Peer Reviews, one of ESMA´s fundamental tool to achieve supervisory convergence. July 2015.

Peer reviews are one of the tools that ESMA uses to move towards its objective of achieving supervisory convergence in the European Union. ESMA is responsible, under Article 8.1.e) of the Regulation of its establishment, for organising and conducting peer review analyses of competent authorities, in order to strengthen consistency in supervisory outcomes. Peer reviews involve reviewing the application by each Member State of specific EU laws. The methodology used by peer reviews includes gathering information using a questionnaire with answers from competent authorities of the Member States, and carrying out onsite inspections or visits in these Member States to verify the information submitted in the questionnaires. Peer reviews usually contain recommendations, findings or best practices, on a case-by-case basis, that ESMA and its members will take into account in order to move towards their objective of achieving consistent and uniform implementation of financial regulations in the European Union.

The relevance of peer reviews is demonstrated in the first EC report (08/08/2014) (as established by Article 81 of the ESMA Regulation and addressed to the European Parliament and the Council) on the operation of the European Supervisory Authorities and the European System of Financial Supervision. This report proposes greater and more effective use of peer reviews and more systematic follow-up of deficiencies detected in them.

1. What are peer reviews? According to Article 30 of the ESMA Regulation, peer reviews are periodically organised and conducted by ESMA in relation to some or all of the activities of competent authorities, to strengthen consistency in supervisory outcomes. Peer reviews are conducted by ESMA's Review Panel, which is a standing committee established through a decision by ESMA's Board of Supervisors on 08/11/2011. CESR (ESMA's predecessor body) also had a committee with the same name and functions.

2. What are peer reviews used for? The work programme that ESMA publishes every tax year has considered supervisory convergence as one of the operational objectives of ESMA's activities. In particular, ESMA's work programme for 2015 (see the summary in previous issues of the International Bulletin) establishes three strategic objectives: investor protection, financial stability and market functioning, which are achieved through a series of operational objectives, the first of which being supervisory convergence. Supervisory convergence or consistent implementation of European Union laws is achieved not only through peer reviews, but also through guidelines, views and opinions addressed to competent authorities, and Questions and Answers (Q&As) on regulations; also through mediation and procedures for investigation of breach of Union law.

3. What is its methodology? The methodology used by the Review Panel is described in a document published by ESMA on 25/11/2013. This methodology has the following stages: determining the topic for a peer review in an agreement adopted by the Board of Supervisors; setting up an assessment group and a coordinator among competent authorities; drafting a mandate by the assessment group, indicating the different stages and timeline for the work; drafting a questionnaire to be answered by competent authorities; the Board of Supervisors designates the countries to be visited by a team created by the assessment group; the assessment group produces a report to be submitted to the Board of Supervisors, who will decide on the publication of the peer review outcomes. ESMA will publish the best practices found in peer reviews and all the other outcomes, unless a competent authority does not give its consent. Finally, at the implementation and follow-up stage, the Review Panel checks whether the Board of Supervisors' decisions have been implemented within a certain period of time, and sends letters to the national authorities that have shown a deficiency, and the actions taken to correct the deficiency will be monitored.

4. What is the content of peer reviews? Based on a regulation (of level 1 or 2) or on specific guidelines, peer reviews analyse, among others aspects, the following: the adequacy of resources and governance arrangements of the competent authority with regard to the effective application of level 2 standards and the capacity to respond to market developments; the degree of convergence reached in the application of Union law and in supervisory

practices, including guidelines and recommendations; best practices developed by some competent authorities; and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law (including the administrative measures and criminal sanctions).

5. What happens with the outcomes of peer reviews? On the basis of the outcomes of a peer review, ESMA may notify the European Commission, draft guidelines and recommendations, and take them into consideration when preparing projects for regulatory or implementing technical standards.

6. Which topics have been analysed by peer reviews? Since its establishment in 2010, ESMA has published peer reviews on the following aspects and provisions: CESR guidelines (ESMA's predecessor body) to simplify the notification procedure for Undertakings for Collective Investment in Transferable Securities (UCITS); practical steps for the approval process of prospectuses (May 2012); guidelines for Money Market Funds (April 2013); and supervisory practices in the Market Abuse Directive (July 2013). More recently, between December 2014 and March 2015, ESMA has published three peer reviews: the first one on conduct of business, fair, clear and not misleading information that Investment Firms should provide investors with under MiFID; the second one on best execution rules under MiFID; and the third one on the implementation by the different Member States of ESMA Guidelines on Systems and Controls in an Automated Trading Environment for Trading Platforms, Investment Firms and Competent Authorities.

7. Which topics will be analysed next by peer reviews? ESMA's work programme for 2015 (30/09/2014) establishes that the considerations and provisions subject to peer reviews for this year will be the following: guidelines of Article 17 of the Regulation on short selling regarding the exemption for market making activities and primary market operations (ongoing since 2014, as stated in ESMA's annual report for 2014); approval procedure of prospectuses; and suitability test for clients of products or services under MiFID. ESMA will also conduct the implementation and follow-up stage of peer reviews on market abuse supervisory practices and on the application of money market funds guidelines.

Relevant links:

Regulation no. 1095/2010, establishing a European Supervisory Authority (European Securities and Markets Authority)

ESMA's Decision establishing the Review Panel

Review Panel methodology

EC Report on the review of European Supervisory Authorities (ESAs)

ESMA's work programme for 2015

ESMA's annual report for 2014

Recent examples of peer reviews:

Peer Review Report on conduct of business, fair, clear and not misleading information under MiFID (December 2014)

Peer Review Report on best execution under MiFID (February 2015)

Peer Review Report on automated trading guidelines (March 2015)