could contribute to an improvement of the supervision of Money Market Funds.

### NEXT STEPS

The committee has announced that the code will be finalised in the first quarter of 2014. ESMA will review the code within two years of its publication to assess whether it has generated the desired increase in transparency and will communicate its findings to the European Commission and the wider public.

## Peer Reviews

### ESMA amends its methodology for peer reviews

In autumn 2013, the Review Panel has amended its methodology for carrying out peer reviews, with the aim at having clearer outcomes of its peer reviews. The new methodology will now include on-site visits. The assessment group performing the review will include ESMA staff and will report directly to the ESMA Board of Supervisors. Peer reviews will not have to cover all NCAs but can be more focused in terms of geographical coverage depending on the subject matter.

### ESMA forges convergent supervision of Money Market Funds

In December 2012, ESMA finalised a peer review on its Money Market Funds Guidelines, which were published in spring 2013. This peer review served as a timely step to investigate the extent to which NCAs had implemented the Guidelines. The Guidelines set out a common definition of European Money Market Funds, with the objective to improve investor protection by this area in



(39) <http://www.esma.europa.eu/system/files/2013-84.pdf>



### NEXT STEPS

ESMA will in the third quarter of 2014 undertake follow-up MMF reviews as regards the NCAs covered by the peer review which have since mentioned that they have introduced changes or taken steps to ensure application of the Guidelines. Also NCAs which had not implemented the Guidelines as of August 2012 and, thus, were not covered by the report will be subject to a follow-up peer review.

### ESMA reviews implementation of MiFID conduct of business rules

In 2013, ESMA started a work-stream on the supervisory practices as regards Conduct of business rules under MiFID – specifically looking into enforcement practices of MiFID rules on fair, clear and not misleading information with regard to Article 19.2 MiFID, which is aimed at protecting the interest of investors. The work was undertaken following an advice from its SMSG. The work has been conducted in successive stages throughout 2013 including a mapping report, a self-assessment report and a peer review report. For the first time and based on the updated Review Panel Methodology, ESMA visited a number of NCAs to review their implementation of the relevant MiFID rules.

### ESMA looks into NCAs supervision of best execution

In 2013, ESMA started another review work-stream. This one looks into the obligation to execute orders on terms most favourable to the client (best execution), as demanded by MiFID. The proposal for this work-stream followed the input received from ESMA's SMSG in 2011 and is in line with ESMA's objective to promote convergence of supervisory approaches. The purpose of the work is to investigate how the EEA NCAs nationally undertake their tasks with regard to the supervision and enforcement of the MiFID provisions on best execution.

## Legal work

### ESMA addresses breaches of Union law

Besides investigating convergence through reviews, another regulatory tool available to ESMA, should a NCA not be in compliance with EU law, is the power to

address a legal recommendation to a NCA setting out the action necessary to comply with Union law (Article 17 of the ESMA Regulation).

In pursuance of several objectives, ESMA is committed to ensuring the correct application of Union law, particularly if a NCA's actions give rise to a clear and unconditional breach of Union law (BUL).

In 2013, ESMA received information from a number of third parties on different practices of financial market participants and NCAs vis-à-vis the application of EU law. ESMA provided those persons with assistance and information to facilitate, where possible, the resolution of their complaints. In addition, ESMA's actions under the BUL procedure, including in 2013 the determination of two admissible cases, five decisions not to initiate an investigation and two decisions to initiate an investigation led to a number of improvements in supervisory convergence. This convergence occurs partly through ESMA's obtaining information on the supervisory practices of competent authorities. The context of ESMA's enquiries encouraged some competent authorities to change their supervisory practices (e.g. one competent authority revised its approach to UCITS passporting in its jurisdiction). The information obtained by ESMA from third parties has helped to further ESMA's supervisory convergence priorities.

## Cross-Sector Convergence – Joint Committee

The three ESA jointly work on cross-sector issues in order to ensure coherent approaches in regulation across the banking, securities and insurance sector. This work is being conducted through the ESA's joint committee. The year 2013 was crucial for the Joint Committee of the three supervisory Authorities (ESAs), which stepped up the pace to act as a forum for exchange and cross-sector co-ordination. Under the chairmanship of EIOPA, it focused in particular on:

- risk-monitoring;
- consumer protection; and
- on the ESFS review exercise.

Being a key forum for sharing information and data on risks in between the ESAs, the Joint Committee developed a "Joint Cross Sector Report on Risks and Vulnerabilities in the EU Financial System", thus contributing to cross-sector risk analysis and anticipation, as well as financial stability. Two such reports were published on the ESAs' websites in 2013, in March and September respectively.

In addition, information has been regularly exchanged on specific topics, including cyber risks, risks as a consequence of criminal acts as well as bad business conduct.

### Consumer protection key ESA focus

Consumer protection is high on the agendas of the three ESAs, and a topic where coordination is essential across financial sectors. To reach out to consumers of financial services, retail investors, and other stakeholders the ESAs organised their first Joint Consumer Protection Day, which was held on 25 June 2013 in Paris. This Joint Consumer Protection Day was intended as a forum for exchange and discussion on important consumer issues as well as on consumer protection supervisory practices.

Furthermore, in order to increase market confidence of all participants, and in particular to ensure the adequate protection of complainants, ESMA and the EBA published, on 6 November 2013, a consultation paper on draft guidelines for complaints-handling for the securities and banking sectors, building on the existing complaints-handling guidelines established by EIOPA for the insurance sector. The objective is to enable EU consumers to refer to a single set of complaints-handling arrangements, irrespective of the type of product or service or the geographical location of the firm in question. This, in turn, will also enable firms to streamline and standardise their complaints-handling arrangements, and national regulators to supervise the same requirements across all sectors of financial services across the EU.

On 28 November 2013, a joint position was published, detailing eight principles applicable to the oversight and governance processes of financial products. These principles cover the responsibilities of manufacturers and producers in setting up processes, functions and strategies for designing and marketing financial products, as well as at reviewing the products' life cycle. They stress the importance of the controls that manufacturers should put in place before launching their products, thereby discouraging products and services that may cause consumer detriment from entering the market and, ultimately, enhancing consumer confidence in financial markets.

As part of its work on Financial Conglomerates, on 26 July 2013, the Joint Committee submitted its first joint draft RTS on the uniform conditions of application of the calculation methods of own funds under the Financial Conglomerates Directive (FICOD) to the EU Commission. It further published on 8 October 2013, its annual update of the list of identified Financial

Conglomerates. This list was for the first time compiled in line with the enlarged scope of the FICOD so as to include reinsurance undertakings, asset management companies and alternative investment fund managers for the identification of financial conglomerates.

With regard to Anti-Money Laundering, a report on anti-money laundering and counter financing of terrorism Risk Based Supervision, was published on the websites of the three ESAs in November 2013. In addition, the Joint Committee considered matters related to, inter alia, cost recovery of agent inspections of cross border payment institutions and distance customer due diligence and started discussions of its work as envisaged under the upcoming 4th Money Laundering Directive (4MLD).



Following the publication of the EBA and ESMA final report and principles for Benchmark-Setting Processes in the EU in June 2013, the Joint Committee continued its discussions of benchmark-related issues, in particular with respect to benchmark contingency matters and considerations to develop more robust models for benchmarks. This work was conducted as part of the OSSG established by the Financial Stability Board (FSB).

In November 2013, the ESAs jointly ran a public consultation on mechanistic references to credit ratings in the ESAs' guidelines and recommendations, as envisaged by the CRA Regulation – as amended by the CRAIII Regulation. The ESAs also initiated the joint work on draft ITS for external Credit Assessment Institutions (ECAIs), for submission to the EU Commission by 1 July 2014. In addition, the Joint Committee started considerations on how to coordinate EU initiatives related to the transparency of securitisation products, aiming at potentially limiting overlapping requirements for issuers and possibly identifying positive and negative patterns of securitisation.

Finally, with the European System of Financial Supervision (ESFS) under review by the European Commission after nearly 3 years of existence, the ESAs actively cooperated with the process, jointly

providing a self-assessment report, and participating in the European Commission's public hearing on "Financial Supervision in the EU", on 24 May 2013<sup>(40)</sup>. The ESAs also jointly responded to the European Parliament's ECON set of common questions for their regular annual public hearing, which took place on 24 September 2013.

### ESAs support Joint Board of Appeal

Through the Joint Committee the ESAs continued to provide operational and secretarial support to the Board of Appeal. The Board of Appeal worked on two appeal cases, publishing its first Decision in an appeal brought by an Estonian company against a decision of the EBA on 24 June 2013.

### The ESA Training Programme 2013

With the objective of further developing a common supervisory culture, the ESAs offered cross-sector trainings and facilitated personnel exchanges throughout 2013. In consultation with NCAs, the ESAs identified priority topics on which a training programme for 2013 was developed. The cross-sector training programme delivered in 2013 included the following training activities:

(40) [http://ec.europa.eu/internal\\_market/conferences/2013/0524-financial-supervision/index\\_en.htm](http://ec.europa.eu/internal_market/conferences/2013/0524-financial-supervision/index_en.htm)

TECHNICAL TRAINING						
No.	Name of training activity	Date	Location	Leading ESA	Host	Number of participants
1	Regulatory Impact Assessment	27-28 Feb	Frankfurt	EIOPA	EIOPA	48
2	Working with ESMA / ESMA's role and powers in the new legislative framework	14 May	Paris	ESMA	ESMA	39
3	Workshop on Developing Technical Standards and undertaking Impact Assessments	30-31 May	London	EBA	EBA	24
4	Supervisory Review Process	25-26 Jun	Frankfurt	EIOPA	EIOPA	38
5	Workshop on XBRL Implementation	1-2 Oct	Warsaw	EBA	PFSA (KNF)	105
6	General course on IFRS	21 Nov	Brussels	ESMA	ESMA	45
7	Colleges of Supervisors	28-29 Nov	Berlin	EIOPA	Bafin – ESE	53
8	Discussion and seminar on the CRA supervision and Reduction of the reliance on ratings	11 Dec	Paris	ESMA	ESMA	25
<b>Total:</b>						<b>377</b>

In certain cases financial support was provided to NCAs where they, for reasons of budgetary constraints, might otherwise not have been able to attend. This ensured a more equal representation at the ESA trainings, and such support, including reimbursement of travel and accommodation expenses, will continue in 2014.

### Establishing the ESA Training Programme 2014

The ESA sector and cross-sector Training Programme 2014 was developed based on NCA responses to the Training Need Assessment Questionnaire 2013. This online survey was circulated to all NCAs in July 2013 and captured their responses to a number of proposed topics. All training programmes were first circulated to the Joint Committee for information and then to the ESAs Boards of Supervisors in November and December 2013.

### Sector training programme

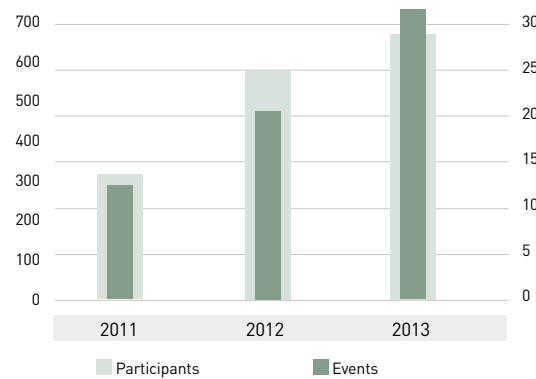
In addition to the joint ESA training courses, ESMA organized 28 training courses in 2013. This included fourteen sector seminars and three cross-sector seminars eleven soft-skill trainings. The reason for the extra courses were high demand from the NCAs and the need for additional courses by the working groups and subject matter experts.

	Title	Date	Location	Number of participants
1	General course on AIFMD	1 February 2013	AMF, Paris	35
2	Workshop Enforcement	7 February 2013	ESMA, Paris	49
3	Omnibus and AIFMD directives	10-11 April 2013	ESMA, Paris	53
4	High Frequency Trading	15-16 April 2013	ESMA, Paris	33
5	General course on UCITS	18-19 April 2013	ESMA, Paris	18
6	Valuation of illiquid assets	6-7 June 2013	CMVM, Lisbon	36
7	SARIS	24 July 2013	ESMA, Paris	32
8	OMNIBUS and AIFMD authorised entities and sanctions register:	11 September 2013	ESMA, Paris	29
9	OMNIBUS Approved prospectus, supplement and CoA register:	12 September 2013	ESMA, Paris	27
10	Commodities an introduction	25 September 2013	AFM, Amsterdam	38
11	CRD IV: investment and securities firms perspective	8 October 2013	KNF, Warsaw	28
12	Commodities advanced course	14 October	ESMA, Paris	26
13	Benchmarking	23 October 2013	FSMA, Brussels	17
14	EMIR implementation and monitoring	10-11 December 2013	ESMA, Paris	20
<b>Total</b>				<b>441</b>

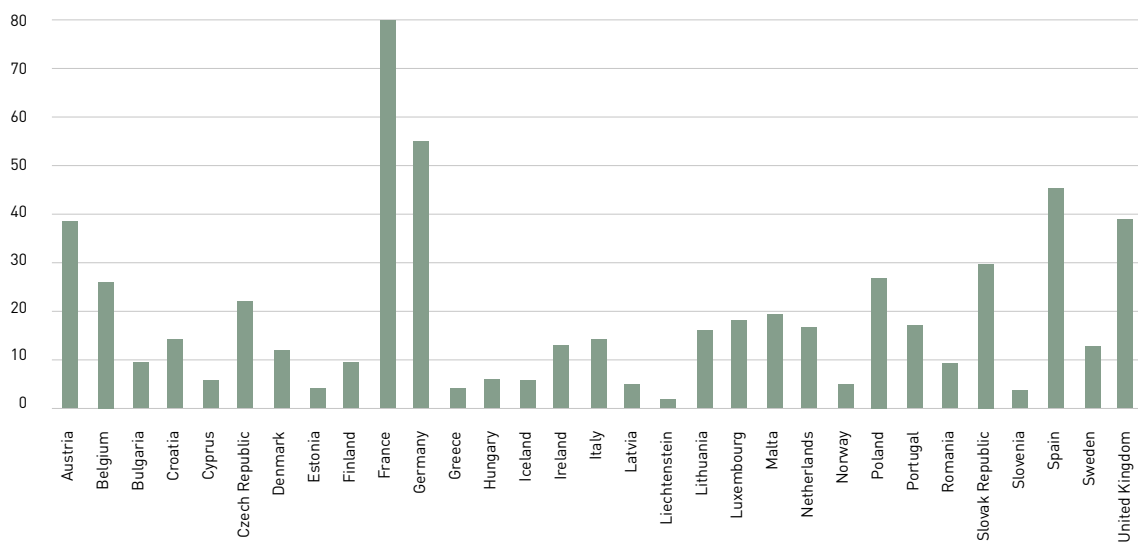


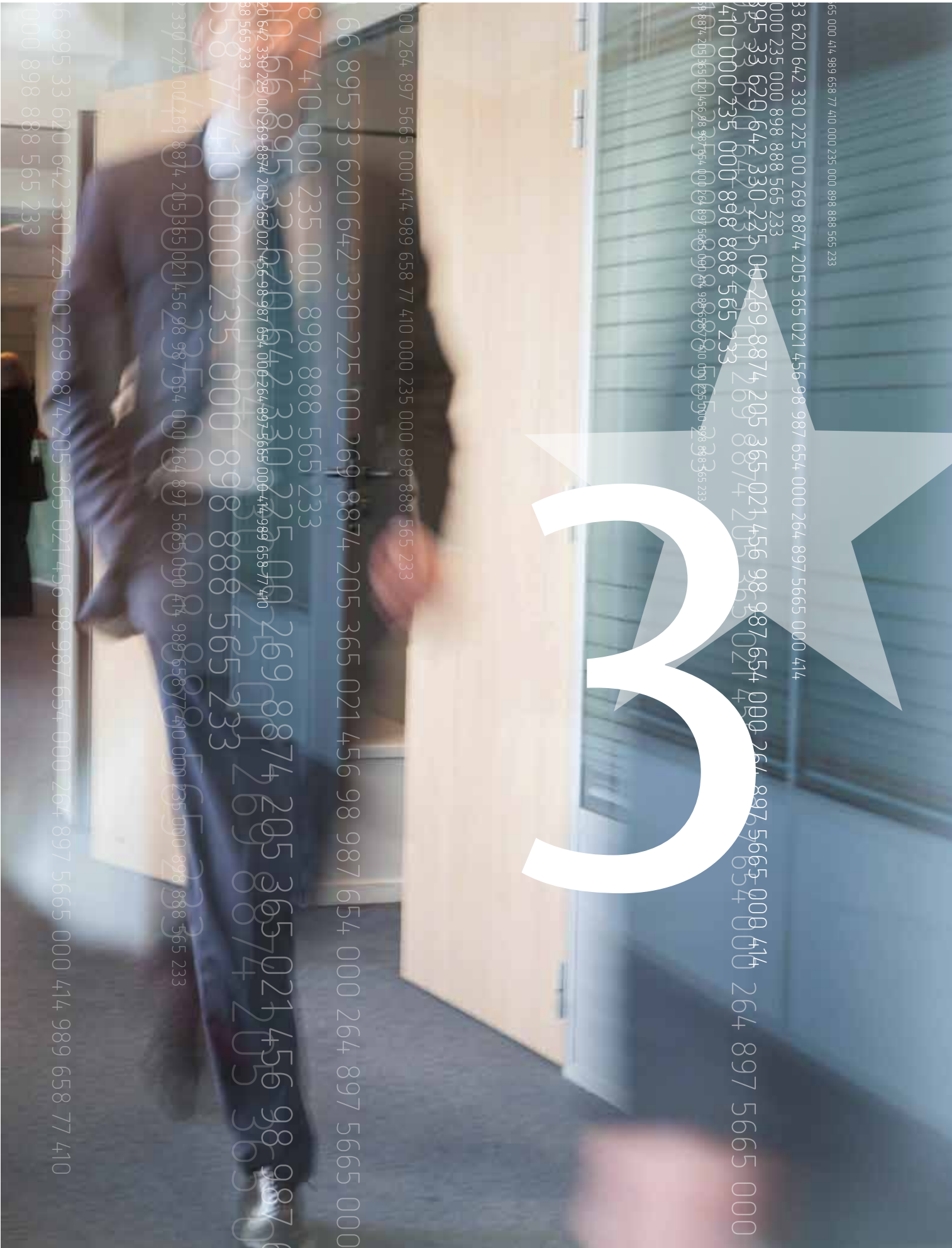
Together with the increasing number of courses the number of participants increased as well up to almost 700 (including soft-skills and cross-sector courses). The participation varied a lot between soft skills training courses (some of them with 10 participants) and technical skills seminars with more than 50 participants whereas the average was around 24 participants per training.

**Increase in the number of events and participants of ESMA training programme between 2011 – 2013**



**2013 Participants per country**





565 000 414 989 658 77 410 000 235 000 898 888 565 233

33 620 642 330 225 00 269 8874 205 365 021 456 98 987 654 000 264 897 5665 000 414

000 235 000 898 888 565 233

895 33 620 642 330 225 00 269 8874 205 365 021 456 98 987 654 000 264 897 5665 000 414

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20 642 330 225 00 269 8874 205 365 021 456 98 987 654 000 264 897 5665 000 414 989 658 77 410

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000 898 888 565 233

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# ESMA ORGANISATION

# ★ ESMA ORGANISATION

## ESMA's day-to-day Management

ESMA has six Units/Divisions. The Heads of Units/Divisions are responsible for the activities in their respective business areas. The Executive Director and the Heads are responsible for ESMA's day-to-day management. ESMA's decision taking bodies, the Management and the Board of Supervisors, are further detailed on pp.14.

ESMA's management meets on a weekly basis. They discuss ESMA's objectives linked to Divisions' objectives, follow up and agree cross-ESMA issues and solutions. Planning activities are a crucial part of the management and internal control system of ESMA. An Annual Work Programme is adopted every year in September for the following year by the Board of Supervisors. A multi-annual staff policy plan is in place. The Work Programme is monitored internally throughout the course of the year. Progress on its implementation is reported to the Management Board. A comprehensive set of reports on key activities such as recruitment and budget execution is provided monthly to the Executive Director and quarterly to the Management Board.

## ESMA's IT programme

Providing IT infrastructure, pan-EU database and facilitation pan-EU exchange of information is a key role of ESMA. This is reflected in ESMA's IT budget: in 2013, 5.5m€ (20% of ESMA's total budget) was committed to support IT activities related to ESMA's work programme. In total ESMA ran 16 IT projects out of which the following were the largest:

– **ESMA registers:** in 2013, a new IT platform was set up which implements transparency requirements set out by the Omnibus<sup>(41)</sup> and AIFMD<sup>(42)</sup> Directives. The go-live for public access to these registers is scheduled for Q1.14, including the publication of historic information since 2012. Via ESMA's website, the platform will enable market participants and investors to access regulated information in one single point for the EU. This will include information on:

- authorised entities under the UCITS and MiFID regime;
- sanctions executed by a National Competent Authority;
- alternative investment funds managers; and
- prospectuses.

The ESMA system is retrieving data on a daily basis from the 31 NCAs and publishes the information on ESMA's website. The registers have been extended at the end of 2013 to also include additional information

(41) 2010/78/EU - amendments to Prospectus, MiFID and UCITS Directives

(42) 2011/61/EU





as required under the transparency regimes set up by the:

- the Short-Selling Regulation<sup>(43)</sup>;
- the European Venture Capital Regulation EuVECA; and
- the EuSEF<sup>(44)</sup> regulations.

Implementation of the additional system is scheduled for Q4 2014.

– **SARIS**: in order to avoid regulatory arbitrage, it is required that NCAs coordinate rapidly and efficiently on the suspensions from trading on EU markets. In order to notify in a safe manner all NCAs where a suspended instrument is elsewhere traded, in 2013 ESMA set up a new IT system supporting the notification of suspension and removal of financial instruments from trading among NCAs. The system has been delivered in third quarter 2013.

– **AIFM reporting**<sup>(45)</sup>: the AIFMD project will facilitate the online transmission, storage and processing of the AIFM reporting between the NCAs and ESMA, using a standard form for the reports. ESMA has published final guidelines on the reporting obligations for AIFMs which clarify provisions of the AIFMD on required information including a new consolidated reporting template, including the technical data format (XML Schema) that has to be consistently implemented by all NCAs. The new IT system's specifications enabling the AIFMD reporting obligations have been drafted, the custom software development engagement has been finalised and the final system delivery is scheduled for Q4.14.

– **EMIR intra-group notifications**: EMIR provides that under certain conditions, intra-group OTC derivative contracts may be exempted from the clearing obligation<sup>(46)</sup> or the margining requirements<sup>(47)</sup>. Depending on the nature of the counterparties and location, the counterparties may need to get a positive decision from the NCA or should only notify their NCA which may object within a three month period. NCAs shall notify ESMA of their decision and of notification received when they have an objection right<sup>(48)</sup>. In order to facilitate this exchange of information, ESMA has launched a project to build a specific IT platform in 2013. The system requirements, including the exchange protocol and data format enabling the intra-group notifications, and the software development engagement, were finalised in 2013.

(43) 2012/236/EU

(44) 2013/346/EU

(45) 2011/61/EU

(46) 2012/648/EU article 4.2

(47) 2012/648/EU articles 11(5) to 1(10)

(48) 2012/648/EU article 11(11)

– **CRA III**: the entry-into-force of the new amendments to the CRA Regulation (CRA III) in June 2013 required major IT developments within ESMA, in particular on the supervision of fees charged by CRAs to their clients; the creation of an individual rating platform (European Rating Platform, ERP), to help investors in their decision making, contributing to increased investor protection and improving the visibility of smaller CRAs; and collecting and making public information on structured finance instruments (SFIs). In 2013, the CRA III project focused on collecting the business requirements and IT support for developing the associated Regulatory Technical Standards.

Other IT projects in 2013 covered for example:

- MiFID II transparency regime (data sets of trading data, both on and off-exchange, of financial instruments in order to define and test the proposed technical standards, estimate their impact and calibrate the regime);
- High Frequency Trading Database (the set-up of a database containing data for several major exchanges platforms in Europe in order to study the impacts and effects of High Frequency Trading); and
- the set-up of new Audio and Video Conference Systems to reduce travel costs.

ESMA also successfully conducted and finalised two public calls for tender for supporting the new data-centre hosting infrastructure and software maintenance for all the IT systems operated and maintained in production, disaster recovery and testing environments.

## Internal control standards

### ESMA's management and internal control systems

On 5 November 2012, ESMA's Management Board adopted ESMA's Internal Control Framework. The Framework covers 16 Internal Control Standards. The Internal Control Standards 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 European 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.

### ESMA's mission

The mandate and tasks of the Authority are summarised in ESMA's mission statement, which is described in a number of key documents, most importantly the ESMA annual work programme. It is also available on the home page of ESMA's external website. ESMA has also defined its six main characteristics.

Several awareness sessions have been organised during the year for all staff to strengthen common understanding and increase awareness of the mission and characteristics of ESMA as an organisation.

### Ethics and conflict of interests

Besides a code of good administrative behaviour and decision on professional secrecy, ESMA has established ethics guidelines for all staff.

In order to promote and strengthen the principles and practice of ethics and organisational values among its staff, ESMA has designated two staff members as Ethics Officer and a Deputy respectively. This allows for the development of a strong in-house expertise and prompt response and reaction to ethics issues. This organisation has been labelled as a best practice/strength by the Internal Audit Service of the Commission. An Intranet page on 'ethics and integrity' has been developed in 2013 to give staff a clear indication of what to do, or whom to ask when in doubt of being in presence of a conflict of interest.

Regular training in ethics is organised to ensure awareness of the special requirements of confidentiality and integrity that apply for ESMA as a key actor in the financial markets. This includes that:

- newcomers in ESMA are mandatorily enrolled in a presentation on 'ethics and conflict of interest'. In 2013, seven training-sessions were organised in 2013, gathering 88 participants;
- the direct supervisory activities of ESMA in the field of CRAs required the adaptation of the training to address specific risks met by most exposed staff members. A dedicated workshop was provided to the full CRAs Unit in 2013; and
- an annual session to all staff was organised in December 2013.

At the practical level, the ESMA Ethics Guide, adopted in 2012, serves as a rulebook for all staff with regard to work within the Authority. It provides clear guidance on conflict of interest and contact with stakeholders among others. All staff members are required to fill an annual declaration regarding potential conflicts of interest and are bound to request clearance for dealing with financial instruments.

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

### Staff allocation and development

The allocation and recruitment of staff is based on the Authority's Establishment Plan and Multi-annual Staff Policy Plan.

The Authority has adopted a recruitment policy and recruitment guidelines outlining the various steps of the recruitment process. There is also a comprehensive policy for induction of newcomers, consisting of basic training and welcome packs.

Moreover, ESMA has rules on internal mobility and performs analysis on its staff turnover.

The Authority carries out annual appraisals of staff in line with its Performance Appraisal Policy. In 2013, the appraisal exercise was launched in January 2013 and finalised in May 2013.

In 2013, ESMA performed its first reclassification of staff. Career development is governed by a set of policies, including a Training and Development Policy, an internal mobility policy and a Policy on Third Language.

### ESMA's work planning

ESMA adopted a Multi-annual Work Programme covering the period 2013-2015, which details the main activities and priorities and the corresponding deliverables.

The ESMA Annual Work Programme 2013 outlines the key activities of the Authority as expected to take shape and progress during the year, including new fields of activities where capacity building continues, with a breakdown of the overall activities into 75 individual tasks, already under implementation and/or planned to be implemented during the coming years.

Furthermore, in 2013 ESMA drafted the Work Programme 2014 that includes:

- detailed activities;
- human (full time equivalents) and financial (budgetary expenditure) resources per area of activity;
- Procurement Plan; as well as
- key performance indicators setting.



Transparent sharing of higher-level objectives throughout the Authority ensures adequate cascading of Annual Work Programme level objectives to the division and individual level. ESMA will continue introducing elements of Activity Based Planning and Budgeting and further develop SMART<sup>(49)</sup> objectives and RACER<sup>(50)</sup> indicators to support annual planning as well as monitoring and follow-up of plan implementation.

### Risk management

In order to ensure identification and assessment of potential risks in the annual planning phase that could negatively influence the achievement of ESMA's objectives and effective execution of activities, ESMA adopted in 2013 Risk Management Guidelines, aiming at giving guidance on how to analyse and evaluate risks, decide upon and implement further actions and controls to terminate or mitigate the risks and monitor and review the risk management. In addition, risk management training was organized in 2013 for ESMA's management.

ESMA conducted its first corporate risk assessment exercise in 2013, the result of which was a preparation of a risk register and an action plan with assigned responsibilities and set deadlines, which provided input for the Annual Work Programme. Risks were prioritised according to their significance and actions are taken to reduce them to the acceptable risk level of ESMA.

### Operations and control activities

The current organisation of ESMA aims at optimising the way the Authority can deliver on the tasks delegated to it through the Founding Regulation. In 2013, the delegation structure was reviewed. ESMA does not manage any programmes or projects, which limits the size of its budget operational expenditures as well as the number of financial transactions. This allows ESMA to maintain a partially decentralised model for its financial circuits while at the same time limiting the number of staff members involved in the electronic workflow. The Executive Director, as the Authorising Officer (AO), delegated financial responsibility to Heads of Units/Divisions, team leaders and other members of staff. In total, in 2013, there were eight Authorising Officers by Delegation (AOD).

Management supervision in ESMA is supported by a system of meetings and reports covering all areas of the Authority. The two-layer structure of the Authority's top management with the Executive Director and the Chair of the Management Board enhances efficiency of the monitoring and supervision activities, especially regarding the operational tasks of the Authority.

For coordination and decision-making, the senior management of the Authority meets weekly with an agenda alternating between ESMA regulatory tasks and operational functions. A dedicated secretary to the management meetings is in charge of the agenda preparation and follow-up of action plans based on the decisions taken at each meeting.

<sup>(49)</sup> Specific, Measurable, Attainable, Relevant, and Time based

<sup>(50)</sup> Relevant, discussed and Accepted, Credible, Easy and Robust against manipulation

A separate monthly operational meeting is organised where a comprehensive set of reports on key activities such as recruitment and budget execution is provided to the Executive Director.

The reporting on the activities, notably the progress of the different tasks with expected products and timelines is organised on quarterly basis.

A special Activity Report, prepared for every meeting of the ESMA Management Board, serves as a tool for regular management reporting. The report, including KPIS, covers key areas such as budget implementation, HR and recruitment, procurement, and achievement of Annual Work Programme per area. In addition, the management reporting package is supported by supplementary reports when needed.

An IT Management and Governance committee oversees IT projects and a business owner has been assigned for all IT systems in place.

In order to enhance the planning and follow up of the planning, operational owners were established for each budget line.

Following three years of operations since the start-up on 1 January 2011, ESMA has managed to create and document 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. New procedures were adopted in 2013, including procedures for the management of external communication, management of sensitive functions or the manual of procedure for the registration of trade repositories.

In 2013, the ESMA Business Process Map was completed. The processes are split in three categories: transversal, core and management. Furthermore, in 2013 ESMA formulated and adopted its internal rules of procedure, and created an inventory of all policies, procedures and working instructions. In 2013, a Document Management Policy has been adopted.

ESMA started developing its business continuity framework in 2012. The business impact assessment was reviewed during 2013. There is a disaster and recovery plan in place. In 2013, ESMA performed a physical security review and recruited a Security, Health and Safety officer.

In 2013, ESMA ran a project on data classification, which will be used as the basis for the further enhancement of security measures.

## Information and financial reporting

The main channels of communication are the internal and external websites; the Intranet was launched in the beginning of 2013. ESMA has an external website since 2011.

In 2013, ESMA also adopted its External Communication Strategy and developed an Internal Crisis Management Plan, which also covers communication issues.

There is a procedure for launching public consultations and a decision regulating access to documents.

ESMA has strong Information Technology governance in place. The IT projects that are carried out together with the national authorities are overseen by a Standing Committee and by ITMG, which report regularly to the Management Board and Board of Supervisors.

ESMA has implemented certain procedures and controls to ensure that accounting data and related information are accurate, complete and timely. The validation of the accounting and underlying financial systems of ESMA was performed by the Accounting Officer in 2013.

## Evaluation and audit

In line with the ESMA Founding Regulation (Articles 10 and 15), impact assessments on new regulatory tasks (technical standards and guidelines) are carried out prior the drafting of implementing technical standards, guidelines or recommendations.

An assessment regarding the status of implementation of the 16 ICS in ESMA has been performed annually since the establishment of the Authority – in 2011 and 2012. In 2013, ESMA decided to rely on the result of the limited review on the implementation of internal control standards performed by IAS.

The internal control system was reinforced since 2012 with the establishment of the role of Internal Control Officer reporting directly to the Executive Director and providing regular reports to the Management Board. Concerning the internal control planning, the draft 2014 Annual Work Programme incorporates planned actions regarding internal control, especially plans to further improve existing controls.

For reporting the developments and progress in internal control, the quarterly Activity Report to the Management Board has a dedicated section on Internal Control and audit follow up.

ESMA has not established an Internal Audit Capability. The IAS mission charted signed in September 2012 serves as the framework and terms of reference for the internal audit services provided to ESMA by the IAS.

In addition in 2013, the Executive Director also adopted a decision to perform internally annual finance ex-post controls.

### Data protection

ESMA performed important advancements in the area of data protection during 2013.

The DPO was appointed in March 2013, supported by a Deputy DPO. Both successfully attended the Certification Programme in Maastricht in June 2013. In 2013, an inventory of the operations in ESMA that were of relevance for data protection was setup as well as a register of notified processing operations. Available notifications under Art.26 and 27 of the Regulation (EC) No45/2001 have been sent to EDPS.

## Building blocks of assurance

### Follow up of audits and evaluations

#### European Court of Auditors

ESMA is audited every year by the European Court of Auditors (ECA) in two visits. 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 2012, it was indicated that ESMA accounts are reliable and the transactions underlying the accounts are legal and regular.

The ECA audit of the 2013 annual accounts is on-going. The draft report will be available by mid-2014. The first audit mission was performed in October 2013 and the second audit mission in March 2014.

The recommendations raised by ECA regarding the 2012 annual accounts are being addressed by ESMA.

Among others:

- recruitment procedures have been reviewed and an ex-ante control of the eligibility of candidates has been implemented;
- important efforts have been dedicated to strengthen the implementation of the Internal Control Standards; and
- ESMA's accounting systems have been validated by the Accounting Officer.

#### Internal audit service

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

The IAS performed in July a limited review<sup>(51)</sup> on the implementation of Internal Control Standards (ICS) at ESMA. ESMA received the final report in October 2013.

Out of the 15 ICS reviewed, IAS considered that 12 internal control standards are fully or largely implemented. 3 internal control standards are under implementation: ICS10 Business continuity, ICS11 Document management and ICS5 Objectives and performance indicators. IAS issued 14 recommendations in the different areas, only one of them classified as "Very important". There was no "Critical" recommendation.

All observations and recommendations were taken into account and appropriate action plans were developed by ESMA. The audit plan and the implementation of the action plans were presented to the Management Board. The 3 actions planned to be implemented during the year were implemented in timely manner and sent for review by IAS.

The implementation of these actions is being followed up regularly.

### 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 authorizing officer by delegation to the Executive Director;
- the result of the assessment<sup>(52)</sup> of the internal control standards and;
- the ex-ante and ex-post controls;
- the validation of the accounting systems; and
- 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.

(51) In 2013, ESMA relied on the results of the limited review on the implementation of Internal Control Standards

(52) In 2013, ESMA relied on the results of the limited review on the implementation of Internal Control Standards

## Declarations of assurance



The Executive Director

Date: 26 April 2014  
ESMA/2014/000

### 2013 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 report gives a true and fair view<sup>(53)</sup>;

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, 16 May 2014

**Verena Ross**

*Executive Director  
European Securities and Markets Authority*

ESMA • CS 60747 - 103 rue de Grenelle • 75345 Paris Cedex 07 • France - Tel. +33(0) 1 58 36 43 21 • [www.esma.europa.eu](http://www.esma.europa.eu)

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

## ESMA operations, budget and structure

ESMA is divided into six Divisions/Units, dealing with Markets, Investment and Reporting, CRAs, Economic Analysis and Research, Legal, Co-operations and Convergence and Operations. The Authority is chaired by Steven Maijoor, Chair, while Verena Ross, Executive Director, is responsible for its day-to-day management. Carlos Tavares acts as ESMA's Vice-Chair and is alternate to the ESMA Chair. The Chair and Executive Director are supported by the Communications Team, the Internal Control and Accounting Team and their personal assistants.

### ESMA's 2013 budget

In 2013, ESMA's annual budget increased by about €8 million compared to the previous year, from €20.2 million in 2012 to €28.1 million in 2013. That represents an increase of 39% in the total resources level. The budget increase was required to allow ESMA having the capability to implement all tasks provided by new EU legislations.

The sources of funding were further diversified in 2013, as fees for Trade Repositories were received for the first time following the registration of six Trade Repositories in Q4 2013. ESMA is now financed from four separate streams of income, namely, by the NCAs of the Member States (€12.9 million in 2013, representing 46% of the total revenues), by a balancing subsidy of the European Union (€8.6 million, representing 31%), by fees charged to Credit Rating Agencies (€5.7 million, representing 20%) and by fees charged to Trade Repositories (€0.83 million, representing 3%).

ESMA also ran some major procurement procedures in order to renew the remaining contracts from its predecessor CESR.

### Annual accounts

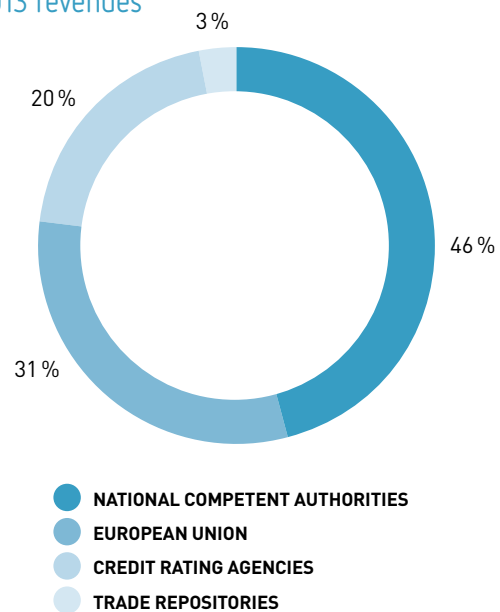
The annual accounts of ESMA have been established in accordance with the Financial Regulation of ESMA as adopted by ESMA's Board of Supervisors and Management. The "Framework Financial Regulation" EC Regulation (EC, EURATOM) No 652/2008 of July 2008 amending Regulation (EC, EURATOM) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, EURATOM) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

The accounting rules, methods and guidelines are those as adopted and provided by the Accountant of the EC.

### 2013 – overall budget

- 28.189m€ - overall budget for 2013 (C1-credits)
- 26.2m€ or 93% of the budget was committed
- 20.4m€ or 73% of the budget had been spent to end December 2013
- The remaining 5.8m€ will be paid in 2013

### 2013 revenues



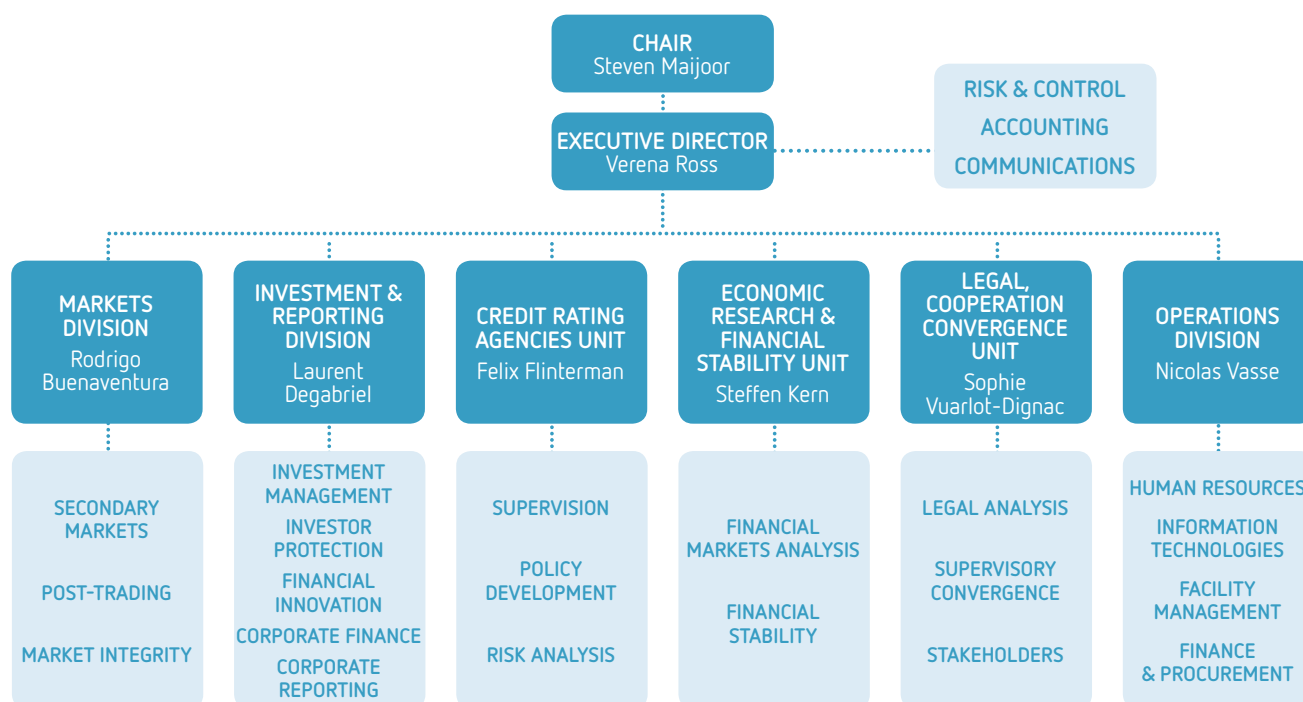
### ESMA works with other EU agencies on Common Approaches

In July 2012 the European Parliament, the Council and the Commission endorsed the Common Approach on EU decentralised agencies that aims to increase their coherence, effectiveness, accountability and transparency. The Common Approach led to a roadmap that requires the involvement of the Agencies to work with the three main institutions, in particular with the Commission.

ESMA has been working as part of the EU Agencies Network towards fulfilling the roadmap; in 2013 among other topics the focus was on sharing services between agencies, the new Framework Financial Regulation, developing Single Annual Report templates, and the prevention and management of conflicts of interest.

➡ [http://europa.eu/agencies/documents/joint\\_statement\\_and\\_common\\_approach\\_2012\\_en.pdf](http://europa.eu/agencies/documents/joint_statement_and_common_approach_2012_en.pdf)

## ESMA organisational chart, 31.12.2013



### ESMA's standing committees and working groups

As well as being comprised of Divisions and Units, much of the Authority's technical work is supported by standing committees (SC), working groups and task forces, panels and networks, which draw together senior experts from NCAs. The different ESMA groups are established either on a permanent basis or limited in time, depending on the issues handled and the mandate given. The groups are

normally chaired by senior representatives of NCAs and supported by ESMA staff who act as rapporteurs. More details on : [www.esma.europa.eu](http://www.esma.europa.eu)

There are a number of other groups, networks and task forces falling outside the permanent structures of ESMA which are undertaking work to respond to special mandates.

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

## ESMA's Boards and their composition

### Members of the ESMA Management Board

Member	Authority	Country
Steven Maijoor	ESMA	
Gérard Rameix	AMF	France
Julie Galbo	Finanstilsynet	Denmark
Konstantinos Botopoulos	CMC	Greece
Jean Guill	CSSF	Luxembourg
Klaus Kumpfmüller	FMA	Austria
Martin Wheatley	FCA	United Kingdom
Carlos Tavares	CMVM	Portugal



## MEMBERS OF THE ESMA BOARD OF SUPERVISORS

Member	Authority	Country
Steven Maijoor	ESMA	
Jean-Paul Servais	FSMA	Belgium
Stoyan Mavrodiev	FSC	Bulgaria
Pavel Hollmann	CNB	Czech Republic
Julie Galbo	Finanstilsynet	Denmark
Karl-Burkhard Caspari	BaFin	Germany
Andre Nõmm	FSA	Estonia
Konstantinos Botopoulos	HCMC	Greece
Elvira Rodriguez	CNMV	Spain
Gérard Rameix	AMF	France
Petar-Pierre Matek	HANFA	Croatia
Cyril Roux	Central Bank	Ireland
Guisepe Vegas	Consob	Italy
Demetra Kalogerou	SEC	Cyprus
Kristaps Zakulis	FCMC	Latvia
Vytautas Valvonis	Bank of Lithuania	Lithuania
Jean Guill	CSSF	Luxembourg
László Windisch	MNB	Hungary
Andre Camilleri	FSA	Malta
Gerben Everts	AFM	Netherlands
Klaus Kumpfmüller	FMA	Austria
Marek Szuszkiewicz	KNF	Poland
Carlos Tavares	CMVM	Portugal
Daniel Daianu	ASF	Romania
Damjan Zugelj	SMA	Slovenia
Ivan Barri	NBS	Slovak Republic
Anneli Tuominen	FIN-FSA	Finland
Martin Andersson	Finansinspektionen	Sweden
Martin Wheatley	FCA	United Kingdom

## OBSERVERS TO THE BOARD

Name	Authority	Country
Unnur Gunnarsdóttir	FI	Iceland
Mario Gassner	FMA	Liechtenstein
Anne Merethe Bellamy	Finanstilsynet	Norway
Adam Farkas	European Banking Authority	
Carlos Montalvo	European Insurance and Occupational Pensions Authority	
Francesco Mazzaferro	European Systemic Risk Board	
Jonathan Faull	European Commission	

## ESMA'S STANDING COMMITTEES AND WORKING GROUPS

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

Name of SC	Mandate	Chair
<b>Secondary Markets Standing Committee</b>	<ul style="list-style-type: none"> <li>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).</li> <li>develop technical standards and guidelines, elaborating advice to the EC relating to the MiFID.</li> </ul>	<b>Martin Wheatley</b> , FCA, UK
<b>Investment Management Standing Committee</b>	<ul style="list-style-type: none"> <li>work on issues relating to collective investment management, covering both harmonised and non-harmonised investment funds.</li> <li>develop technical standards, elaborating advice to the EC, or developing guidelines and recommendations relating to UCITS and AIFMD.</li> </ul>	<b>Gareth Murphy</b> , Central Bank of Ireland
<b>Post-Trading Standing Committee</b>	<ul style="list-style-type: none"> <li>work relating to clearing and settlement of transactions in financial instruments.</li> <li>develop technical standards, elaborating advice to the EC or developing guidelines and recommendations relating to EMIR.</li> </ul>	<b>Guiseppe Vegas</b> , CONSOB, Italy
<b>Credit Rating Agencies Technical Committee</b>	<ul style="list-style-type: none"> <li>prepare technical standards and common guidelines on CRA Regulation.</li> <li>co-ordinate with other international organisations and third-country regulators that are performing activities in relation to CRAs.</li> </ul>	<b>Verena Ross</b> , ESMA
<b>Corporate Finance Standing Committee</b>	<ul style="list-style-type: none"> <li>work relating to the Prospectus Directive, corporate governance, and major shareholding disclosures under the Transparency Directive.</li> <li>develop technical advice and guidance, standards on the provisions of the above Directives.</li> <li>in the area of corporate governance, respond to areas which relate to securities laws in the EU.</li> </ul>	<b>G�rard Rameix</b> , AMF, France
<b>Corporate Reporting Standing Committee</b>	<ul style="list-style-type: none"> <li>work on issues related to accounting, audit, periodic reporting and storage of regulated information.</li> <li>co-ordinate the activities of national enforcers from the European Economic Area (EEA) relating to the enforcement of compliance with IFRS.</li> <li>foster operational co-operation between EU and non-EU regulators.</li> </ul>	<b>Hannelore Lausch</b> , BaFin, Germany
<b>Market Integrity Standing Committee</b>	<ul style="list-style-type: none"> <li>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.</li> <li>develop technical standards, elaborating 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.</li> </ul>	<b>Konstantinos Botopoulos</b> , HSC, Greece
<b>Investor Protection and Intermediaries Standing Committee</b>	<ul style="list-style-type: none"> <li>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.</li> <li>develop and provide technical advice to the EC, and for preparing technical standards, guidelines and recommendations relating to the provisions of MiFID applicable to investment services and activities.</li> </ul>	<b>Jean-Paul Servais</b> , FMSA, Belgium

Name of SC	Mandate	Chair
<b>Financial Innovation Standing Committee</b>	<ul style="list-style-type: none"> <li>• achieve a c-ordinated approach to the regulatory and supervisory treatment of new or innovative financial activities.</li> <li>• identify risks to investor protection, and to financial stability, in the financial innovation area; and then to produce a risk mitigation strategy.</li> </ul>	<b>Anneli Tuominen,</b> FIN-FSA, Finland
<b>Review Panel</b>	<ul style="list-style-type: none"> <li>• contribute to supervisory convergence through supporting the consistent and timely implementation of Community legislation in the EU.</li> <li>• conduct peer reviews and mapping exercises.</li> <li>• review the implementation of EU legislation and ESMA standards and guidelines.</li> </ul>	<b>Jean Guill,</b> CSSF, Luxembourg
<b>Committee of Economic and Markets' Analysis</b>	<ul style="list-style-type: none"> <li>• financial markets monitoring and analysis.</li> <li>• identification, monitoring, and assessment of trends, potential risks and vulnerabilities in financial markets across borders and sectors, including a thorough focus on financial innovations and incentives related to market practices both at the wholesale and retail level.</li> </ul>	<b>Carlos Alves,</b> CMVM, Portugal
<b>IT Governance Committee</b>	<ul style="list-style-type: none"> <li>• work on IT governance, exchange of data &amp; information between NCAs and ESMA.</li> </ul>	<b>Nicolas Vasse,</b> ESMA



## ESMA staff summary 2013

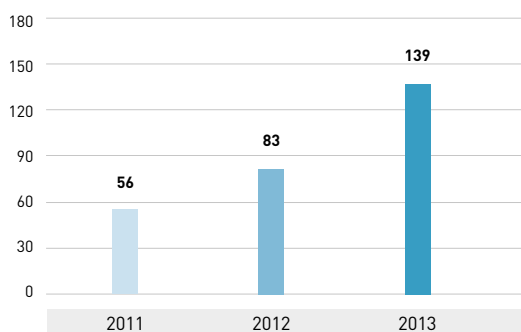
ESMA employs different categories of staff: temporary agents (TA)<sup>(54)</sup>, contract agents (CA) and seconded national expert (SNE). Starting from 83 staff members at the end of 2012, ESMA's recruitment plan for 2013 contained new positions to be filled with the objective to reach a total of 160 staff by the end of 2013, which divides into:

- 121 temporary agents;
- 25 contract agents; and
- 14 seconded national experts.

In the context of continued organisational growth, ESMA set up specific procedures for the induction of new colleagues that were focusing on training, team building, support to relocation and mentoring. Linked to that growth, ESMA also implemented an internal mobility policy to further career development and allow flexibility in terms of organisational needs.

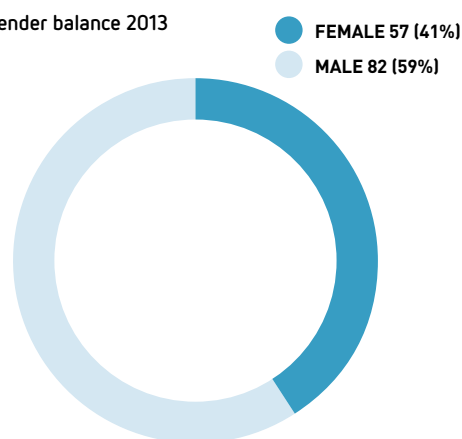
With regards to the implementation of the recruitment plan for 2013, as of 31 December 2013, ESMA achieved a head count of 139 staff, compared to the 160 initially planned which did not take into account some actual internal moves and departures. An additional eleven job offers were made and accepted by candidates by the end of 2013, arriving at a total head count for temporary agents of 150. ESMA has also taken great care to achieve the best possible gender and geographical balance during its recruitment process. Taking into consideration the specificity of the post offered at ESMA, 25 EU and EEA nationalities are currently represented at ESMA with a gender ratio of 58% to 42%.

Total number of staff 2011-2013



\* Number of temporary agents (TA), contract agents (CA) and seconded national experts (SNE) per unit (as of 31 December 2013).

ESMA gender balance 2013



(54) Listed in the establishment plan of the EU budget

	CRAs	Economic Research & Financial Stability	Investment & Reporting	Legal, cooperation & convergence	Markets	Operations	Senior Management	Total staff
TA	18	8	17	9	20	27	9	108
CA	4	2	2	2	3	5		18
SNE	1	1	5	4	2			13
<b>Total</b>	<b>23</b>	<b>11</b>	<b>24</b>	<b>15</b>	<b>25</b>	<b>32</b>	<b>9</b>	<b>139</b>

\* Number of staff (TA, CA and SNE as of 31 December 2013: ESMA employed staff from 24 Member States.

Country	Austria	Belgium	Bulgaria	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Netherlands	Norway	Poland	Portugal	Romania	Slovak Republic	Slovenia	Spain	Sweden	United Kingdom	TOTAL
Number	2	4	2	1	2	1	1	31	14	7	3	5	20	3	1	4	1	2	6	4	1	1	9	1	13	139

## ESMA Establishment Plan 2014

Staff population		Staff population actually filled at 31.12.2012 <sup>(1)</sup>	Staff population in EU Budget 2013 <sup>(2)</sup>	Staff population actually filled at 31.12.2013 <sup>(3)</sup>
Officials	AD			
	AST			
	AST/SC			
TA	AD	65	106	102
	AST	10	15	14
	AST/SC			
<b>Total<sup>(4)</sup></b>	<b>75</b>	<b>121</b>	<b>116</b>	
CA GF IV	4	10	7	
CA GF III		4	2	
CA GF II	8	11	10	
CA GF I				
<b>Total CA<sup>(5)</sup></b>	<b>12</b>	<b>25</b>	<b>19</b>	
<b>SNE<sup>(6)</sup></b>	<b>12</b>	<b>14</b>	<b>15</b>	
<b>TOTAL</b>	<b>99</b>	<b>160</b>	<b>150</b>	

(1) This number includes 15 offer letters sent counted as posts filled (15 TA posts)

(2) As authorised for officials and temporary agents (TAs) and as estimated for contract agents (CAs) and seconded national experts (SNEs)

(3) This number represents headcounts on 31.12.2013. This number includes 11 offer letters sent counted as posts filled (8 TA posts, 1 CA position, 2 SNE positions).  
Vacant: 5 TA posts, 3 CA positions, 2 SNE positions

(4) Headcounts

(5) FTE

(6) FTE



Category and grade	Establishment plan in EU Budget 2013		Establishment plan in voted EU Budget 2014		Establishment plan in Draft EU Budget 2015 <sup>(1)</sup>		Establishment plan 2016 <sup>(2)</sup>		Establishment plan 2017 <sup>(3)</sup>	
	officials	TA	officials	TA	officials	TA	officials	TA	officials	TA
AD 16										
AD 15		1		1		1		1		1
AD 14		1		1		1		2		2
AD 13				2		2		2		3
AD 12		3		4		5		6		7
AD 11		5		5		6		8		10
AD 10		6		9		12		16		20
AD 9		12		21		29		35		35
AD 8		24		26		27		28		30
AD 7		24		26		28		31		25
AD 6		18		16		13		12		12
AD 5		12		9		10		12		8
<b>Total AD</b>		<b>106</b>		<b>120</b>		<b>134</b>		<b>153</b>		<b>153</b>
AST 11										
AST 10										
AST 9		1								
AST 8										
AST 7				1		1		2		3
AST 6		1		2		2		2		2
AST 5		2		2		3		4		4
AST 4		6		5		5		4		3
AST 3		2		1		2		1		1
AST 2		3		1						
AST 1				1						
<b>Total AST</b>		<b>15</b>		<b>13</b>		<b>13</b>		<b>13</b>		<b>13</b>
AST/SC6										
AST/SC5										
AST/SC4										
AST/SC3										
AST/SC2										
AST/SC1										
<b>Total AST/SC</b>		<b>0</b>		<b>0</b>		<b>0</b>		<b>0</b>		<b>0</b>
<b>TOTAL</b>		<b>121</b>		<b>133</b>		<b>147</b>		<b>166</b>		<b>166</b>

(1) Additional 14 posts requested in the year 2015 (4 x AD9, 6 x AD7, 4 x AD5).

(2) Additional 19 posts requested in the year 2016 (4 x AD9, 9 x AD7, 6 x AD5).

(3) No additional posts requested in the year 2017 (stable growth).

## Other disclosure

### Agreements with third countries

Article 33(3) of the ESMA Regulation requires ESMA to set out the administrative arrangements agreed upon with international organisations or administrators in third countries and the assistance provided in preparing equivalence decisions.

For 2013, these were over 1000 MoUS under the Alternative Investment Fund Managers Directive (AIFMD). The full list of MoUS is available on ESMA's website under:

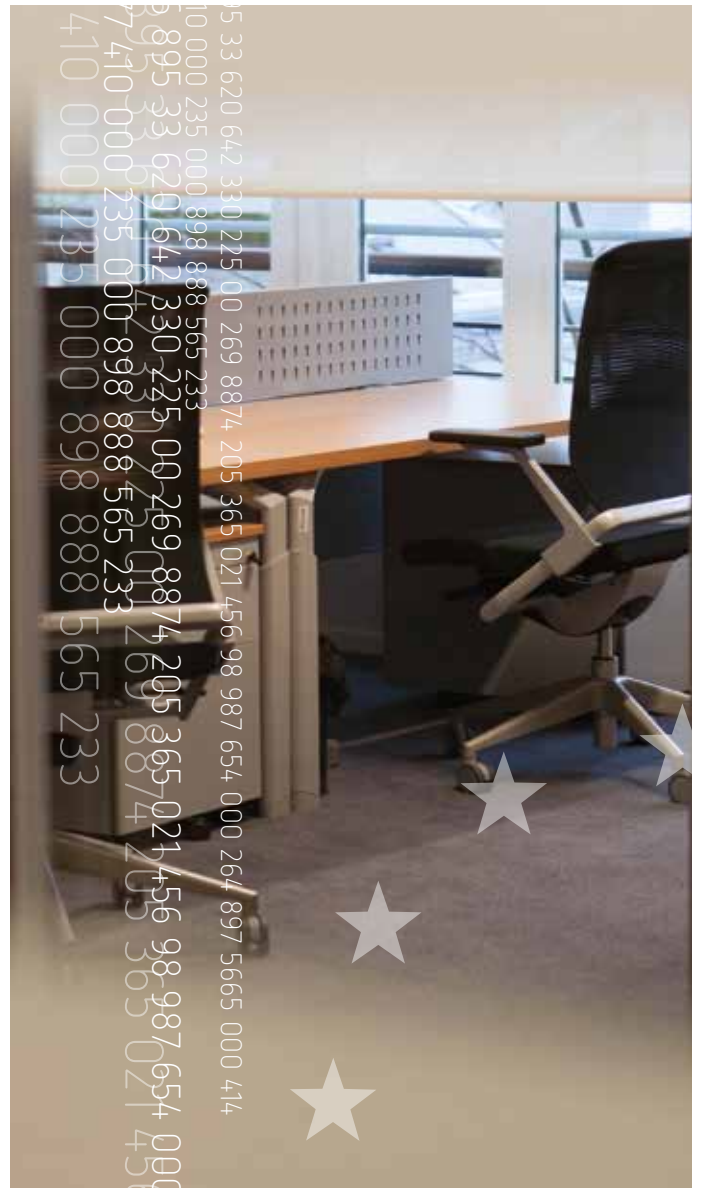
➔ [http://www.esma.europa.eu/system/files/aifmd\\_mous\\_signed\\_by\\_eu\\_authorities\\_2014m02d20.xlsx](http://www.esma.europa.eu/system/files/aifmd_mous_signed_by_eu_authorities_2014m02d20.xlsx)

### Access to information

Pursuant to Article 17(1) of the EU Access Regulation, a report shall be annexed to ESMA's annual report including (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 2013, ESMA received twelve requests for access to documents pursuant to Regulation (EC) 1049/2001. In eight cases ESMA granted full access to the requested documents. In two cases ESMA gave partial disclosure as part of the documents requested contained commercial and market-sensitive information regarding the activities of some undertakings, whose public disclosure would have undermined the protection of commercial interests.

In one case ESMA refused to provide access to the requested documents as they concerned confidential information regarding supervisory activities. In another case the requested document was not owned by ESMA.





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# ESMA'S 2014 WORK PROGRAMME

Ref no	Strategic Aim	Activity	Tasks
1	1 - Convergence	1.1 - Corporate Reporting	Implementation of strategy on strengthening supervisory convergence, including review of accounting practices
2	1 - Convergence	1.1 - Corporate Reporting	Developments on XBRL and OAM
3	1 - Convergence	1.1 - Corporate Reporting	Specific tasks related to the implementation of the Accounting and Transparency Directives, as required by the EC
4	1 - Convergence	1.1 - Corporate Reporting	Regulatory standards on electronic reporting format and access to regulated information
5	1 - Convergence	1.1 - Corporate Reporting	Framework on the establishment of the common supervisory culture on financial information
6	1 - Convergence	1.1 - Corporate Reporting	Limited monitoring of IFRS developments (IASB), contribution to EFRAG and ARC
7	1 - Convergence	1.1 - Corporate Reporting	Issuance of guidelines on alternative performance measures
8	1 - Convergence	1.2 - Peer reviews, BUL and Mediation	Execution of ESMA's powers (BUL, Mediation, Crisis Mgmt., Product Intervention) incl. representation in front of Board of Appeal
9	1 - Convergence	1.2 - Peer reviews, BUL and Mediation	General Peer reviews and reports
10	1 - Convergence	1.2 - Peer reviews, BUL and Mediation	Targeted Peer Reviews: Convergence investigations including On Site visits at NCAs
11	1 - Convergence	1.3 - Training	Regulatory and supervisory training (including E-learning) and staff exchange fostering convergence
12	1 - Convergence	1.4 - Joint Committee	Joint Committee work : support, Packaged Retail Investor Products (PRIPs), Asset Money Laundering (AML), Non-Cooperative Jurisdictions, Financial Conglomerates, Joint Committee Risk Sub-Committee, Evaluation of EC's EFSF Report
13	1 - Convergence	1.5 - International Co-operation	External relations
14	1 - Convergence	1.5 - International Co-operation	Limited legal advice on information exchange, equivalence and drafting of MoU

Deliverable	Delivery date	New task in 2014	Priority	Mandatory task	Unit /Division	Standing Committee
Opinion, statements, extracts from database, Activity Report, Reports, etc.	Permanent	No	1 - high	Mandatory	Investment and Reporting	Corporate Reporting
Consultation Paper	Permanent	No	2 - medium/high	Mandatory	Investment and Reporting	Corporate Reporting
Advice on third country equivalence	Permanent	Yes	3 - medium/low	Mandatory	Investment and Reporting	Corporate Reporting
Regulatory Technical Standard	Q4	Yes	3 - medium/low	Mandatory	Investment and Reporting	Corporate Reporting
Final ESMA guidelines on enforcement of financial information	Q2	No	1 - high	Not mandatory	Investment and Reporting	Corporate Reporting
Comment letters IASB and EFRAG	Permanent	No	2 - medium/high	Not mandatory	Investment and Reporting	Corporate Reporting
Guidelines	Q4	No	2 - medium/high	Not mandatory	Investment and Reporting	Corporate Reporting
Handling of Cases	Permanent	No	1 - high	Mandatory	Legal, co-operation and convergence	None
Reports	Permanent	No	1 - high	Mandatory	Legal, co-operation and convergence	Review Panel
Reports	Permanent	Yes	1 - high	Mandatory	Legal, co-operation and convergence	None
More than 24 trainings	Permanent	No	2 - medium/high	Mandatory	Legal, co-operation and convergence	None
Reports	Permanent	No	2 - medium/high	Mandatory	Legal, co-operation and convergence	Joint Committee
Legal advice, governance and organisational support	Permanent	No	2 - medium/high	Mandatory	Legal, co-operation and convergence	None
MoUs	Permanent	Yes	2 - medium/high	Not mandatory	Legal, co-operation and convergence	None

Ref no	Strategic Aim	Activity	Tasks
15	1 - Convergence	1.6 - Other convergence activities	Opinions on exemptions for pension scheme arrangements
16	1 - Convergence	1.6 - Other convergence activities	Annual report under EMIR on penalties imposed by competent authorities
17	2 - Consumer Protection	2.1 - Product intervention	Report
18	2 - Consumer Protection	2.1 - Product intervention	Delegated acts and technical standards to the Commission
19	2 - Consumer Protection	2.2 - Coordinated regulatory approach	Report, opinion
20	2 - Consumer Protection	2.2 - Coordinated regulatory approach	Support to IA activities in ESMA divisions. Methodologies, data provision
21	2 - Consumer Protection	2.2 - Coordinated regulatory approach	Cross-sectoral work (guidelines, common positions, etc.)
22	2 - Consumer Protection	2.2 - Coordinated regulatory approach	Structured Retail Products - Recommendation to IPISC for possible issuance of best practices
23	2 - Consumer Protection	2.2 - Coordinated regulatory approach	Coordination of financial education programs across Member States
24	2 - Consumer Protection	2.2 - Coordinated regulatory approach	MiFID 1
25	2 - Consumer Protection	2.2 - Coordinated regulatory approach	MiFID 1
26	2 - Consumer Protection	2.2 - Coordinated regulatory approach	Self Placement
27	2 - Consumer Protection	2.3 - Packaged Retail Investment Products	Packaged Retail Investment Products
28	3 - Financial Stability	3.1 - Financial market surveillance	EFC, EP: Reporting on Trends, Risks, Vulnerabilities, and Risk Dashboard

Deliverable	Delivery date	New task in 2014	Priority	Mandatory task	Unit / Division	Standing Committee
Opinion	Permanent	No	1 - high	Mandatory	Markets	Post-Trading
Report	Permanent	No	2 - medium/high	Mandatory	Markets	Post-Trading
Permanent	Yes	No	1 - high	Mandatory	Investment and Reporting	Financial Innovation
Q4	No	No	1 - high	Mandatory	Investment and Reporting	Investor Protection and Intermediaries
Q3	No	Yes	1 - high	Mandatory	Investment and Reporting	Financial Innovation
Permanent	No	Yes	2 - medium/high	Mandatory	Economic Research and Financial Stability	CEMA
Permanent	No	No	2 - medium/high	Mandatory	Investment and Reporting	Investor Protection and Intermediaries
Report to IPISC	Q1	No	2 - medium/high	Mandatory	Investment and Reporting	Financial Innovation
Report, advice	Permanent	Yes	3 - medium/low	Mandatory	Investment and Reporting	Financial Innovation
Consumer protection, supervisory convergence - Art 16/Art 9/Art 29 output (guidelines, supervisory convergence tools)	Permanent	No	3 - medium/low	Mandatory	Investment and Reporting	Investor Protection and Intermediaries
Consumer protection, supervisory convergence - Art 16/Art 9/Art 29 output (investor warnings)	Permanent	No	1 - high	Not mandatory	Investment and Reporting	Investor Protection and Intermediaries
Report to IPISC	Q1	No	2 - medium/high	Not mandatory	Investment and Reporting	Financial Innovation
Advice, technical standards and input to consumer testing (IMSC); MiFID selling practices input (Investor Protection and Intermediaries Standing Committee)	Q4	No	1 - high	Mandatory	Investment and Reporting	Investment Management
2 TRV report, 2 RD per year	Permanent	No	1 - high	Mandatory	Economic Research and Financial Stability	CEMA

Ref no	Strategic Aim	Activity	Tasks
29	3 - Financial Stability	3.1 - Financial market surveillance	ESRB: Relationship management, reporting, working groups, analyses
30	3 - Financial Stability	3.1 - Financial market surveillance	Gathering of financial market intelligence to detect innovative products or processes, which involves a regular dialogue with a wide variety of market participants
31	3 - Financial Stability	3.1 - Financial market surveillance	MiFID Database: Annual market transparency calculations
32	3 - Financial Stability	3.1 - Financial market surveillance	Annual EU wide stress tests for CCPs
33	3 - Financial Stability	3.1 - Financial market surveillance	Consultative Working Group Work streams: Index Innovation, Collateral Transformation, Financial Innovation, Crowdfunding
34	3 - Financial Stability	3.2 - Economic Research	Joint Committee: Semi-annual Risk Reports, research projects, enhanced cooperation.
35	3 - Financial Stability	3.2 - Economic Research	CEMA: 2 research projects running in parallel per year, 2 working papers per year. Benchmarks: coordination FSB, IOSCO, EBA-ESMA TF activities; input to EU and international workstreams.
36	4 - Single Rulebook	4.1 - Revision of MiFID & MAD	Legal advice and legal quality control regarding Sectoral ESMA Legislation
37	4 - Single Rulebook	4.1 - Revision of MiFID & MAD	MAR - development of delegated acts and technical standards (e.g. list of instruments, indicators of market manipulation, STRs, managers dealings, technical specifications for order book data...)
38	4 - Single Rulebook	4.1 - Revision of MiFID & MAD	MAR - Technical standards on cooperation Support to Legal, Cooperation and Convergence Unit
39	4 - Single Rulebook	4.1 - Revision of MiFID & MAD	MAR- Guidelines (e.g. market sounding)
40	4 - Single Rulebook	4.1 - Revision of MiFID & MAD	MiFIR - Transaction reporting technical standards

Deliverable	Delivery date	New task in 2014	Priority	Mandatory task	Unit/ Division	Standing Committee
Regular reporting, working group contributions, meeting preparation, analyses	Permanent	No	1 - high	Mandatory	Economic Research and Financial Stability	CEMA
Report, opinion, advice	Permanent	No	1 - high	Mandatory	Investment and Reporting	Financial Innovation
Publication and ad hoc update of MiFID Database for shares	Q1	No	1 - high	Mandatory	Markets	Secondary Markets
Stress tests	Permanent	No	2 - medium/high	Mandatory	Markets	None
Reports, recommendation	Q1	No	2 - medium/high	Not mandatory	Investment and Reporting	Financial Innovation
2 JC RR per year, management of chairmanship	Permanent	No	1 - high	Not mandatory	Economic Research and Financial Stability	CEMA
CEMA: 2 research projects running in parallel per year, 2 working papers per year. Benchmarks: coordination FSB, IOSCO, EBA-ESMA TF activities; input to EU and international workstreams.	Permanent	No	2 - medium/high	Not mandatory	Economic Research and Financial Stability	CEMA
Legal advice	Permanent	No	1 - high	Mandatory	Legal, co-operation and convergence	None
Technical advice; draft technical standards	Q4	Yes	1 - high	Mandatory	Markets	Market Integrity
Support to Legal, Cooperation and Convergence Unit	Q4	No	1 - high	Mandatory	Markets	Market Integrity
Guidelines	Q4	Yes	1 - high	Mandatory	Markets	Market Integrity
Draft technical standards	Q4	No	1 - high	Mandatory	Markets	Investor Protection and Intermediaries

Ref no	Strategic Aim	Activity	Tasks
41	4 - Single Rulebook	4.1 - Revision of MiFID & MAD	Preparatory work on MiFID II and MiFIR
42	4 - Single Rulebook	4.1 - Revision of MiFID & MAD	Preparatory work on MiFID II and MiFIR
43	4 - Single Rulebook	4.1 - Revision of MiFID & MAD	Preparatory work on MiFID II and MiFIR
44	4 - Single Rulebook	4.1 - Revision of MiFID & MAD	Preparatory work on MiFID II and MiFIR
45	4 - Single Rulebook	4.1 - Revision of MiFID & MAD	Assessment applications for pre-trade transparency waivers
46	4 - Single Rulebook	4.2 - European Investment Fund Legislation	AIFMD - assessments of depositary frameworks in non-EU jurisdictions
47	4 - Single Rulebook	4.2 - European Investment Fund Legislation	AIFMD - report on switching-on of passport for non-EU AIFMs
48	4 - Single Rulebook	4.2 - European Investment Fund Legislation	Money market funds
49	4 - Single Rulebook	4.2 - European Investment Fund Legislation	AIFMD - Article 47(4) powers in relation to non-EU AIFMs
50	4 - Single Rulebook	4.2 - European Investment Fund Legislation	AIFMD - monitoring and analysis of data reported by AIFMs via NCAs under Articles 24 & 25
51	4 - Single Rulebook	4.2 - European Investment Fund Legislation	UCITS V - advice, technical standards and guidelines
52	4 - Single Rulebook	4.2 - European Investment Fund Legislation	European Social Entrepreneurship Funds Regulation
53	4 - Single Rulebook	4.2 - European Investment Fund Legislation	European Venture Capital Regulation
54	4 - Single Rulebook	4.3 - Corporate Finance	Technical Advice, technical standards following revision of Transparency Directive



Deliverable	Delivery date	New task in 2014	Priority	Mandatory task	Unit / Division	Standing Committee
Delegated acts and technical standards to the Commission	Q4	No	1 - high	Mandatory	Markets	Secondary Markets
Preparatory work on technical standards and advice on delegated and implementing acts under MiFID 2 and MiFIR	Q4	No	1 - high	Mandatory	Investment and Reporting	Investor Protection and Intermediaries
Preparatory work on technical standards and advice on delegated and implementing acts under MiFID 2 and MiFIR; position limits, position reporting, ancillary activities exemption, ESMA position management powers, specifications of definitions of commodity and exotic derivatives	Q4	No	1 - high	Mandatory	Markets	Commodity Derivatives Task Force
Preparation to publish and maintain website which has (1) summaries of national position limits and position mgt controls, (2) weekly COTs reports, (3) ESMA opinions	Permanent	Yes	2 - medium/high	Mandatory	Markets	Commodity Derivatives Task Force
Update of the document "Waivers of pre-trade transparency: CESR positions and ESMA opinions"	Permanent	No	2 - medium/high	Not mandatory	Markets	Secondary Markets
Advice to COM	Q4	Yes	1 - high	Mandatory	Investment and Reporting	Investment Management
Advice to COM	Q4	Yes	1 - high	Mandatory	Investment and Reporting	Investment Management
Technical standards	Q4	Yes	1 - high	Mandatory	Investment and Reporting	Investment Management
Prohibitions/restrictions	Permanent	Yes	2 - medium/high	Mandatory	Investment and Reporting	Investment Management
Warnings, recommendations	Permanent	Yes	2 - medium/high	Mandatory	Investment and Reporting	Investment Management
Advice, technical standards and guidelines	Q4	No	2 - medium/high	Mandatory	Investment and Reporting	Investment Management
Technical standards and guidelines	Q4	No	3 - medium/low	Mandatory	Investment and Reporting	Investment Management
Technical standards and guidelines	Q4	No	3 - medium/low	Mandatory	Investment and Reporting	Investment Management
Technical standards, advice	Q4	No	1 - high	Mandatory	Investment and Reporting	Corporate Finance

Ref no	Strategic Aim	Activity	Tasks
55	4 - Single Rulebook	4.3 - Corporate Finance	Technical standards and guidelines on prospectus regime
56	4 - Single Rulebook	4.3 - Corporate Finance	Equivalence assessment of 3 <sup>rd</sup> country regimes regarding prospectuses and transparency
57	4 - Single Rulebook	4.3 - Corporate Finance	Possible delegated acts derived from the EC Action Plan on Company Law and Corporate Governance
58	4 - Single Rulebook	4.4 - CRA Regulation	CRA III implementation
59	4 - Single Rulebook	4.4 - CRA Regulation	Guidelines to ensure consistent application by CRAs of CRA Regulations
60	4 - Single Rulebook	4.4 - CRA Regulation	Endorsement/equivalence assessment of non-EU regulatory frameworks
61	4 - Single Rulebook	4.5 - CSD Regulation	CSDR - Draft RTS, ITS, guidelines and technical advices as envisaged in the 2013 regulatory work programme, given the postponement of the adoption of the primary legislation
62	4 - Single Rulebook	4.6 - Other single rulebook activity	EMIR- Regulatory Technical Standards on bilateral margins
63	4 - Single Rulebook	4.6 - Other single rulebook activity	Guidelines on Exchange Traded Derivatives reporting
64	4 - Single Rulebook	4.6 - Other single rulebook activity	Implementing measures for the Capital Requirements Regulations
65	5 - Supervision	5.1 - CRAs	On-going supervision of CRAs (including enforcement) / Registration/certification assessments upon applications by CRAs/Risk analysis. Enforcement of perimeter
66	5 - Supervision	5.2 - Post Trading	Authorisation of trade repositories

Deliverable	Delivery date	New task in 2014	Priority	Mandatory task	Unit/Division	Standing Committee
Technical standards, guidelines, supervisory convergence tools	Q4	No	1 - high	Mandatory	Investment and Reporting	Corporate Finance
Report	Q4	Yes	3 - medium/low	Not mandatory	Investment and Reporting	Corporate Finance
Technical standards, advice, guidelines	Q4	Yes	4 - low	Not mandatory	Investment and Reporting	Corporate Finance
Draft RTS/IT platforms/ revision of existing guidelines/reports to COM	Permanent	No	1 - high	Mandatory	CRA	CRAs, other SCs including Corporate Finance SC
Guidelines (subject not defined yet)	Q4	No	2 - medium/high	Mandatory	CRA	CRAs
Endorsement decisions/ equivalence advice to COM	Permanent	No	3 - medium/low	Not mandatory	CRA	CRAs
Draft RTS, ITS, guidelines and technical advices		Yes	1 - high	Mandatory	Markets	Post-Trading
Draft technical standards	Q1	Yes	1 - high	Mandatory	Markets	Post-Trading
Guidelines	Q4	No	1 - high	Mandatory	Markets	Market Data Reporting Working Group
Preparation of ESMA technical standards	Q4	Yes	1 - high	Mandatory	Markets	Secondary Markets
Implementation of CRA supervisory work program 2014/Registration/ certification decisions by BoS/Providing risk report as part of supervisory work program on basis of risk analysis plus on-going assistance to supervisors. Identify freeriding CRAs and draft enforcement proposal where necessary.	Permanent	No	1 - high	Mandatory	CRA	None
Decisions	Permanent	No	1 - high	Mandatory	Markets	None

Ref no	Strategic Aim	Activity	Tasks
67	5 - Supervision	5.2 - Post Trading	Determination of OTC derivatives subject to the clearing obligation
68	5 - Supervision	5.2 - Post Trading	Participation in CCP colleges
69	5 - Supervision	5.2 - Post Trading	Recognition of third country CCPs
70	5 - Supervision	5.2 - Post Trading	Recognition of third country TRs
71	5 - Supervision	5.2 - Post Trading	Supervision of trade repositories
72	5 - Supervision	5.2 - Post Trading	Validation of CCPs risk models and parameters
73	5 - Supervision	5.3 - Enforcement/ Independent Investigation	Enforcement and sanctions regarding CRA and TR
74	5 - Supervision	5.3 - Enforcement/ Independent Investigation	Legal advice regarding on-going supervision of CRAs and TRs
75	5 - Supervision	5.3 - Enforcement/ Independent Investigation	Stress Testing: Support to ST activities in ESMA divisions. Coordination of ST activities through TF, methodologies, data provision.
76	6 - Operational set up	6.1 - EU IT Projects	IT architecture and infrastructure management
77	6 - Operational set up	6.1 - EU IT Projects	Management of IT projects
78	6 - Operational set up	6.1 - EU IT Projects	Transaction data consistency test
79	6 - Operational set up	6.1 - EU IT Projects	Review (every two years) of the list of exempted shares under the Short Selling Regulation
80	6 - Operational set up	6.1 - EU IT Projects	List of Market makers/primary dealers exempted under the Short Selling Regulation

Deliverable	Delivery date	New task in 2014	Priority	Mandatory task	Unit/Division	Standing Committee
Decisions	Permanent	No	1 - high	Mandatory	Markets	None
	Permanent	No	1 - high	Mandatory	Markets	None
Decisions	Permanent	No	1 - high	Mandatory	Markets	None
Decisions	Permanent	No	1 - high	Mandatory	Markets	None
Decisions	Permanent	No	1 - high	Mandatory	Markets	None
	Permanent	Yes	1 - high	Mandatory	Markets	None
Possible CRAs and TRs sanctions	Permanent	No	1 - high	Mandatory	Legal, co-operation and convergence	None
Legal advice	Permanent	No	1 - high	Mandatory	Legal, co-operation and convergence	None
Support to ST activities in ESMA divisions. Coordination of ST activities through TF, methodologies, data provision	Permanent	No	1 - high	Not mandatory	Economic Research and Financial Stability	CEMA
Begin definition of architecture and technical strategy Management of technical projects	Permanent	No	1 - high	Mandatory	Operations	None
Cf IT work plan	Permanent	No	1 - high	Mandatory	Operations	ITMG
Report	Permanent	No	2 - medium/high	Mandatory	Markets	Market Data Reporting Working Group
Publication of the updated list	Q1	No	2 - medium/high	Mandatory	Markets	Market Integrity
Publication of the list and access by competent authorities to additional information	Q4	No	2 - medium/high	Mandatory	Markets	Market Integrity

Ref no	Strategic Aim	Activity	Tasks
81	6 - Operational set up	6.2 - Stakeholder management	Relations with institutional stakeholders (EC, EP, Council, FSC, EBA, EIOPA)
82	6 - Operational set up	6.2 - Stakeholder management	Support and advice to Senior Management, Board of Supervisors, Management Board, groups reporting to Board
83	6 - Operational set up	6.2 - Stakeholder management	Secretariat of Board of Appeal
84	6 - Operational set up	6.3 - Ethics, Data Protection & Internal Control	Data Protection
85	6 - Operational set up	6.3 - Ethics, Data Protection & Internal Control	Ethics
86	6 - Operational set up	6.3 - Ethics, Data Protection & Internal Control	Internal control planning/follow up/reporting
87	6 - Operational set up	6.3 - Ethics, Data Protection & Internal Control	Ex-post controls
88	6 - Operational set up	6.3 - Ethics, Data Protection & Internal Control	ICS2. Ethics. Implementation of new policy on Conflict of Interest
89	6 - Operational set up	6.3 - Ethics, Data Protection & Internal Control	ICS8. Processes and procedures Data protection
90	6 - Operational set up	6.3 - Ethics, Data Protection & Internal Control	ICS2. Ethics. Anti-fraud
91	6 - Operational set up	6.3 - Ethics, Data Protection & Internal Control	ICS6. Risk Management
92	6 - Operational set up	6.3 - Ethics, Data Protection & Internal Control	Internal Control assessment

Deliverable	Delivery date	New task in 2014	Priority	Mandatory task	Unit/ Division	Standing Committee
Legal advice, governance and organisational support	Permanent	Yes	1 - high	Mandatory	Legal, cooperation and convergence	All
Legal advice, governance and organisational support	Permanent	No	1 - high	Mandatory	Legal, cooperation and convergence	All
Support to BoA	Permanent	No	2 - medium/ high	Mandatory	Legal, cooperation and convergence	None
Handle register of Data Processing Procedures, Notifications for Prior Checking to EDPS, Training of ESMA Staff	Permanent	Yes	1 - high	Mandatory	Legal, cooperation and convergence	None
Legal advice and handling of cases	Permanent	No	1 - high	Mandatory	Legal, cooperation and convergence	None
- Internal control WP 2015 - Quarterly reporting to MB on audit/ KPIs - Annual activity report - Discharge 2012 - ESMA replies to audit report - Assessment of implementation of ICS	Permanent	No	2 - medium/ high	Mandatory	Senior Management	None
ABAC access rights validation Finance ex-post control	Q2	No	2 - medium/ high	Mandatory	Senior Management	None
Policy	Q2	Yes	2 - medium/ high	Mandatory	Legal, cooperation and convergence	None
Data protection framework Data protection compliance follow up	Q2	Yes	2 - medium/ high	Mandatory	Legal, cooperation and convergence	None
Anti-Fraud strategy	Q4	Yes	2 - medium/ high	Mandatory	Senior Management	None
Risk assessment 2014	Q3	No	2 - medium/ high	Not mandatory	Senior Management	None
IC assessment report	Q4	No	2 - medium/ high	Not mandatory	Senior Management	None

Ref no	Strategic Aim	Activity	Tasks
93	6 - Operational set up	6.3 - Ethics, Data Protection & Internal Control	Assessment of sensitive functions
94	6 - Operational set up	6.3 - Ethics, Data Protection & Internal Control	Internal control procedures
95	6 - Operational set up	6.4 - Organisational support	Chair and Executive Director and their office
96	6 - Operational set up	6.4 - Organisational support	External Communications: daily communications with external stakeholders - institutional Communications Network
97	6 - Operational set up	6.4 - Organisational support	Finance and procurement support to organisation
98	6 - Operational set up	6.4 - Organisational support	HR support to organisation
99	6 - Operational set up	6.4 - Organisational support	ICT support to organisation and EU projects
100	6 - Operational set up	6.4 - Organisational support	Logistical support to organisation
101	6 - Operational set up	6.4 - Organisational support	Preparatory work for Audit SC if responsibilities granted to ESMA
102	6 - Operational set up	6.4 - Organisational support	Senior management support: Briefings, speeches for senior management. Data and methodology support for divisions.
103	6 - Operational set up	6.4 - Organisational support	Translations
104	6 - Operational set up	6.4 - Organisational support	Accounting (ESMA)
105	6 - Operational set up	6.4 - Organisational support	ESMA's 2013 Annual Report
106	6 - Operational set up	6.4 - Organisational support	Access to documents issues



Deliverable	Delivery date	New task in 2014	Priority	Mandatory task	Unit/ Division	Standing Committee
2014 sensitive functions assessment	Q2	No	3 - medium/low	Not mandatory	Senior Management	None
Internal control procedures	Q4	Yes	3 - medium/low	Not mandatory	Senior Management	None
Strategic direction	Permanent	No	1 - high	Mandatory	Senior Management	None
Press queries, press releases, briefings, publications	Permanent	No	1 - high	Mandatory	Senior Management	None
Commitment/payments. Procurement and advice on contract management Budget management	Permanent	No	1 - high	Mandatory	Operations	None
Recruitment HR management Payroll Staff evaluation and development. Training	Permanent	No	1 - high	Mandatory	Operations	None
Service desk Telephony Contract management	Permanent	No	1 - high	Mandatory	Operations	None
Premises and inventory management Mail, reception, office supplies Meeting and mission support	Permanent	No	1 - high	Mandatory	Operations	None
Operational set-up, technical standards and guidelines	Permanent	Yes	1 - high	Mandatory	Investment and Reporting	Corporate Reporting
Briefings, speeches for senior management. Data and methodology support for divisions	Permanent	No	1 - high	Mandatory	Economic Research and Financial Stability	CEMA
Translations	Permanent	No	1 - high	Mandatory	Senior Management	None
ESMA 2013 Annual Accounts	Q2	No	1 - high	Mandatory	Senior Management	None
Annual Report	Q2	No	1 - high	Mandatory	Senior Management	None
Application of Access to Documents Regulation	Permanent	No	2 - medium/high	Mandatory	Legal, co-operation and convergence	None

Ref no	Strategic Aim	Activity	Tasks
107	6 - Operational set up	6.4 - Organisational support	Securities and Markets Stakeholder Group Support
108	6 - Operational set up	6.4 - Organisational support	Work programme coordination
109	6 - Operational set up	6.4 - Organisational support	Activity based budgeting/planning and Zero-based budgeting
110	6 - Operational set up	6.4 - Organisational support	Project on security
111	6 - Operational set up	6.4 - Organisational support	Website
112	6 - Operational set up	6.4 - Organisational support	Intranet & internal communications
113	6 - Operational set up	6.4 - Organisational support	Partial development of external and internal communication plan and strategy, implementation and adherence

Deliverable	Delivery date	New task in 2014	Priority	Mandatory task	Unit/ Division	Standing Committee
Support to SMSG	Permanent	No	2 - medium/high	Mandatory	Legal, co-operation and convergence	None
Annual work programme and ongoing reporting (objectives and performance indicators)	Permanent	No	2 - medium/high	Mandatory	Operations	None
Work programme and budget 2015 (activity based/Zero-based)	Q4	Yes	2 - medium/high	Mandatory	Operations	None
Requirements on physical security at ESMA Begin work on IT Security strategy (to be finished 2015) and begin audit of security implementation Security arbitrages Health & safety	Q3	Yes	3 - medium/low	Mandatory	Operations	None
Improved website	Permanent	Yes	1 - high	Not mandatory	Senior Management	None
Strategy	Permanent	No	2 - medium/high	Not mandatory	Senior Management	None
Annual Plan and Monitoring	Permanent	No	2 - medium/high	Not mandatory	Senior Management	None

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