

European Securities and Markets Authority: 2020 Annual Work Programme. October 2019.

The mission of the European Securities and Markets Authority (ESMA) is to improve investor protection and promote stable and orderly financial markets. In order to achieve this, this Authority publishes an Annual Work Programme which details the activity that it plans to carry out during the coming year to meet the three objectives entrusted to it: investor protection, orderly financial markets and financial stability.

As in previous years, the Annual Work Programme for 2020 (AWP 2020) contains a list of the main tasks grouped around the following four lines of work: 1) promotion of supervisory convergence; 2) risk assessment to investors, markets and financial stability; 3) completing a single rulebook for European Union (EU) financial markets and 4) direct supervision of specific financial entities. On this occasion however, the Programme also includes a breakdown of the tasks that will be undertaken in 2020 related to the new mandates attributed in recent amendments and regulatory packages, once these are published and enter into force. Among the new powers, it is worth highlighting those resulting from the review of the ESMA¹ Regulation, which are intended to enhance the role played by this Authority in supervisory convergence, investor protection, relations with third countries, technological innovation and direct supervision, which has led to changes in its governance and organisational structure.

The EMIR² review also attributes new powers to this Authority, both in relation to the central counterparties (CCPs) of third countries and to strengthen its role in the area of supervisory convergence in relation to the EU CCPs.

Regarding the promotion of supervisory convergence, the AWP 2020 has established the following priorities: 1) strengthen its convergence and coordination powers, as well as encourage exchanges in the areas of supervision and enforcement; 2) strengthen the application of MiFID II/MiFIR³ concerning secondary markets and investor protection; 3) increase consistency in the supervision of performance and cost carried out by the National Competent Authorities (NCAs); 4) attend to the data quality received for future supervision based on them and 5) closely follow the trend of the market in relation to financial innovation so that this information serves to enable the ESMA to specify its regulatory and supervisory initiatives in the FinTech field.

With regard to the activities related to risk assessment, the AWP 2020 considers those related to the use of the annual statistical reports based on the data required by EMIR, AIFMD⁴ and MiFID II to be a priority. ESMA also plans to focus on improving the quality of data and their use.

The activities for 2020 to promote a single rulebook for EU financial markets code are focused on the development of EMIR 2.2/EMIR Refit and other standards within the scope of the Capital Markets Union Action Plan, as well as those that require developments on both FinTech and Sustainable Finance Action Plans, and the review of other rules within the sector.

Finally, in the area of direct supervision, activities will continue to focus on credit rating agencies (CRAs) and trade repositories. The Programme also foresees the assumption of new powers in relation to securitisation repositories within the scope of the Regulation on simple, transparent and standardised securitisation (SR⁵), as well as with respect to CCPs from third countries within the EMIR 2.2 framework.

New Mandates

The review of the ESMA Regulation will lead to the adoption of changes in its organisation and governance as well as any necessary adaptation for the performance of its new powers. The most important measures are summarised as follows:

Governance: In relation to the Board of Supervisors, it envisages the establishment of new committees (to perform peer reviews, for example) together with measures that increase transparency regarding conflicts of interest and professional secrecy. The Management Board is authorised to set up internal committees and coordination groups as well as to present proposals and opinions to the Board of Supervisors.

Supervisory convergence: Improvements have been made to the NCA peer review processes and Q&As. The deployment of new convergence tools will include the identification of the Union Strategic Supervisory Priorities for 2021, the development of an EU supervisory handbook or the coordination of orders, transactions and activities with significant cross-border effect.

Investor Protection: The new mandates include coordination measures on mystery shopping actions, developments concerning retail risk indicators and the collection, analysis and reporting on consumer trends.

Equivalence assessment: The activity in this area will consist in supporting the European Commission (EC) in the preparation of equivalence decisions, monitoring and reporting to the EC, the European Parliament and the Council on regulatory and supervisory developments in third countries regarding which an equivalence decision has been granted, and lastly, representing the interests of the EU at international fora.

Transversal topics: Technological innovation, sustainable finance and proportionality will be factors embedded in the development of its activities. In addition, a Proportionality Committee will be established within ESMA.

New direct supervisory powers: Adaptation of its structure and systems to cover the new supervisory powers regarding critical benchmarks of the EU, its administrators and data service providers as well as the recognition of benchmarks from third countries.

On the other hand, EMIR 2.2 will entail intensifying the supervisory convergence work in relation to the CCPs in the EU and greater powers in relation to third country CCPs, such as their recognition, monitoring of their applicable regime or their classification into tier 1 or 2 (demanding higher requirements from those in this second category due to their systemic importance). In order to exercise these functions, the aforementioned regulation has provided for the creation of a new committee (CCP Supervisory Committee) which will be created at the beginning of 2020 and ESMA's third country CCPs' activity will be funded by fees charged to these CCPs' applicants.

Lastly, the AWP 2020 also plans to assume new responsibilities in the cross-border distribution of funds (such as the creation of a database in ESMA), prudential requirements for investment service companies (such as regulatory developments or more powers regarding third-country investment services companies) and sustainable finance (such as the EU benchmarks for climate transition or those aligned with the Paris Agreement).

Supervisory Convergence

In its active role in promoting sound, efficient and consistent supervision, ESMA has planned the following lines of action for 2020:

Post-trading: Continue with the development of the requirements introduced by EMIR Refit⁶, a stress test exercise on EU CCPs, a peer review on CCPs' supervision and another on central securities depositories. Guidelines related to CSDR⁷ will be developed, such as, for example, in matters of settlement discipline.

Market Integrity: Implementation of measures in the areas of MAR⁸, SSR⁹ and BMR¹⁰ materialised by issuing guidelines, opinions and Q&As, non-binding opinions on accepted market practices and participation in colleges of critical benchmarks.

Secondary markets: Continue to offer supervisory guidance to promote convergence around MiFID II/MiFIR, especially in those areas in which different practices are identified within the EU, such as the previous transparency requirements in commodity derivatives.

Protection of investors and intermediaries: Ensure the consistent application of the MiFID II/MiFIR requirements and encourage coordination among NCAs, paying special attention to product intervention measures.

Investment management: Achieve greater convergence and consistency of NCAs supervisory approaches and practices, especially regarding the performance and costs of retail investment products. Likewise, emphasis will be placed on the evaluation of possible mismatches between redemption policies and liquidity profiles in UCITS. Lastly, common criteria for stress tests applicable to monetary funds will continue to be developed.

Market Data: Ease a data-based supervision supported by the promotion of agreed actions improving the quality of data and its use within the framework of the SFTR¹¹, EMIR and MiFIR reporting regimes.

Corporate finance and securitisation: Complete the regulatory framework on prospectus issues with the publication of new Q&As and the review of existing guidelines, in addition to promoting the debate between NCAs to converge on supervisory practices. Lastly, ESMA intends to launch a public register of issue prospectuses in 2020. Regarding the SR (Securitisation Regulation), ESMA will monitor its consistent implementation.

Corporate Reporting: Strengthen supervisory convergence measures emphasising aspects related to alternative performance measures, a common supervisory culture for non-financial reporting of environmental, social and governance factors and the application of the new single European electronic format.

Horizontal supervision and peer reviews: Within the Brexit issue, follow-up job on relocation of British entities in the EU 27 will continue up to six months after the withdrawal of the United Kingdom from the Union, a peer review on this matter will be carried out and creation of voluntary colleges will be encouraged. It is also planned to carry out a peer review concerning the supervision of investment services companies with cross-border activity.

Assessing risks to investors, markets and financial stability

In relation to the analysis of risks related to products and financial innovation, the objective is to identify opportunities and risks, as well as observe the trends of retail investors based, among other factors, on a financial innovation marker using quantitative and qualitative parameters.

Regarding risk monitoring and analysis, ESMA will continue its work to identify the financial market risks in its Dashboard and its reports (particularly TRV¹²). Furthermore, risk indicators will be obtained through an integrated approach consisting on an Annual Statistics Report series on EU derivatives (EMIR scope), funds (AIFMD scope) and securities markets (MiFID II scope) will also be available.

Lastly, in relation to data management and statistics, the actions will focus on improving aspects of data

quality, its usability and integration, in order to support ESMA in its activities as well as those of the NCAs and other interested parties.

Completing a single rulebook for EU financial markets

First, within the scope of the review of the regulatory framework under EMIR (EMIR 2.2 and EMIR Refit) ESMA will develop level 2 measures that will lead to the introduction of amendments that will affect the penalty framework or technical standards related to the expansion of CCPs' activities, the consideration of more significant EU currencies, significant changes in models adopted by the CCPs and information requirements for the recognition of CCPs from third countries.

Similarly, ESMA will prepare reports on the CSDR review and those set forth in EMIR Refit. Technical standards will also be drafted regarding the information to be sent to the trade repositories within the SFTR framework.

Second, in relation to the MiFID II review, ESMA will provide advice to the EC on level 1 and 2 regulatory developments on the protection of investors and intermediaries.

With regard to the secondary markets, ESMA will focus on advising the EC on the development of key MiFID II/MiFIR provisions related to the pre- and post-trading transparency regime, the double volume cap, the Systematic Internaliser regime, algorithmic trading, the trading obligation for derivatives, SME growth markets, the functioning of organised trading facilities and the impact of MiFID II on commodity derivatives markets.

Third, ESMA will participate in the reviews of the regulatory frameworks related to market abuse (MAR), packaged products (PRIIPs) and asset management (UCITS and AIFMD) and will complete the developments of the PR¹³ Regulation.

Lastly, ESMA will continue to contribute to the establishment of a sound regulatory framework for CRAs, external credit assessment institutions, sustainable finance and a regime for third-countries.

Direct supervision of specific financial entities

ESMA has adopted a risk-based approach to prioritise its direct supervision activities. Specifically, it has planned to carry out the following work in 2020:

First, in the field of CRAs, ESMA has focused the scope of the supervision on the following areas: 1) Rating Process, including the independence of the rating process; 2) the effectiveness of governance, internal control functions and IT security and 3) Methodology Development and Validation.

Second, with respect to the trade repositories, the supervision will be aimed at improving data quality.

Third, in relation to securitisation repositories, ESMA plans to carry out monitoring and inspection activities within its continuous supervision work.

Lastly, ESMA will continue to carry out the continuous monitoring of compliance with the recognition conditions for CCPs and central securities depositories of third-countries, as well as their supervision, where appropriate.

¹Regulation (EU) No 1095/2010 establishing a European Securities and Markets Authority.

²Regulation (EU) No 648/2012 on over-the-counter (OTC) derivatives, central counterparties and trade repositories.

³Directive 2014/65/EU on markets in financial instruments and Regulation (EU) No 600/2014 on markets in financial instruments.

⁴Directive 2011/61/EU on Alternative Investment Fund Managers.

⁵Regulation (EU) 2017/2402, laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.

⁶Regulation (EU) No 2019/834 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 derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories.

⁷Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories.

⁸Regulation (EU) No. 596/2014 on market abuse.

⁹Regulation (EU) No. 236/2012 on short-selling and certain aspects of credit default swaps.

¹⁰Regulation (EU) No. 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds.

¹¹Regulation (EU) No 2015/2365 on transparency of securities financing transactions and of reuse.

¹²ESMA report on trends, risks and vulnerabilities.

¹³Regulation (EU) No 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

Enlaces de interés:

[ESMA press release on its 2020 Annual Work Programme](#)

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