



## **ESMA Annual Work Programme for 2023 International Bulletin, November 2022.**

ESMA's main mission is to enhance investor protection and promote stable and orderly financial markets, and to this end it has published its new multi-annual 2023-2028 Strategy which sets out the approach and objectives for the next five years. The ESMA Annual Work Programme (AWP) for 2023 is consequently based on the three strategic priorities included in this Strategy: 1) fostering effective markets and financial stability; 2) strengthening supervision of the EU financial markets and 3) enhancing protection of retail investor. Most of the tasks planned will be affected in some way by one or both of the two transversal thematic drivers that have been identified: sustainable finance, and technological innovation and the use of data.

With regard to sustainability, ESMA expects to be entrusted in 2023 with the development of several reports, assessments and technical standards relating to the regulations applicable to sustainable finance, including among other things issuing opinions on the proposed CSRD<sup>1</sup>, as well as developments related to the future Regulation on European green bonds and the SFDR<sup>2</sup>. In addition, ESMA will continue to analyse the causes underlying greenwashing, will support the training of national supervisors in sustainability matters and will integrate appropriate environmental risks in the framework of stress tests. The other thematic driver impels ESMA to carry out a wide range of activities with a view to facilitating technological innovation and the integration of tests and data as the basis of its activities. In this regard it is expected to monitor the evolution of issues relating to SupTech<sup>3</sup>, RegTech<sup>4</sup>, DeFi<sup>5</sup>, AI<sup>6</sup> and open finance in 2023, in order to provide technical advice to the European Commission (EC), develop supervisory guidance and take intervention measures where necessary.

Specifically, with regard to digital innovation, the frameworks provided in DORA<sup>7</sup>, MiCA<sup>8</sup>, the DLT pilot regime<sup>9</sup> and the ESAP<sup>10</sup> Regulation will give rise to new mandates for ESMA that will involve the issue/development of various opinions and technical standards during 2023 and 2024. Even more in detail, ESMA is expected to take charge of several registers with information relating to the various categories of crypto-assets as well as one of complaint handling.

Regarding effective use of data, ESMA will work on the implementation of the European Union (EU) Strategy on supervisory data, focusing on consistency and standardisation of data, as well as improvements in data sharing agreements or in the design of reporting requirements.

Having set out the context, we now detail the core of the AWP below, in accordance with ESMA's areas of activity:

### **Investors and Issuers**

#### *Investment services*

ESMA will focus on the coordination of new Common Supervisory Actions (CSAs) within the framework of MiFID II<sup>11</sup>. In addition, the launch of a mystery shopping exercise throughout the EU is planned, as is participation in follow-up activities concerning peer reviews already carried out, including the follow-up of specific recommendations made to one NCA as a result of the peer review on the supervision of firms' cross-

border activities. ESMA will also devote special attention to the development of ESG products (products incorporating Environmental, Social and Governance attributes) and the consequent increased risk of greenwashing. It also expects to be mandated, together with the European Banking Authority (EBA), to provide technical advice to the EC on possible amendments to the Crowdfunding Regulation.

Finally, it also intends to contribute to the upcoming EU Retail Investment Strategy and supports targeted financial education initiatives in close cooperation with the other European Supervisory Authorities (ESAs).

#### Investment management:

By 2023, it is expected that the ongoing reviews of the regulations in this area<sup>12</sup> will lead to additional mandates for ESMA to develop guidelines, technical standards and/or technical advice. In addition, as a result of its participation in the Joint Committee (JC) of the ESAs, ESMA expects to be called upon to review the regulatory technical standards (RTS) developing the SFDR, relating to the disclosure of adverse impacts of financial products and to provide technical input on the minimum criteria for determining that a financial product falls under Article 8 of the SFDR, i.e. promotes environmental and/or social characteristics.

During this year, ESMA will expand the notification portal for NCAs to exchange notifications on the cross-border marketing of funds, in addition to preparing its second report on marketing requirements and advertising communications.

Finally, in 2023 ESMA will start a CSA in the field of sustainability, which will cover the risk of greenwashing and will report on the outcome of the 2022 CSA on the valuation of illiquid assets.

#### Issuers: Disclosure

in 2023 ESMA will report on the application of the Shareholder Rights Directive (SRD II), with regard to proxy advisers and the identification, communication and voting of shareholders. In addition, ESMA will continue to contribute to maintaining an updated regulatory framework for digital reporting and achieving greater convergence and consistency of NCAs' supervisory approaches and practices in this area.

#### Benchmark providers

EURIBOR is the only remaining benchmark recognised as critical in the EU and consequently ESMA has supervisory responsibilities over its administrator, the European Money Markets Institute (EMMI). The key areas of supervisory focus, in relation to EURIBOR for 2023 will be the robustness and resilience of the methodology applied as well as EURIBOR's representativeness of the underlying market.

In addition, ESMA ensures convergence of benchmark administrators supervised at national level and expects convergence work in 2023 to focus on the area of climate benchmarks.

In relation to the BMR<sup>13</sup> third country regime (equivalence and recognition), and depending on the outcome of the ongoing EC review on the scope of this Regulation, new work could take place for ESMA, in cooperation with the NCAs.

Finally, ESMA will dedicate efforts to the review of the RTS on authorisation and registration under BMR to ensure that they remain aligned with the regulatory framework and previous developments included in the RTS on recognition.

#### Credit Rating Agencies (CRAs)

ESMA's work in this field will be aimed at improving the notification of incidents by CRAs regarding methodological errors, as well as their practices regarding the discontinuation and withdrawal of credit ratings. Furthermore, ESMA expects that supervisory activities will focus on the quality and independence of

the rating process as well as the appropriateness of the ratings assigned to the main asset classes, taking into account the deteriorating economic outlook.

## **Markets and infrastructures**

### Third Country Central Counterparties (TC-CCPs)

In collaboration with the NCAs and the EU, the aim is to reduce dependence on the three clearing services identified as having significant systemic importance and to reduce the risks and vulnerabilities related to their recognition, all within the framework of the planned review of EMIR<sup>14</sup>. EU Central Counterparties (CCPs)

In the framework of annual peer review of CCPs, ESMA will focus its work for 2023 on concentration risks and will take stock of progress on supervisory convergence by monitoring and verifying the application of previous recommendations.

In 2023 ESMA also expects to present to the EC the last two RTSs under the CCP Recovery and Resolution Regulation (CCPRRR) and will prepare a report assessing the staffing and resources arising from the assumption of its powers and duties under CCPRRR.

### Data Reporting Service Providers (DRSPs)

In 2023, ESMA will start setting up the required processes and systems for the selection procedure and future supervision of CTPs (consolidated tape providers), which provide consolidated information in trading in secondary markets and possibly market orders.

ESMA will focus its supervisory activities on monitoring the adherence to regulatory requirements in terms of consistency, completeness, timeliness and accuracy of the data. One area of attention will be the consistency between transaction data reported to ARMs (approved reporting mechanisms) and trade data published by APAs (approved publication arrangements). It will also focus especially on the level of operational separation of the DRSPs from other lines of business, the implementation of cloud solutions as well as the adequacy of security controls.

### Secondary markets

Regarding financial instrument markets, the ongoing review of the MiFIR will give rise to new mandates that ESMA will undertake in 2023, including those related to transparency and CTPs. As already mentioned, the selection procedure for the appointment of CTPs and the development of the appropriate specifications (selection criteria, governance, fees, revenue sharing, continuity requirements and reporting rules).

Still in this area, and specifically as regards commodities, ESMA's Annual Work Programme is affected by the uncertainty deriving from the Russian invasion of Ukraine. It is expected to affect the follow-up work on ESMA's report on the EU carbon market and the work related to the monitoring of position limits and position management controls by trading venues.

In relation to market abuse and short selling, ESMA will assess the need to launch new guidelines on the disclosure of privileged information in relation to the resolution regime for financial institutions, on the public disclosure of financial information and on pre-hedging. Also in this area, monitoring of the peer review on STORs that took place in 2019<sup>15</sup>.

With regard to OTC derivative clearing and risk mitigation techniques, on the one hand, ESMA will continue to make the necessary adjustments regarding the scope of the clearing and trading obligations in the context of the benchmark transition and, on the other hand it will monitor the application of the clearing obligation by pension schemes, whose exemption expires in June 2023.

### Central securities depositories

The implementation of the settlement discipline and reporting regime started in 2022, although the mandatory buy-back regime was postponed. In 2023, ESMA will continue to monitor the application and effects of this new regime, which could entail the issue of new guidance with additional clarifications.

On an annual basis, ESMA reports to the EC on the application of the CSDR. In 2023 these reports will focus on settlement efficiency and internalised settlement, cross-border provision of services and handling of applications.

### Securitisation repositories

ESMA will continue in 2023 its review work on the adequacy of its disclosure templates, taking into account the conclusions of the EC's report on the functioning of the Securitisation Regulation. In addition, it will focus on the usefulness of the information for regulators and investors and the need for additional sustainability disclosures. It aims to publish a consultation paper with proposed amendments.

### Trade repositories

The main purpose in this field is to improve data quality: ESMA will again publish a report on the quality of EMIR and SFTR<sup>16</sup> data to show the effectiveness with which reporting entities are supervised.

## **Risk assessment**

### Risk monitoring and analysis

ESMA has identified the following key analytical priorities for 2023: a) the impact of the Russian invasion on commodity markets; b) the effects of inflation and increases in interest rates; c) financial stability and macroprudential considerations in relation to asset management; d) ESG developments, climate risk and greenwashing and e) crypto assets, artificial intelligence, SupTech and technology risks, including outsourcing to third parties.Supervision and convergence

ESMA shares certain supervisory responsibilities with NCAs and carries out activities aimed at supervising certain regulated entities, in addition to coordinating supervisory activities with the NCAs, with a view to achieving a common supervisory approach and effective supervision. In this regard, in 2023 ESMA will review its supervisory convergence tools so that the main ones, at least, are clearer, in addition to introducing a more structured approach to their selection based on the desired outcomes. Additionally, and in collaboration with the ESAs, closer cooperation will be facilitated with the creation of an intersectoral system for the exchange of information between the NCAs on significant fit and proper assessments in terms of significant stakes, directors and holders of key functions.

Regarding the peer review work plan, in 2023 it is planned to carry out an evaluation of the obligations of depositories under the UCITS Directive and the AIFMD. Additionally, in 2023 a peer review will be conducted on the application of the Guidelines on Market Data, in particular on the requirements linked to the provision and cost of data. In 2023 ESMA will also follow up on peer reviews carried out in previous years, including the fast-track review of the application by BaFin (the German Federal Financial Supervisory Authority) and FREP (the German Financial Reporting Enforcement Panel) of the guidelines on enforcement of financial information, in the context of the Wirecard scandal.

### ESMA as an organisation

ESMA will complete its staff with new personnel linked to its new powers and responsibilities. To stimulate better adaptation and a better adjustment of resources to its processes, a new human resources strategy will be launched in 2023.

<sup>1</sup>Proposal for a Directive (EU) regarding corporate sustainability reporting.

<sup>2</sup>Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector.

<sup>3</sup>SupTech: Supervisory technology is a part of financial technology that uses innovative technology to support supervision and helps supervisory authorities digitise reporting and regulatory processes.

<sup>4</sup>RegTech: Enforcement-focused technology is a part of fintech that focuses on technologies that can facilitate compliance with regulatory requirements more efficiently and effectively than existing capabilities.

<sup>5</sup>Decentralised Finance (DeFi): IOSCO refers to it as an important, evolving and expanding technological innovation which commonly refers to the provision of financial products, services, arrangements and activities that use distributed ledger technology (DLT) in an effort to disintermediate and decentralise legacy ecosystems by eliminating the need for some traditional financial intermediaries and centralised institutions.

<sup>6</sup>Artificial intelligence.

<sup>7</sup>Regulation on the digital operational resilience of the financial sector.

<sup>8</sup>Markets in Crypto-Assets Regulation.

<sup>9</sup>Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology.

<sup>10</sup>Regulation establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability.

<sup>11</sup>Directive 2014/65/EU on markets in financial instruments.

<sup>12</sup>Directive 2011/61/EU on Alternative Investment Fund Managers (the AIFMD), Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (the SFDR), Directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS), Regulation (EU) 2017/1131 on money market funds (MMFs) and Regulation (EU) No 345/2013 on European venture capital funds (EUVECA).

<sup>13</sup>Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds.

<sup>14</sup>Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.

<sup>15</sup>[https://www.esma.europa.eu/sites/default/files/library/esma42-111-4916\\_-\\_stor\\_peer\\_review\\_report.pdf](https://www.esma.europa.eu/sites/default/files/library/esma42-111-4916_-_stor_peer_review_report.pdf)

<sup>16</sup>Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse.

Useful links:

- [2023 Annual Work Programme](#)
- [ESMA Strategy 2023-2028](#)