



ESMA 2016 Supervisory Convergence Work Programme. May 2016.

ESMA, having completed most of its work drafting new standards to support the regulatory reforms in response to the recent crisis, mainly through its contribution to the single rule book, has decided to refocus its activities and give greater priority to supervisory convergence. Its aim is to achieve a consistent, efficient and effective application of regulation across the EU via sound, efficient and consistent supervision that prevents regulatory arbitrage.

To do this, ESMA will issue an **annual Supervisory Convergence Work Programme**. The first Program, covering this year, was approved at the January meeting of the Board of Supervisors. The Programme is included in the ESMA Annual Work Programme and follows the principles set out in the 2016-2020 Strategic Orientation. The priority areas for supervisory convergence in 2016 are: i) preparing for the implementation and supervision of MiFID II/MiFIR; ii) finalising the IT infrastructure needed to support MiFID II/MiFIR; iii) facilitating supervision of OTC derivatives markets and European CCPs; and iv) supporting the EU Plan for Capital Markets Union.

Regulation (EU) No 1095/2010, which created ESMA, states that its contribution to achieving these aims will consist in large part of, first, ensuring the consistent, efficient and effective application of rules governing financial markets and, second, actively fostering supervisory convergence in the European Union.

So far, the major regulatory reform in response to the great financial crisis has demanded that ESMA focus, during its early years, on its regulatory role, preparing proposals for technical standards, drafting technical advice for the European Commission and adopting guidelines. But with the bulk of this work now done, ESMA has decided to direct its resources toward fostering a common supervisory culture.

In fact, this was already acknowledged in the European Commission's review of ESMA in August 2014 which, while recognising the importance of the single rulebook, also stressed the need for ESMA to start focusing more closely on supervisory convergence in coming years as a preliminary step to the uniform application of regulation across all Member States.

One of the main tools used by ESMA to date to control the level of member state convergence has been peer reviews. These not only examine the degree of convergence in supervisory practice but also look at supervisors' ability to deliver high-quality supervision and the independence of the National Competent Authorities (NCAs).

These peer reviews have, to date, been carried out by a working group called the Review Panel. But the increased priority given to supervisory convergence led to the dissolution of this panel and the founding of another with more functions and importance called the **Supervisory Convergence Standing Committee (SCSC)**. The SCSC will focus its work in three areas: i) the new **Supervisory Convergence Work Program**; ii) tools for supervisory convergence; and iii) peer reviews.

Also, as mentioned, ESMA has decided to publish its commitments on supervisory convergence each year in the

Supervisory Convergence Work Programme. The aim is to achieve a level playing field for all participants in capital markets so avoiding regulatory arbitrage.

In drafting the programme for 2016, ESMA has looked at the regulatory framework, market circumstances, convergence tools available to it and supervisory priorities of the NCAs.

The programme lists the issues relating to supervisory convergence on which each of the ESMA working groups will focus and the convergence tools they will use.

The issues to focus on were selected based on the following criteria: i) the impact of supervisory effectiveness on investor protection and financial stability and integrity; ii) value added; iii) likely efficiency gains; iv) the potential for change; v) the priority given to the issue by NCAs; and vi) viability given the resources available.

Convergence tools are either those explicitly defined in the ESMA Regulation or those developed under the generic power granted by Article 29.2. In any event, ESMA distinguishes between preparatory tools (as they facilitate the application of rules), implementation tools (as they are related with supervision) and review or remedy tools (as they are used for the assessment of supervision and market developments). The programme envisages greater use of implementation tools in 2016 given the current stage of development of standards.

We summarise below the main actions to be undertaken by the various working groups in 2016:

CORPORATE FINANCE –*Corporate Finance Standing Committee (CFSC)*:- i) complete the peer review on prospectuses and sharing of good practices; ii) hold workshops on prospectuses; and iii) carry out a thematic study on major holdings notifications.

CORPORATE REPORTING –*Corporate Reporting Standing Committee (CRSC)*:- i) peer review on guidelines for enforcement of financial information; ii) review the common compliance priorities for 2015 financial statements and define new priorities for 2016; and iii) publish statements on IFRS 9 and 15.

COLLECTIVE INVESTMENT INSTITUTIONS –*Investment Management Standing Committee (IMSC)*:- i) study of home and host member state responsibilities in passporting (UCITS and AIFMD); ii) coordinate actions on closet-indexing; and iii) adopt remuneration guidelines for UCITS.

INVESTOR PROTECTION –*Investor Protection and Intermediaries (IPSC)*:- i) draft implementing rules for MiFID II/MiFIR (product governance, recording of telephone conversations, etc.); ii) follow up peer reviews on best execution and information and marketing materials; and iii) continue work on the marketing and sale of financial contracts for differences.

MARKET INTEGRITY –*Market Integrity Standing Committee (MISC)*:- i) implementing rules for MAR/MAD; ii) draft opinions on accepted market practices; iii) complete necessary IT infrastructure, and iv) coordinate consistent action on market abuse.

POST-TRADING –*Post trading Standing Committee (PTSC)*:- i) promote consistent supervision of CCPs; ii) ensure consistent application of EMIR requirements; iii) improve the quality of information held by trade repositories; and iv) ensure consistent application of standards on CSDs.

SECONDARY MARKETS –*Secondary Markets Standing Committee (SMSC)*:- i) give effect to the new market microstructure envisaged by MiFID II/MiFIR; ii) implement a system of position limits on commodity derivatives; and iii) prepare opinions on waivers from the pre-trade transparency requirements.

INFRASTRUCTURE –*IT Infrastructure*:- develop the IT systems required by application of MiFID II/MiFIR/MAR.

CROSS-CUTTING ACTIVITIES: the SCSC will carry out a peer review of the guidelines on enforcement of financial information and another on the compliance function. In addition, it will help follow up results of

reviews on best execution and information and marketing materials (including advertising). Other cross-cutting issues that ESMA will be working on are: i) MiFIR intervention powers; ii) distributed ledger technology; iii) crowdfunding; iv) technical support; v) development of a procedure for mandatory peer reviews (annual reviews required by EMIR, AIFMD and CSDR); vi) criteria for selecting the topics of peer reviews and the benefits of such reviews for each country.

The new SCSC will monitor compliance with this Programme and help define supervisory priorities for next year's Programme.

Finally, it should be stressed that the European Union's Capital Markets Union Action Plan sees supervisory convergence as a key issue to achieving the Plan aims. As an illustration of this, a representative of the Commission will sit in on SCSC meetings as a non-participating member to monitor ESMA's work on supervisory convergence.

Links: [ESMA 2016 Supervisory Convergence Work Programme](#)