



## ESMA 2016 Regulatory Work Programme. May 2016.

At the start of October 2015, ESMA published its 2016 Work Programme and, at the same time, the Joint Committee of European Supervisory Authorities (ESMA, EBA and EIOPA) published their Joint Work Programme for the same year. In February this year, ESMA published, alongside a newly revised work programme, two specific programmes: the Regulatory Work Programme (RWP) and, for the first time in 2016, a Supervisory Convergence Work Programme, detailing the actions ESMA planned to take to move toward greater supervisory convergence in the European Union.

The RWP is a list of 78 different developing measures that ESMA will carry out in 2016, including regulatory and implementing technical standards, technical advices, guidelines and recommendations. In most cases, ESMA is obliged to publish its measures within a deadline set in Level 1 (Regulations-Directives). But in others, ESMA has discretion to decide if and when to proceed with the project. On some occasions, too, without express Level 1 authorisation, ESMA can issue guidelines and recommendations grounded on the powers granted by Article 16 of Regulation (EU) No 1095/2010 establishing ESMA. This article empowers ESMA to issue guidelines to competent authorities or market participants for the purpose of establishing consistent, efficient and effective supervisory practices in the European System of Financial Supervision so as to ensure common, uniform and consistent application of EU law.

The higher number of regulatory measures to develop stems from the legislative package comprising EU Directive 2014/65 on markets in financial instruments (MiFID 2) and Regulation (EU) 600/2014 on markets in financial instruments (MiFIR), along with the Regulation on indices used as benchmarks in financial instruments and financial contracts.

The programme includes the following measures:

- 22 measures implementing **MiFID 2/MiFIR**.

ESMA plans to draw up 13 technical standards and nine sets of guidelines and recommendations. Of the former, three are regulatory technical standards and develop, respectively, the scope of the consolidated tape for non-equity instruments, indirect clearing arrangements for exchange-traded derivatives, and standards for determining which derivatives are to be traded on MiFID venues only. Mandatory guidelines that ESMA is obliged to issue include those on the management body of a regulated market, calibration of trading halts and the suitability of the members of the management body of data reporting services providers. ESMA will also issue joint guidelines with the EBA on certain conditions for authorising an investment firm management body. Among its discretionary guidelines, ESMA has opted to address, among other issues, the implementation of key investor protection topics such as product governance and best execution.

The regulatory programme, as regards MiFID 2/MiFIR, may be affected by the one-year postponement to its coming into force.

- 18 measures to implement **Regulations on indices used as benchmarks in financial instruments and financial contracts**.

Although this Regulation has not been published yet but it is expected to be soon (the European Commission's proposal was approved by the European Parliament on 28 April and by the Council on the 17 May), the working programme schedules the development of 13 technical standards and five technical advices, the latter all being discretionary.

- Eight measures implementing the **Market Abuse Regulation (MAR)**.

The programme has four technical standards, one technical advice and three guidelines. The technical standards refer to the exchange of information and ESMA's obligation to cooperate with National Competent Authorities (NCAs). The guidelines will deal with market soundings, delay in disclosure of inside information, and information which is reasonably expected to be disclosed or must be disclosed in relation to commodity derivatives or spot markets.

- Six measures implementing the **Regulation on transparency of securities financing transactions and of reuse**.

ESMA will produce five technical standards and one advice. The technical standards address various aspects of the trade repositories that ESMA is going to carry out and the advice, a discretionary project, aims to regulate the fees ESMA receives for registration, recognition and supervision of trade repositories.

- Six measures implementing the **Central Securities Depository Regulation**.

The planned measures consist of a regulatory technical standard on settlement discipline and five discretionary guidelines. The guidelines ESMA may adopt relate to: i) access to central counterparties and trading venues; ii) determination of relevant authorities for CSDs; iii) indicators of substantial importance; iv) co-operation between authorities; and iv) procedures for defaulting CSD participants.

- Five measures implementing the **Regulation on European Long-Term Investment Funds (ELTIF)**.

ESMA has to issue five regulatory technical standards on the following points: i) circumstances in which the life of a fund is sufficient to cover the life-cycle of each of its individual assets; ii) the criteria used to assess the market for potential buyers and assets to be divested; iii) common calculation methodologies and presentation formats for costs; iv) types of services available to retail investors; and v) circumstances where derivative contracts solely serve the purpose of hedging the risks inherent to the investments.

- Five measures implementing the **Regulation on OTC derivatives, central counterparties and trade repositories (EMIR)**.

Five regulatory technical standards are planned. One of these is mandatory, on bilateral margins on OTC derivative contracts not settled by a central counterparty, and will be adopted by all three ESAs. The other four are discretionary as far as ESMA is concerned. One defines the determining of the clearing obligation and the other three revise a number of technical standards already in force on trade repositories.

- Three measures implementing the **Credit Rating Agency Regulation (CRA 3)**.

ESMA is obliged to issue a regulatory technical standard on structured finance instruments and may, at its discretion, issue two guidelines, one on the validation of methodologies and another on reducing financial institutions' over-reliance on ratings.

- Two measures implementing the Key Information Document (KID) Regulation on packaged retail and insurance-based investment products (**PRIIPS Regulation**).

ESMA will produce, jointly with the other ESAs, two regulatory technical standards. The first one on calculation of risk/reward, cost disclosures and content and format of the KID, and the second specifying the

details of the review, revision and the provision of the KID.

.- A measure on the **Transparency Directive**, one on the **Takeover Bids Directive** and one on the **UCITS V Directive**.

On the transparency Directive, the Authority plans to issue a regulatory technical standard on the European Single Electronic Format (ESEF). On the Takeover Bids Directive, ESMA will issue an advice in line with the European Commission's Action Plan on corporate governance, company law and emerging issues following review of the Directive. Finally, ESMA will publish a number of guidelines on remuneration policies at UCITS.

Links:

[ESMA 2016 regulatory work programme.](#)

[ESMA revised 2016 work programme.](#)

[ESMA 2016 supervisory convergence work programme](#)