European Securities and Markets Authority: 2019 Annual Work Programme. February 2019.

The Board of Supervisors of the European Securities and Markets Authority (ESMA) approved the ESMA 2019 Annual Work Programme at its meeting last September.

ESMA's mission is to enhance investor protection and promote stable and orderly financial markets. Its activities are divided into four categories: (1) promoting supervisory convergence, (2) assessing risks to investors, markets and financial stability, (3) completing a single rulebook for European Union (EU) financial markets and (4) directly supervising specific financial entities. Together with the Annual Programme, ESMA has developed a specific work programme for each one of the four categories. ESMA's planned work for 2019 is completed by the 2019-2022 IT Work Programme. These last programmes were approved in January.

With regard to *ESMA's existing mandates*, major work streams for 2019 include supervisory convergence work in the area of the Prospectus Regulation[1] and the Securitisation Regulation[2], including input to the Joint Committee in this area. ESMA will continue to work on implementation of MiFID II[3] and MiFIR[4] , to analyse and manage the related data requirements and to provide advice to the European Commission (EC) on the review of new requirements. ESMA will also work on the third-country regime under MiFIR including, among other tasks, support to the EC on equivalence assessments and concluding co-operation arrangements with third countries.

In addition, ESMA will be taking on *new direct supervisory responsibilities*, firstly of the trade repositories registered with ESMA in accordance with the Regulation on transparency of securities financing transactions (SFTR)[5] and, secondly, of securitisation repositories registered under the Securitisation Regulation. ESMA will also take on *new responsibilities* under the Regulation on European venture capital funds (EuVECA Regulation)[6] and the Regulation on European social entrepreneurship funds (EuSEF Regulation)[7].

Moreover, ESMA is planning to *support sustainable finance* in 2019 through a set of priority actions to integrate environmental, social and governance considerations as part of the investment chain.

ESMA will also work on mitigating the effects of the *withdrawal of the United Kingdom from the EU*. Brexit will make demands on National Competent Authorities (NCAs) and ESMA in terms of supervisory convergence work, financial stability work as well as third-country policies that ensure appropriate regulatory and supervisory coverage of third-country entities. ESMA will continue its preparedness planning based on all Brexit scenarios, facilitating strategic leadership and coordination of working groups within the scope of its powers.

Finally, ESMA will have to comply with its mandates stemming from the initiatives approved in relation to the *Capital Markets Union*.

Promoting supervisory convergence

The Supervisory Convergence Work Programme 2019 identifies five work priorities: 1) ensuring supervisory convergence in the context of Brexit; 2) making data and its use more robust and consistent by developing and further clarifying reporting methodologies and providing guidance to ensure complete and high-quality data; 3) driving forward consistency in the application of MiFID II/MiFIR and getting to a common understanding on arising supervisory challenges; 4) safeguarding the free movement of services in the EU through adequate investor protection in the context of cross-border provision of services and 5) fostering supervisory convergence in the field of financial innovation.

While not formally included in the five priorities, the importance of central counterparties (CCPs) is highlighted.

These priorities are developed in a series of objectives by thematic areas, the most important of which are mentioned below.

Financial intermediaries

Consistent application of MiFID II/MiFIR and coordination between NCAs will be promoted. In addition, greater attention will be paid to sustainability at an EU level. Consequently, suitability and product governance guidelines may be updated in this regard. Other important issues will be the renewal of product intervention measures relating to binary options and contracts for differences and convergence work relating to the effects of Brexit.

Secondary markets

ESMA will promote consistent implementation of MiFID II/MiFIR – including in the context of Brexit – and emphasis will be given to issues such as the provision of market data on a reasonable commercial basis or the compliance of periodic auction trading systems with transparency requirements. ESMA will also prepare opinions on position limits, on waivers for instruments and on the temporary suspension of pre-trade and post-trade transparency. ESMA will also prepare annual reports on the double-volume cap mechanism intended to limit trading under the reference price waiver and the negotiated transaction waiver, on transparency waivers, on the use of deferred publication arrangements, on the international application of principles laid down by the trading obligation for derivatives and on the implementation of the trading obligation by third countries benefiting from an equivalence decision. ESMA will also continue participating in assessing the equivalence of third-country trading venues.

Investment fund management

A register and database will be created for money market funds (MMFs). ESMA will also publish guidelines on information requirements and the stress testing to be performed by MMF managers, as well as guidelines on liquidity stress testing for investment funds and leverage limits for alternative investment funds. ESMA will also provide guidance to improve the convergence of practices relating to performance fees and closet indexing. The work within the framework of Brexit will also be of special importance.

Market integrity

ESMA will aim to improve convergence and application of the Market Abuse Regulation (MAR)[8], the Short Selling Regulation (SSR)[9] and the Benchmarks Regulation (BMR)[10] – including the treatment of third countries and benchmark colleges.

Post-trading

Guidance will be provided to market participants and NCAs on the application of EMIR[11] – particularly on bilateral margins and, if adopted, on the EMIR Refit[12] – and the Central Securities Depositories Regulation[13] – particularly in view of the entry into force of the settlement discipline regime. Similarly, the annual EU-wide CCP stress test exercise will begin and a peer review on CCP supervision by NCAs will be conducted.

Corporate finance

The convergence work will focus on the new Prospectus Regulation, which will apply as from July 2019. ESMA will publish guidelines on risk factors and will begin to operate the new prospectus register. Supervisory convergence work will also be undertaken in the areas of transparency, corporate governance and takeover bids.

Corporate reporting

ESMA will work on convergence in the practices of financial information, non-financial reporting – promoting the integration of sustainability factors – and of alternative performance measures. Special attention will also be paid to implementation and supervisory practices relating to accounting standards IFRS 9, IFRS 15 and IFRS 16.

Cross-cutting themes

Improving the quality of data will continue to be of great importance and attention will be paid to issues such as the use of appropriate identifiers and data standards. The Data Quality Action Plan will continue for EMIR and AIFMD and will be developed for the SFTR and the Prospectus Regulation.

With regard to financial innovation, work will be continued on understanding innovation facilitators and analysing cases in which initial coin offerings (ICOs) may be subject to financial legislation. Similarly, in the first quarter of

2019, ESMA plans to undertake a comparison of the approaches followed by the different NCAs for authorising activities relating to FinTech and to draw up technical advice on issues related to cyber-security.

Together with other convergence instruments, ESMA will highlight the value of sharing experiences between NCAs, training and joint discussion as a way to drive convergence and it will therefore schedule a series of seminars and training workshops in 2019.

A peer review to assess convergence on NCAs' handling of relocation to EU27 in the context of the UK's withdrawal from the EU will be launched at the end of 2019.

Assessing risks to investors, markets and financial stability

Within the ESMA Risk Assessment Work Programme 2019, the following lines of action may be highlighted:

Data management and statistics

With the aim of improving the quality of the information received and its use, ESMA will conduct regular analyses, process internal and commercial data, generate statistics to support ESMA and NCA activities and will continue the maintenance of databases and IT systems.

Risk monitoring and analysis

ESMA will continue monitoring market risks, including Brexit-related risks, preparing in-depth research and thematic analyses and will contribute to risk monitoring by EU and other international bodies.

Financial innovation and product risk analysis

ESMA will continue to analyse investor and market trends and pay particular attention to financial innovation – such as FinTech and crypto-assets – identifying risks and opportunities, helping to coordinate the initiatives of NCAs in this area and facilitating exchanges of best practices and making proposals of actions where needed. Monitoring market trends and market intelligence gathering and analysis will also help ESMA to determine those cases in which it is necessary to use the product intervention powers provided for in MiFIR.

Regulatory work programme

With regard to its 2019 Regulatory Work Programme, ESMA will draw up technical advice and will contribute towards developing Level 2 measures in relation to the Prospectus Regulation. In the area of securitisation, ESMA will draft a number of technical standards relating to issues such as the information available in securitisation repositories and standardised templates so that originators and sponsors provide the same information, cooperation and information sharing between NCAs and ESMA and the requirement for the registration of securitisation repositories.

ESMA will also develop standards, advice and opinions with regard to the regulation of investment funds. The upcoming reviews of the UCITS Directive[14], the AIFM Directive[15] and the PRIIPS Regulation[16] and its delegated regulation will involve additional work. ESMA must also draft technical standards as provided for in the EuVECA Regulation, the EuSEF Regulation and the ELTIF Regulation[17].

In addition, in 2019 ESMA might have to work on reviews relating to the MAR, BMR and SSR. Furthermore, should the EMIR Refit be adopted, ESMA would also need to develop technical standards relating to reporting requirements as well as to review those relating to the compensation obligation and those relating to CCPs.

ESMA will assist the EC in preparing reports to evaluate the impact of MiFID II in the area of financial intermediaries and for the development of Level 1 and Level 2 provisions. In the area of secondary markets, ESMA will also assess the functioning of the MiFID II/MiFIR requirements, which may lead to a review of certain technical standards on the transparency requirements for non-equity instruments, and to draft additional standards on the trading obligation of derivatives subject to the clearing obligation. It may also be necessary to revise Level 2 rules depending on the impact of Brexit.

With regard to relations with third countries, ESMA will support the EC in equivalence assessments of third-country financial intermediaries – there is also expected to be a register of third-country firms and cooperation arrangements with third-country authorities. In the framework of the BMR, ESMA will offer advice to NCAs on the recognition of third-country benchmark administrators and it may have to offer advice to the EC on the

equivalence regime under this Regulation.

In addition, the Action Plan on Sustainable Finance also includes a mandate for ESMA to draft technical advice on the integration of sustainability risk in the UCITS Directive, AIFMD and MiFID II.

Finally, it should be noted that there are other mandates included in legislative proposals, in addition to those indicated above, which are at different stages of negotiation and which might be approved over 2019, such as those relating to European crowdfunding service providers and to prudential requirements for investment firms and their supervision.

Directly supervising specific financial entities subject to ESMA

The document entitled ESMA's Supervision – 2018 Annual Report and 2019 Work Programme includes the main areas of action, determined on the basis of the risks identified, for supervising trade repositories– data quality and access for authorities, IT process and system reliability, business continuity planning and the information security function – and credit rating agencies – portfolio risk, quality of the rating process and cybersecurity. ESMA will also work on common elements to both areas, such as Brexit, fees charged, effective internal control systems and the use of new technologies.

Priorities for action are also included relating to the monitoring of third-country CCPs and central securities depositories, which are linked to the pending recognition applications – especially in the context of Brexit – and monitoring of indicators that evaluate whether there are potential risks for the EU that come from the activity of these entities.

Information Technologies

The actions under this Work Programme include, inter alia, continuation of the projects that began in 2018 – resulting from Regulations such as the Central Securities Depositories Regulation, the Money Market Funds Regulation, the Prospectus Regulation and the Securitisation Regulation – and implementation of the changes needed to information systems and data resulting from Brexit.

Outstanding issues

In any event, ESMA's 2019 Annual Work Programme will need to adapt in future months to the demands set by Brexit and initiatives that will emerge within the framework of the Capital Markets Union, as well as those related to financial stability. Similarly, approval of EMIR 2.2 and the EC's proposal for a review of the European System of Financial Supervision would lead to new powers for ESMA.

[1] Regulation (EU) 2017/1129, of the European Parliament and of the Council, of 14 June 2017, on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

[2] Regulation (EU) 2017/2402, of the European Parliament and of the Council, of 12 December 2017, laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.

[3] Directive 2014/65/EU, of the European Parliament and the Council, of 15 May 2014, on markets in financial instruments.

[4] Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments.

[5] Regulation (EU) 2015/2365, of the European Parliament and of the Council, of 25 November 2015, on transparency of securities financing transactions and of reuse.

[6] Regulation (EU) No. 345/2013, of the European Parliament and of the Council, of 17 April 2013, on European venture capital funds.

[7] Regulation (EU) No. 346/2013, of the European Parliament and of the Council, of 17 April 2013, on European social entrepreneurship funds.

[8] Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, on market abuse (market abuse regulation) and repealing Directive 2003/6/EC, of the European Parliament and of the Council, and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

[9] Regulation (EU) No. 236/2012, of the European Parliament and of the Council, of 14 March 2012, on short selling and certain aspects of credit default swaps.

[10] Regulation (EU) 2016/1011, of the European Parliament and of the Council, of 8 June 2016, on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No. 596/2014.

[11] Regulation (EU) No. 648/2012, of the European Parliament and of the Council, of 4 July 2012, on OTC derivatives, central counterparties and trade repositories.

[12] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No. 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories.

[13] Regulation (EU) No. 909/2014, of the European Parliament and of the Council, of 23 July 2014, on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU, and Regulation (EU) No. 236/2012.

[14] Directive 2009/65/EC, of the European Parliament and of the Council, of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

[15] Directive 2011/61/EU, of the European Parliament and of the Council, of 8 June 2011, on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC, and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010.

[16] Regulation (EU) No. 1286/2014, of the European Parliament and of the Council, of 26 November 2014, on key information documents for packaged retail and insurance-based investment products.

[17] Regulation (EU) 2015/760, of the European Parliament and of the Council, of 29 April 2015, on European long-term investment funds.

Links of interest:

ESMA 2019 Annual Work Programme

Supervisory Convergence Work Programme 2019

ESMA Risk Assessment Work Programme 2019

2019 Regulatory Work Programme

ESMA's Supervision – 2018 annual report and 2019 work programme

2019-2022 IT Work Programme (not available)