

Annual Report 2023



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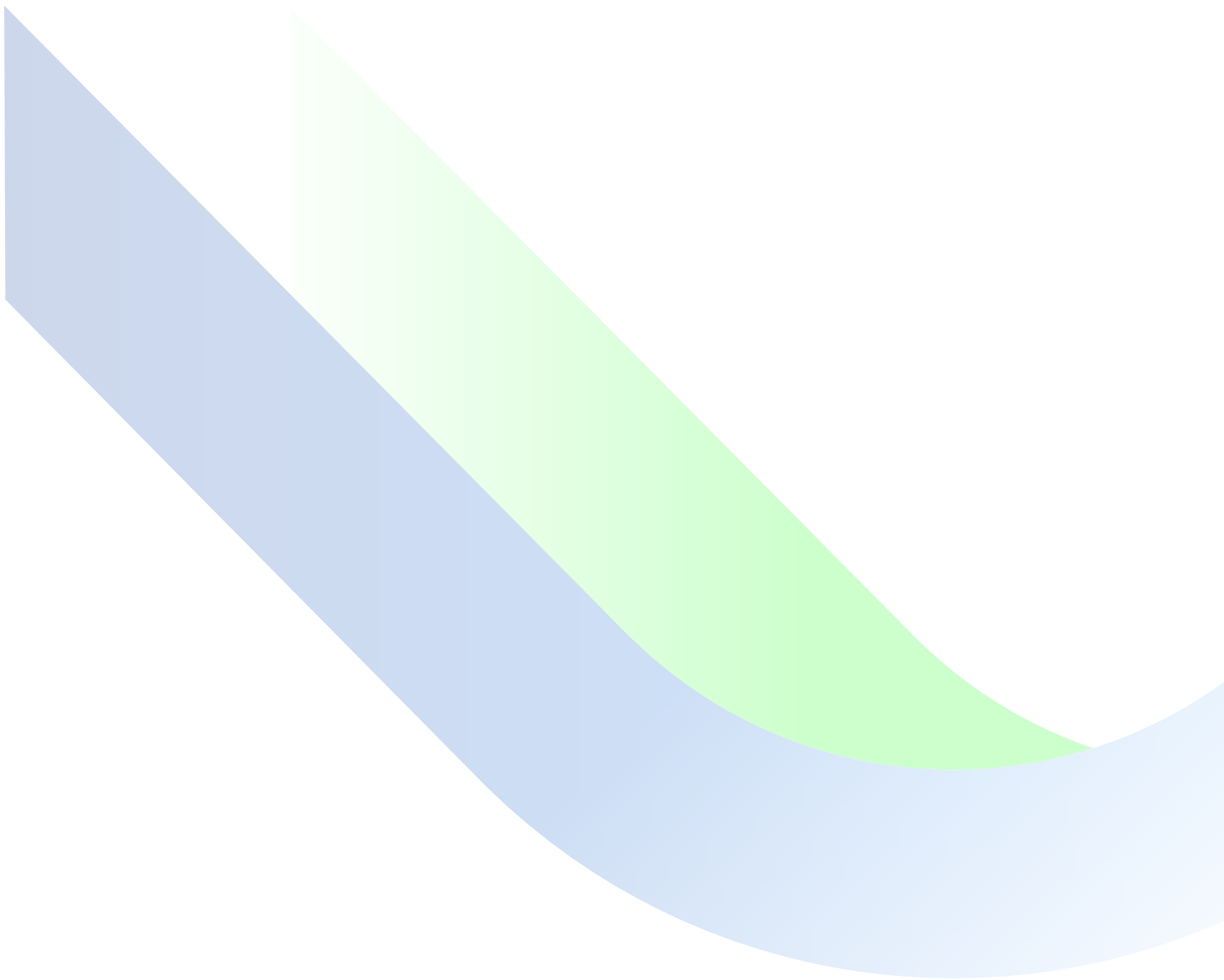
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Board of Supervisors' analysis and assessment of the annual report for 2023

The Board of Supervisors of the European Securities and Markets Authority (ESMA) takes note of the annual report for 2023, submitted by the Executive Director in accordance with Article 48(1) of ESMA's financial regulation.

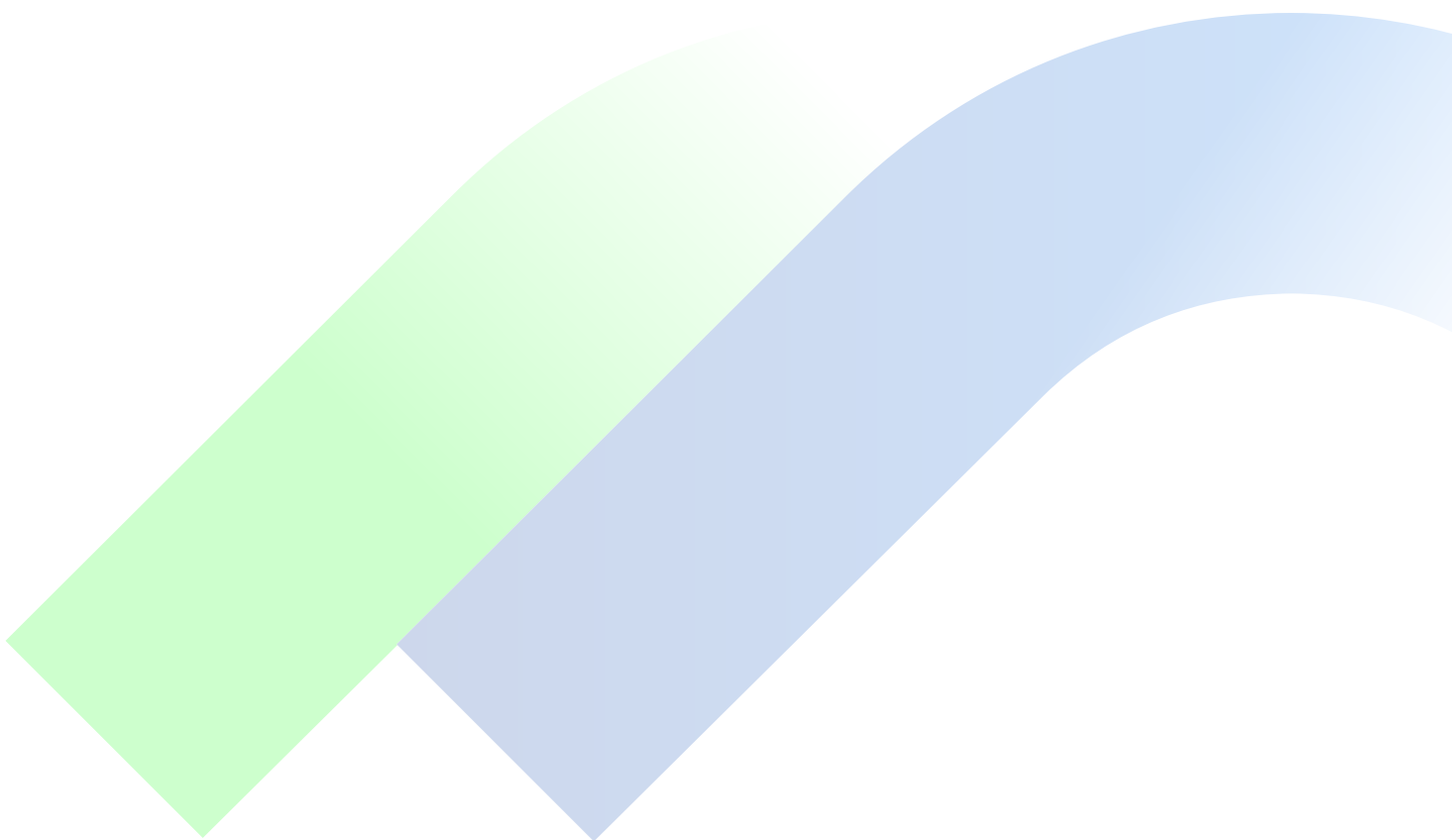
Analysing and assessing the annual report, the Board makes the following observations.

- The report contains a comprehensive account of the activities carried out by ESMA in the implementation of its mandate and work programme in 2023. ESMA provides in the annual report a detailed account of the results achieved in relation to the objectives set in the work programme for 2023, along with relevant financial and management information.
- The Board takes note of the reports of the European Court of Auditors (ECA) and the European Commission's Internal Audit Service (IAS) and ESMA's actions in response to these reports.
- The Board notes that the Executive Director has no reservations or critical issues to report that would affect the presentation of the annual accounts for the financial year 2023 to the discharge authority.

Paris, 3 June 2024

Verena Ross
ESMA Chair
For the Board of Supervisors







Verena Ross

CHAIR
EUROPEAN SECURITIES AND MARKETS
AUTHORITY

Chair's foreword

In 2023 ESMA has started implementing its new 5-year strategy, which builds on experiences and achievements in the past decade. Progress has already been made this year on delivering against the priorities set out in the strategy.

As geopolitical tensions and macro-economic developments continued to impact European financial markets in 2023, vigilance and proactive measures of supervisory authorities remained fundamental. We closely monitored the effects on European markets of the collapse of three US regional banks and the ensuing instability in the European banking sector. ESMA remained at the forefront of coordinating the actions and sharing information between national supervisors in the EU, ensuring common approaches to any crisis responses.

2023 was a significant year from the supervisory convergence perspective. ESMA launched a set of new joint supervisory actions this year, to ensure effective application of sustainability requirements, both under the markets in the financial instruments directive (MiFID) and the benchmark regulation. We also concluded a common supervisory action (CSA) concerning the supervision of asset valuation rules under the undertakings for collective investment in transferable securities (UCITS) directive and the alternative investment fund managers directive (AIFMD). In our final report published in May, we identified a number of deficiencies on asset valuation which national competent authorities (NCAs) have committed to address. We also presented the results of a CSA and Mystery shopping exercise on the information on costs and charges required under MiFID, finding an adequate overall level of compliance. Finally, we published two reports following up on findings identified in earlier peer reviews on the guidelines on exchange-traded funds (ETFs) and on national supervision of the compliance function under MiFID.

Investor protection remains at the core of ESMA's mission. We observed some progress for retail investors in 2023. Costs and performance are key determinants of whether retail investors benefit from their investments, and are particularly critical in an environment characterised by lower returns and an

elevated level of inflation. I was therefore pleased, for the first time, to observe in our annual report on cost and performance that the average cost of investing in certain funds had declined year on year, even if there is still much work to be done, given the wide variation across the Member States.

Delivering on its strategic priorities, ESMA has started to successfully embed sustainability as well as technological innovation and effective use of data across all our activities.

In June 2023, ESMA adopted its new organisation-wide Data Strategy, providing a roadmap for how to contribute to reducing the compliance burden for companies and facilitating reporting across the entire data life cycle. The Data Strategy will help ESMA work towards becoming the EU data hub providing easier access to financial data to authorities (through enhanced data sharing) and to the public. This includes initiatives that were launched in 2023, such as the European Single Access Point (ESAP), a new public platform for available financial and sustainability information about companies and investment products, which is scheduled to become operational from 2027 onwards. ESMA also made important progress on the implementation of the markets in crypto-assets (MiCA) regulation with the publication of two major consultations on new rules aiming to establish high regulatory standards across the EU and enhanced supervisory convergence work to prevent forum shopping.

The past year has been very eventful on the sustainability front, as we continue to deliver on the ESMA sustainable finance roadmap. ESMA issued an opinion on the first set of draft European Sustainability Reporting Standards (ESRS), an important step towards common EU company reporting on ESG. We also published a progress report on greenwashing, together with the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), putting forward a common understanding of the greenwashing phenomenon and identifying related risks. Finally, ESMA has been looking at how to best protect investors by countering potential misleading

environmental, social and governance (ESG) naming in funds.

Across all its priorities, and in particular in areas such as sustainability and innovation, ESMA continued to participate actively in various global workstreams through the International Organization of Securities Commission (IOSCO) and the Financial Stability Board (FSB). In my capacity as co-chair of the IOSCO sustainable finance carbon markets workstream, I had the opportunity to speak at the COP28 UN Climate Change Conference and advocate for enhancing the integrity and orderly functioning of voluntary carbon markets.

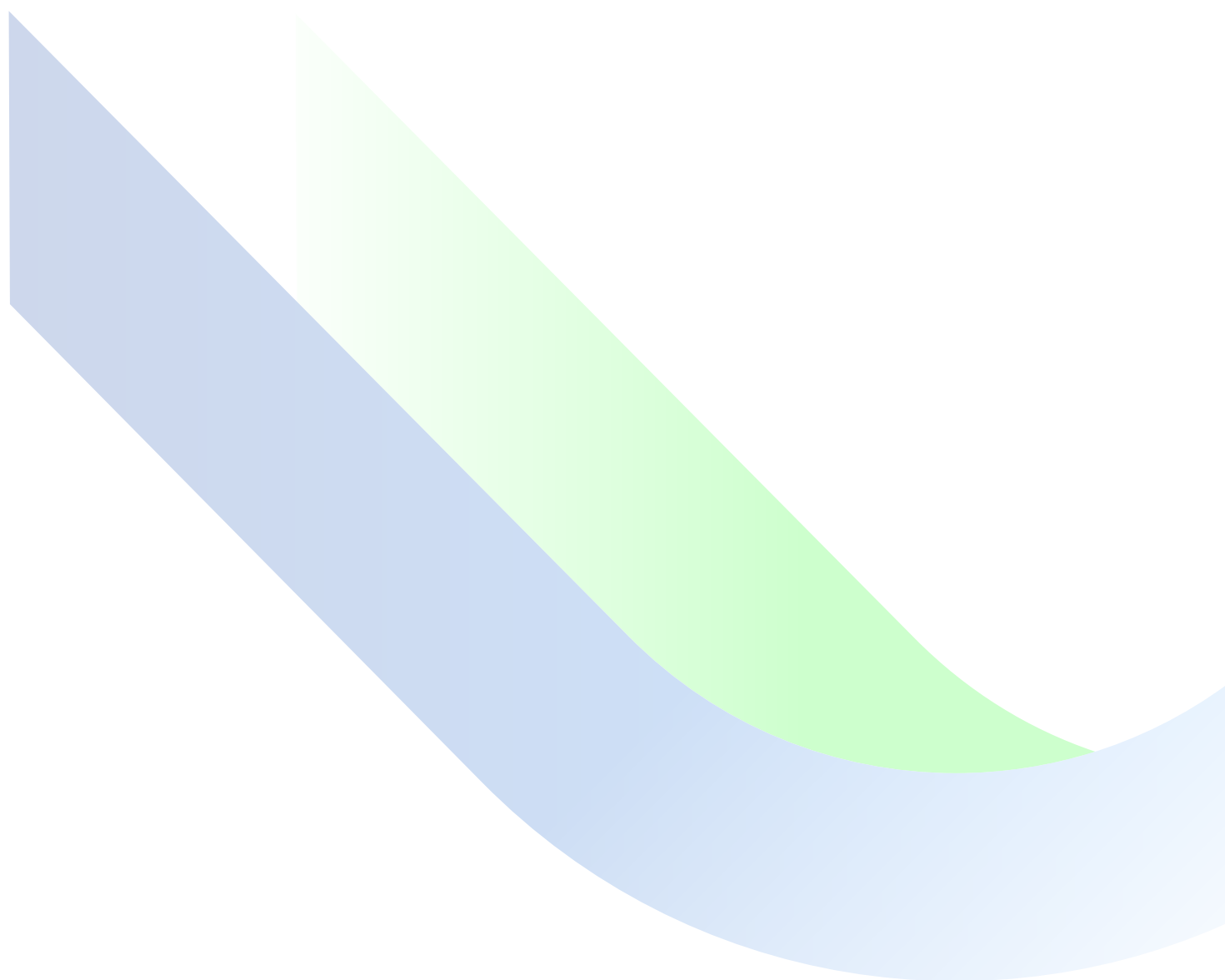
2023 marked the beginning of the end of the current electoral cycle with political agreements being reached on several important legislative files including the review of the AIFMD and UCITS directives, the review of the markets in financial instruments regulation and directive (MiFIR/MiFID) and the CSD regulation. Significant progress was also made towards the conclusion of the review of European market infrastructure regulation (EMIR), the Listing Act and the regulation on ESG Rating Providers. As we prepare for the upcoming 2024 European elections, it is good to be able to look back on 4 years

of very close and productive partnership with the European Parliament, the Council of the European Union and the Commission. I look forward to continuing the work to ensure effective and stable financial markets and to promoting investor protection together with the new Commission and co-legislators in the next mandate.

I would also like to acknowledge the excellent cooperation with our fellow European Supervisory Authorities (ESAs), including through the Joint Committee (JC). All our work is only possible thanks to the close interaction with stakeholders (including importantly the Securities and Markets Stakeholder Group) and their valuable contributions to our work.

At the end of yet another packed year, I want to express my sincere appreciation of the members of ESMA's Board of Supervisors and Management Board for their continued support and active engagement. Finally, and by no means least, I would like to convey my heartfelt thanks to my many excellent colleagues for all their hard work and continued dedication to ESMA and its mission.

Verena Ross
Chair





Natasha Cazenave

EXECUTIVE DIRECTOR

Executive Director's foreword

With ESMA's 2023 – 2028 Strategy as our compass, we focused in 2023 on delivering on our strategic priorities while adjusting the organisation to a complex environment with rapid technological innovation and challenging economic conditions. As a result, both the structure of ESMA groups that draw together senior experts from National Competent Authorities and ESMA's internal organisational structure evolved in 2023 to align with ESMA's strategic priorities and the enhanced focus on sustainability and digital innovation.

The launch of ESMA's new Data Strategy represented an important step in our efforts to integrate data and IT expertise and objectives and serve the needs of all stakeholders. The entry into force of the Digital Operational Resilience Act (DORA) in January 2023 required ESMA to explore new areas of regulation and work closely with EBA and EIOPA in preparation for the implementation of this new regulation and the future joint oversight of critical ICT third-party providers.

Consistent with its strategic priority to strengthen supervision of EU financial markets, ESMA continued to reinforce and streamline its framework to identify supervisory risks, not just within ESMA but also among national supervisors. In 2023, ESMA continued to promote outcome-based supervision across Europe and identify key outcomes to achieve through the multiannual Union Strategic Supervisory Priorities (USSPs). A new USSP on cybersecurity was added in addition to ESG reporting.

As the variety of entities under ESMA's direct supervision increased in recent years, ESMA decided to further align the processes and principles for ESMA's supervision across different areas. ESMA has for instance begun identifying where common guidance outlining expectations concerning requirements which are common for all or most of the supervised entities could make sense (e.g. governance requirements). Building on the principles of being risk based, outcome focused and data driven, ESMA also enhanced risk identification and monitoring through tools like risk dashboards and targeted assessments. Supporting this data-driven

approach, ESMA invested in improving its big data capabilities for efficient storage and analysis.

In 2023, ESMA's supervisory responsibilities also continued to evolve. In the area of benchmark supervision, ESMA recognised in 2023 a benchmark administrator located in the United Kingdom and in the area of central counterparty (CCP) supervision, ESMA extended recognition to three additional third-country (TC) CCPs following the conclusion of cooperation agreements with supervisors in Colombia, Indonesia and Israel.

An important part of ESMA's toolbox as a supervisor is the use of enforcement actions against companies under its supervision where infringements are found. In the past 5 years, ESMA has taken enforcement action against 4 TRs and 10 credit-rating agencies (CRAs) and in 2023, ESMA imposed a EUR 1.1 million fine on a large CRA for failure to disclose its ratings in a timely manner. In 2023, ESMA also continued to promote a common enforcement culture among ESMA and national supervisors through the exchange of best practices among NCAs in the enforcement field.

Beyond traditional markets and financial stability risks, ESMA has stepped up its risk monitoring activities with a particular focus on retail investors in the area of crypto-assets, artificial intelligence and risks stemming from potential greenwashing practices.

As ESMA grows and evolves, it is important for the organisation to retain a strong culture internally and stay rooted in a clear set of values. In 2023, for example, ESMA confirmed its commitment to sustainability. We improved our Environmental Management System (EMS) to maintain our EMAS certification and continued our efforts to reduce the number of missions. ESMA also developed a strategy for diversity, equity and inclusion. For a European organisation like ESMA, a diverse workforce is essential to understand and serve the public we represent and be an inclusive and attractive employer.

As a symbol of ESMA's evolution, we unveiled in January 2023 a new logo and visual identity, with a design embracing the ESMA Strategy for 2023–2028

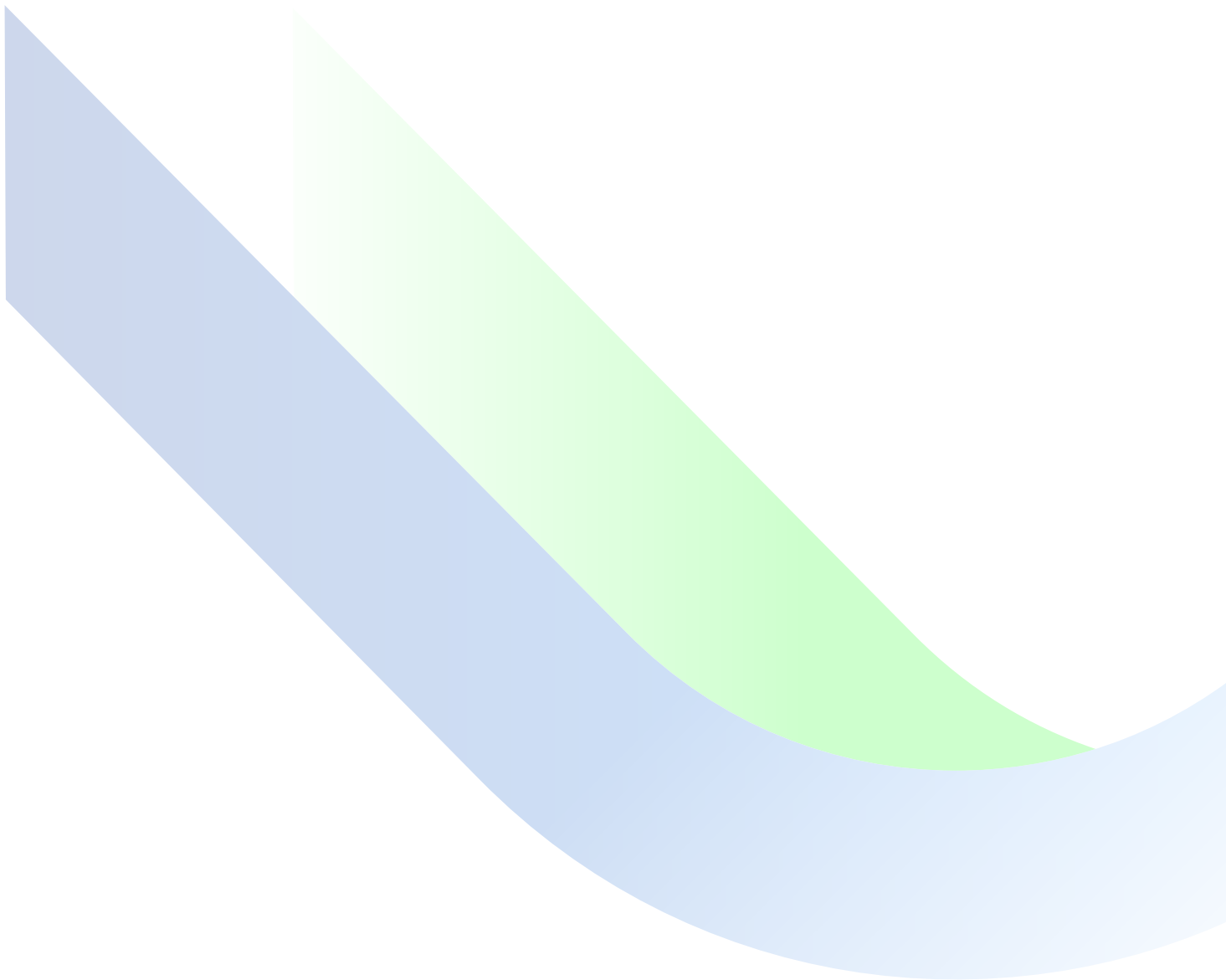
and its key twin drivers of sustainability and technological and data innovation, and a new website with a modernised design and improved functionalities.

Looking back at all these achievements, I would like to warmly thank the ESMA staff for their commitment

and enthusiasm in delivering on ESMA's mission. I would also like to express my gratitude to ESMA's Board of Supervisors and the Management Board members for their continuous support.

Natasha Cazenave

Executive Director





1. Executive summary

1.1. ESMA's mission and 2023 objectives and activities

ESMA is the EU's financial markets regulator and supervisor.

ESMA's mission is to enhance investor protection, promote orderly financial markets and safeguard financial stability.

- **Investor protection.** To better serve financial consumers' needs and to reinforce their ability to make informed choices.
- **Orderly markets.** To foster the integrity, transparency, efficiency and functioning of financial markets and market infrastructures.
- **Financial stability.** To strengthen the financial system to make it capable of withstanding shocks and the unravelling of financial imbalances.

ESMA achieves its mission in the European System of Financial Supervision (ESFS) through active cooperation with national and other EU authorities. While ESMA has a unique position within the ESFS – focusing on regulating and supervising securities and financial markets at the EU level – it works closely together with NCAs to ensure the most effective regulation and supervision of EU financial markets as a whole. Considering the increasing integration between different financial sectors, ESMA will enhance its work with other EU authorities and institutions, in particular regarding the banking and insurance sectors, with EBA and EIOPA, including through the JC of the ESAs.

ESMA also acts as the voice of the European financial markets' supervisory community through its active participation in various international fora, which include IOSCO and the FSB.

In 2023, ESMA focused on three strategic priorities and two thematic drivers, as derived from its Strategy ⁽¹⁾.

- **Fostering effective markets and financial stability.** Contributing to the development of an effective integrated EU single market in financial services by providing advice, technical expertise and regulatory provisions, and working on

technical standards and guidelines mandated by legislation relating to sustainable finance, digital finance and the capital markets union.

- **Strengthening supervision of EU financial markets.** Ensuring a coherent approach to supervision, aiming to develop an EU wide common supervisory culture, and contributing to effective prioritisation. Strengthening supervisory convergence, including by facilitating the exchange of best supervisory practices and sharing supervisory knowledge and experience.
- **Enhancing protection of retail investors.** Prioritising investor protection and focusing on retail investors, by monitoring risks from new products/services (e.g., crypto assets) and high-demand ones (e.g., ESG). Implementing further regulatory changes and supervisory convergence work in key investor protection areas (in the context of the new retail investment strategy), to ensure that investment products and services are provided with the best interest of clients in mind.
- **Enabling sustainable finance.** Contributing to the ESG transition by supporting the effectiveness and integrity of ESG markets, making the regulatory framework workable and promoting high-quality sustainability disclosures. Implementing the expected new supervisory mandates relating to sustainable finance.
- **Facilitating technological innovation and effective use of data.** Ensuring a robust EU approach to technological innovation by leveraging on new technologies to improve supervisory and analytical capabilities. Using data to support evidence-based decisions across all their activities; and minimising potential risks arising from the use of new technologies in financial markets, by setting up a sound EU regulatory and supervisory framework.

1.2. Governance and organisation

Two decision-making bodies govern ESMA: the Board of Supervisors (the Board) and the Management Board.

¹ <https://www.esma.europa.eu/document/esma-strategy-2023-2028>.

The Chair represents the authority. The Chair prepares the work of the Board of Supervisors and chairs the Board of Supervisors and Management Board meetings. A vice-chair is appointed among the members of the Board. Vojtěch Belling, Executive Director of the Financial Market Regulation and International Cooperation Department of the Czech National Bank, has been appointed as Vice-Chair on 15 November 2022.

The Executive Director is responsible for the day-to-day operations of ESMA, including dealing with staff matters, developing and implementing the annual work programme (AWP), developing the draft budget and preparing the work of the Management Board.

1.2.1. Board of Supervisors

The Board is the ultimate decision-making body and guides the work of ESMA. In addition to ESMA's Chair, the Board is composed of the heads of the NCAs in the EU and the European Economic Area (EEA) which are responsible for securities regulation and supervision. A list of the Board of Supervisors' current members and links to summaries of its 2023 meetings can be found in Annex VI and on ESMA's website ⁽²⁾.

1.2.2. Management Board

In addition to the Chair, the Management Board is composed of six members selected from the Board of Supervisors. The Executive Director and a representative of the Commission attend as non-voting members (except on budget matters, where the Commission representative has a vote), and the Vice-Chair attends as an observer.

The main role of the Management Board is to ensure that ESMA carries out its mission and performs the tasks assigned to it in accordance with the authority's founding regulation (known as the ESMA regulation). It focuses, in particular, on the management and supervisory activities of the authority, such as the development and implementation of its multiannual work programme, along with budget and staff resource matters. Furthermore, the Management

Board plays a significant role in the oversight of ESMA's supervisory convergence activities, which refers to the process of aligning supervisory practices and standards across Member States to ensure consistent and effective supervision of financial markets.

A list of the Management Board's current members and summaries of its 2023 meetings are available on ESMA's website ⁽³⁾.

Much of ESMA's work is supported by standing committees (SC), working groups (WG) and task forces, which draw together senior experts from NCAs. Each SC is normally chaired by senior representatives of NCAs or by senior ESMA staff and supported by ESMA staff who act as rapporteurs. Most of the SC also have consultative WG made up of external stakeholder representatives (see Annex VI).

1.2.3. Securities and Markets Stakeholder Group

The SMSG was established under the ESMA regulation to facilitate consultation with stakeholders in areas relevant to ESMA's tasks. The members represent financial market participants and their employees, consumers and other users of financial services, academics and small and medium-sized enterprises. ESMA seeks input from stakeholders by consulting the SMSG on its draft technical standards and guidelines to ensure that they are informed by diverse perspectives.

Professor Veerle Colaert is the Chair of the SMSG, supported by Vice-Chairs Christiane Hölz and Rainer Riess. The full composition of the SMSG is detailed on ESMA's website ⁽⁴⁾. The SMSG held seven meetings in 2023, two of which were held with the Board of Supervisors. A full list ⁽⁵⁾ of the advice produced by the SMSG in 2023 is provided in Annex VII to this report and on ESMA's website ⁽⁶⁾.

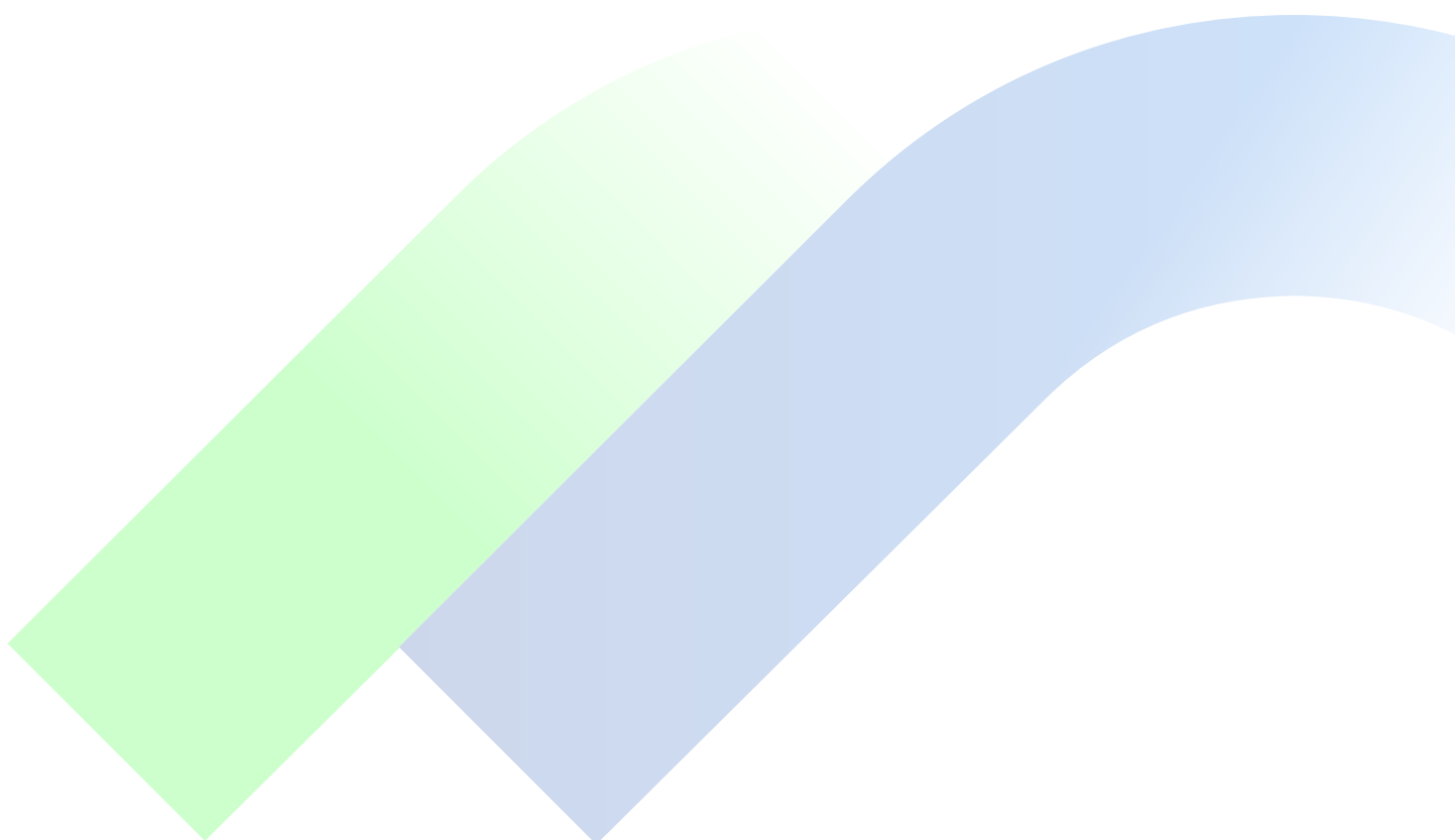
² <https://www.esma.europa.eu/about-esma/governance-structure/board-of-supervisors>.

³ <https://www.esma.europa.eu/about-esma/governance-structure/management-board>.

⁴ <https://www.esma.europa.eu/about-esma/stakeholder-engagement/smsg#members>.

⁵ https://www.esma.europa.eu/databases-library/esma-library?f%5B0%5D=basic_%3A364&f%5B3%5D=basic_section%3A9&f%5B4%5D=basic_date%3A%28min%3A1640995200%2Cmax%3A1672444800%29&search_api_fulltext=&search_api_fulltext_1=&items_per_page=20&order=created&sort=asc.

⁶ <https://www.esma.europa.eu/about-esma/stakeholder-engagement/smsg>.





2. ESMA's achievements

2.1. ESMA's key deliverables and successes in 2023

ESMA's 2023 key achievements, detailed in this report, reflect ESMA's key strategic priorities and are aligned with the EU priorities. ESMA actively monitored risks and resilience of financial markets, contributed to completing the single rulebook and supported supervisory convergence, improved ESG disclosures and tackled greenwashing for sustainable finance, monitored developments in the crypto space and prepared for the implementation of MiCA and DORA, and prioritized investor protection by taking measures aimed at safeguarding retail investors and enhancing cost transparency.

The following topics have been chosen as a sample of the key achievements of ESMA in 2023. These achievements highlight ESMA's commitment to promoting market integrity, investor protection and financial stability in the EU.

2.1.1. Implementation of MiCA

Recognising the importance of preparing for the implementation of MiCA, a statement in October encouraged market participants and NCAs to plan for a smooth transition. This statement provided guidance on the timeline for MiCA's entry into force and outlined the steps that stakeholders should take to ensure compliance with the new rules until the end of the MiCA transitional period. In parallel, ESMA published a letter addressed to EU finance ministers, encouraging them to shorten the transitional period during which crypto firms may continue to offer their services to EU customers using pre-MiCA licenses under national applicable laws. Both publications encapsulate ESMA's commitment to ensuring that Member States apply the single rulebook for MiCA in a uniform and consistent way that encourages robust supervisory outcomes.

Two consultation papers sought feedback on the detailed rules for crypto assets under MiCA. These consultations provided an opportunity for market participants and other stakeholders to contribute to the development of the regulatory framework. The consultation focused on key aspects of the regulation, including the authorisation requirements for crypto-asset service providers and proposed rules covering investor protection measures. ESMA plans to publish

a third consultation package and a final report on the basis of feedback received in 2024. In November, ESMA and the EBA also jointly consulted on two sets of guidelines under MiCA, which would provide practical guidance on the suitability assessment of members of the management body, and suitability of shareholders and members with qualifying holdings of issuers of asset referenced tokens and of crypto-asset service providers.

In addition, ESMA contributed to the FSB and IOSCO work on crypto assets and decentralised finance which culminated in the publication of recommendations for the regulation and supervision of those activities.

2.1.2. Peer reviews

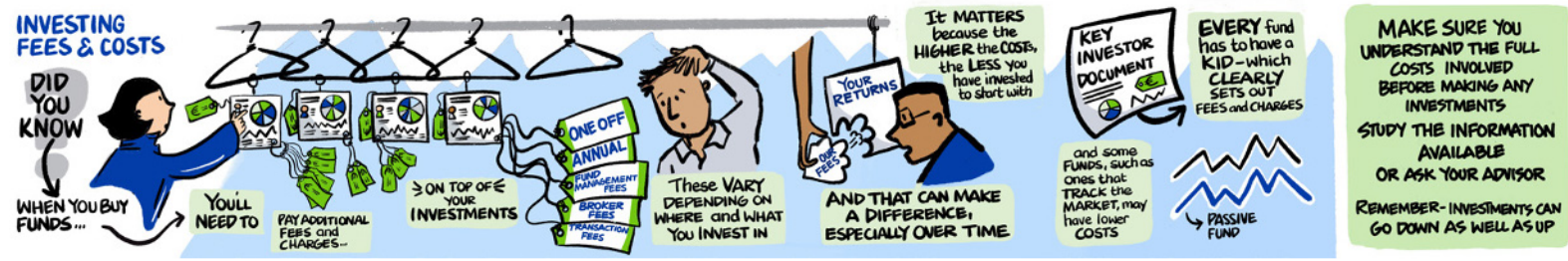
In 2023, ESMA concluded an important peer review on the supervision of CSDs, in addition to the mandatory annual peer review on CCP supervision. Both peer reviews support the enhancement of supervisory convergence in key areas of securities regulation.

Annual peer review of EU CCP supervision

In December, ESMA published the 2022 CCP peer review, assessing the effectiveness of NCAs in supervising CCPs' due diligence on their clearing members. The NCAs generally met expectations, though improvement opportunities exist in certain areas. While CCPs maintain robust due diligence processes, areas for enhancement include monitoring clearing members' operational capacity and their risk management practices. ESMA has issued recommendations to NCAs to address these shortcomings.

Peer review on the supervision of CSDs providing cross-border services or participating in interoperable links

In February, ESMA published its *Peer Review Report* on the national supervision of CSDs providing cross-border services or participating in interoperable links. The peer review assessed the effectiveness of the supervision of CSDs by six NCAs. The assessment highlighted a generally sound level of supervision across the examined NCAs, but also identified areas for improvement, such as the need for more comprehensive risk assessments and enhanced



cooperation among NCAs. ESMA recommended ongoing monitoring and exchange of information among NCAs to maintain a strong and consistent level of supervision of CSDs across the EU. The peer review also identified a number of specific areas where NCAs could take further action, such as conducting more frequent onsite inspections of CSDs, taking a more proactive approach to identifying and addressing emerging risks and improving the communication of supervisory findings to CSDs and stakeholders.

ESMA's work on the peer review was an important step in strengthening the consistency and effectiveness of CSD supervision across the EU.

2.1.3. Costs and performance of retail investment products

In December, ESMA published its sixth annual report on the costs and performance of retail investment products in the EU. The report outlined that the average cost of retail investment products has declined in recent years, but there is still significant variation across different types of products and across Member States. Overall, the performance of retail investment products has been affected by factors such as the energy crisis and rising interest rates.

Key points:

- The average cost of retail equity UCITS has declined from 1.5 % annual ongoing expenses for a 1-year investment in 2016 to 1.4 % in 2022.
- There is still significant variation in costs across different types of products. For example, the average ongoing cost of UCITS funds ranges between 0.9 % for bond funds and 1.5 % for mixed funds per annum for a 1-year investment horizon, while the average cost of real estate alternative investment funds (AIF) is 2.6 %.
- There is significant heterogeneity in costs across Member States. For example, the difference of costs between the most expensive and the cheapest jurisdiction is 1.6 percentage points in the case of UCITS equity funds. The drivers behind these dissimilarities importantly include differences between the Member States in distribution channels and costs.

ESMA recommended that investors carefully evaluate the costs associated with retail investment products before committing their money. Additionally, ESMA stressed the importance of diversifying investments across different types of products to manage risk.

2.1.4. Data strategy for 2023–2028

ESMA launched in 2023 a new Data Strategy that sets a path for the organisation to harness technology and leverage data to improve market supervision and investor protection in the coming 5 years. The strategy reflects the increasing importance of data in the financial sector and the need to adapt to the rapidly evolving digital landscape. ESMA aims to facilitate the use of data and new data-related technologies at both the EU and national levels, reduce reporting burden for regulated entities and enhance further its data-driven approach to make better use of data to identify risks, assess market trends and conduct effective supervision. The strategy outlines six key objectives: become an enhanced EU data hub,





ensure access to data of public interest, promote data-driven supervision, increase data collaboration, produce efficient data policy output and eventually facilitate systematic data use. The Data Strategy envisages a number of specific initiatives that will allow progress towards achieving the objectives.

2.1.5. Greenwashing progress report

In June, ESMA published a progress report as the first part of its response to the Commission's request for input on greenwashing risks and supervision ⁽⁷⁾. The report included a common ESA high-level understanding of greenwashing, a common denominator across their respective remits. Findings showed that greenwashing risk is material across the key segments of the sustainable investment value chain and is the result of both conduct issues and structural causes, such as the need to build up capacity, delays in implementing the necessary ESG governance, data availability issues, limited formal enforcement activities and a fast-moving regulatory framework. The report contained a mapping of the highest areas of greenwashing risks across the value chain and some preliminary remediation actions to mitigate these. ESMA will publish its final report in June 2024.

2.2. Strategic priorities and thematic drivers

2.2.1. Effective markets and financial stability

Objectives for 2023

Identify and assess financial market risks, report on these risks to the relevant institutions and inform the public on a semi-annual basis. Share analysis and coordination of activities relating to financial stability in EU and international bodies.

Analyse key risks and vulnerabilities across the ESMA remit in depth to inform regulatory and supervisory activities.

Trends, risks and vulnerabilities

ESMA monitors risks in its remit, and publishes *Trends, Risks and Vulnerabilities* (TRV) reports and *Risk Dashboards* twice a year. They contribute to promoting financial stability and enhancing consumer protection. They regularly investigate cross-border and cross-sector issues in financial markets, at both the wholesale and retail levels.

In February, ESMA's first TRV report identified several key challenges which were putting pressure on economic growth and asset valuations. The report was published at a time of market uncertainty and increased downside risks due to the economic environment of durably higher inflation and interest rates. In August, the second TRV report highlighted the heightened sensitivity of financial markets to potential deteriorations in economic fundamentals or risks within the financial sector. The report emphasised the importance of maintaining effective risk management practices and ensuring sufficient liquidity in the financial system to mitigate potential disruptions.

ESMA emphasised the need for investors to exercise caution and conduct thorough due diligence when making investment decisions. In addition to the broader market risks, ESMA also identified specific challenges for certain asset classes and market

⁷ Similar requests for input were sent to the three ESAs in May 2022 by the Commission.

segments. In the fixed income market, ESMA warned of heightened credit risk and potential defaults, particularly among highly indebted sectors. For sustainable finance, the report highlighted the growing importance of ESG factors and the potential for market volatility driven by sustainable investing trends.

To support its single rulebook, convergence and supervisory tasks, ESMA undertakes in-depth research into a wide range of contemporary market issues that are published as stand-alone TRV Risk Analysis articles or ESMA Working Papers. In 2023, ESMA published 12 such topical TRV articles and two working papers. A full list of these and earlier analyses can be found on the dedicated Risk Analysis webpage⁽⁸⁾.

Energy markets

In 2023, ESMA continued to closely monitor the European natural gas market, particularly in the wake of the unprecedented price surge experienced in August 2022. ESMA conducted several studies and assessments to evaluate the functioning of the market and identify potential risks to financial stability (see section 2.4.5 under Commodity Derivatives). ESMA's monitoring, assessments and recommendations aimed to safeguard financial stability and promote market efficiency, transparency and resilience in the face of potential price disruptions.

Moreover, ESMA published two TRV articles in May and October, respectively on the EU natural gas derivatives markets and on the August 2022 surge in the price of natural gas futures. In the first article, ESMA identified a high degree of concentration among the major players in the natural gas derivatives market. This concentration could potentially amplify price swings and increase the risk of market manipulation. ESMA urged market participants to adopt measures to enhance transparency and reduce their reliance on specific counterparties. ESMA's analysis of the August 2022 price surge found that the natural gas futures markets functioned appropriately. The authority observed that the markets provided liquidity and price discovery, and they responded to market signals effectively. This assessment suggested that the underlying natural gas market

structures and governance were sufficiently resilient to withstand the price volatility experienced.

Evolution of EEA share market structure since MiFID II

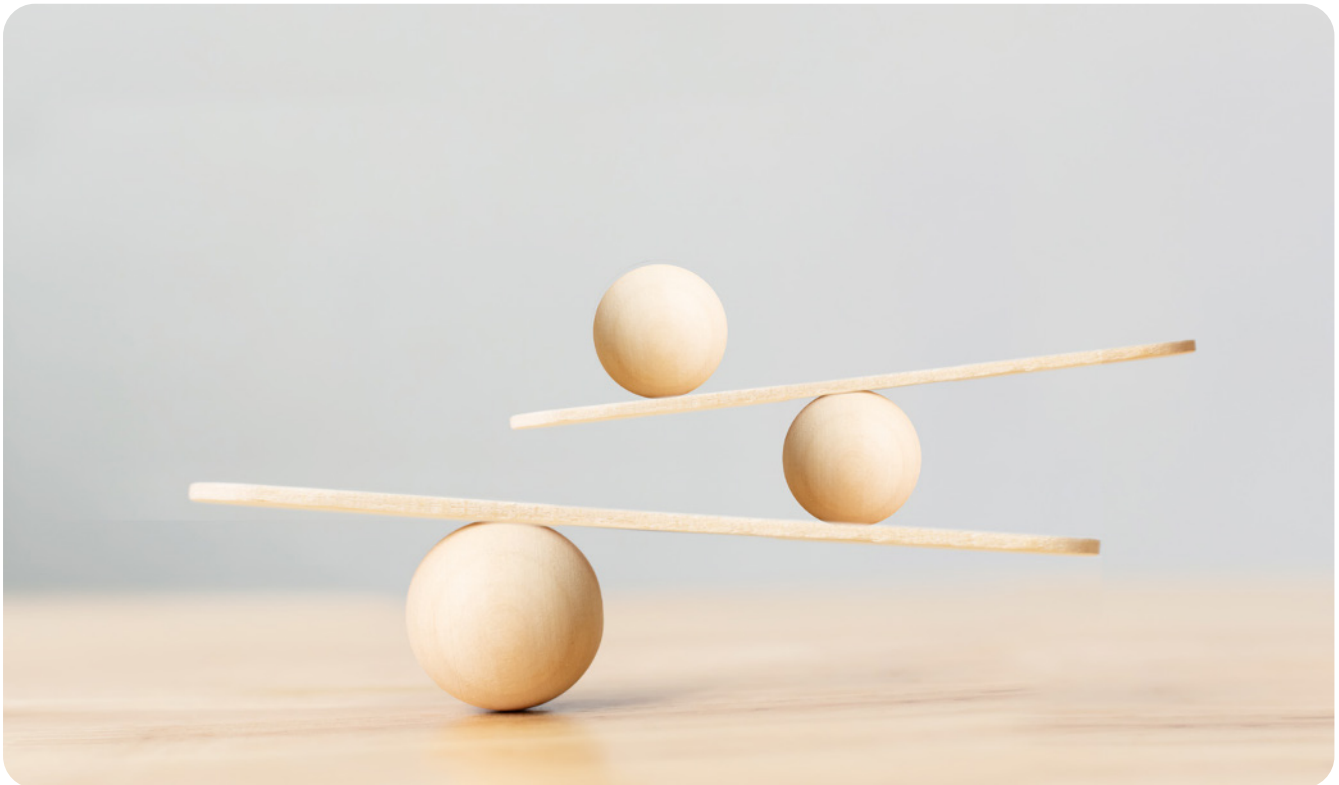
In October, ESMA published a TRV article on the evolution of EEA share market structure since the start of application of the revised markets in financial instruments directive (MiFID II)/MiFIR package in January 2018. The study provided a comprehensive overview of the market's current state and its evolution in recent years. The report highlighted the increasing importance of electronic trading platforms, the growth of passive investing, and the increasing prevalence of algorithmic trading. The report also discussed the challenges that these trends pose to the market, such as fragmentation and liquidity risk, and concluded with a number of recommendations for regulators and market participants to address these challenges and ensure the continued healthy functioning of the EU and EEA share market.

Opinions on trading venue perimeter and outages

ESMA's commitment to enhancing the transparency and resilience of the European financial market continued in 2023 with the publication of two key opinions, one on the trading venue perimeter and the other on market outages.

The opinion on the trading venue perimeter clarified when systems and facilities should be considered multilateral and therefore require authorisation as trading venues under MiFID II. This guidance aimed to promote consistency of supervisory practices and achieve convergent approaches across the EU. The opinion on market outages set out expectations for NCAs to ensure that trading venues have appropriate communication protocols in place, prevent outages from affecting closing auctions and the ability to provide an official closing price. This opinion follows ESMA's review report on algorithmic trading in 2021, which highlighted the need for clear communication procedures in case of disruptions. ESMA continued to closely follow this topic by discussing with NCAs specific cases and supervisory practices on the trading venue perimeter during 2023.

⁸ <https://www.esma.europa.eu/esmas-activities/risk-analysis/topical-analysis>.



Supervisory briefing on the calibration of circuit breakers

Also in October, ESMA published a supervisory briefing on circuit breakers. The briefing provided comprehensive supervisory expectations regarding the calibration of circuit breakers implemented by trading venues. It outlined several principles that NCAs should enforce to ensure effective circuit breaker implementation and aimed to strengthen convergence among NCAs on circuit breaker calibration methodology, promoting compliance, common understanding and enforcement practices. The guidance followed up on the letter ESMA sent in September 2022 to the Commission about measures to be implemented in energy markets. ESMA considered the briefing was necessary in light of recent events, such as Russia's military aggression against Ukraine and the May 2022 flash crash which led to sometimes extreme volatility in commodity derivatives and equity markets.

ESMA market report on prospectuses

In December, ESMA released a significant market report on EU prospectuses, focusing on EEA prospectus approvals and the use of streamlined regimes for SMEs (EU growth prospectus), secondary issuances (simplified disclosure regime), frequent issuers (universal registration document), and the

newly introduced EU recovery prospectus (agreed under the capital markets recovery package to address the economic impact of the COVID-19 pandemic). In 2022, EEA countries approved 2 425 prospectuses, 9 % less than 2021. The general downward trend seen since 2007 (8 875 prospectuses) continues, and the slight increase of approvals in 2021 appears to have been short-lived. Non-financial corporates were the most common type of issuer, accounting for 58 % of all prospectuses.

Finally, ESMA engaged in the FSB and IOSCO work regarding financial stability and systemic risks associated with non-bank financial intermediation activities, such as money market funds (MMFs) and open-ended funds.

2.2.2. Effective supervision

Objectives for 2023

Create a sound and effective supervisory and enforcement culture.

Promote common understanding of the risks and problems facing the EU capital markets and their severity.

Promote the identification of clear supervisory objectives and outcomes.

Establish concrete supervisory actions on key priorities through the selection of the most effective tool.

Enhance the supervisory toolkit – including through the use of advanced data analytics and forensic techniques – to promote the use of the most effective tools based on the desired outcome.

Create networks to promote continuous dialogue and exchange among NCAs on supervisory methods and enforcement techniques.

Stronger common EU supervisory culture

ESMA has put a lot of effort into developing a common effective supervisory culture across the EU. ESMA continued working on common supervisory approaches on sector-specific issues (through supervisory briefings) and has expanded the role of the Senior Supervisors Forum (SSF). This group, which brings together NCAs' Heads of Supervision across different sectors, as well as Heads of Enforcement, plays a key role in developing common approaches to address key supervisory risks. Under its expanded mandate, the SSF will work on establishing common principles for foundation elements of supervision (e.g., risk-based supervision), applying both to NCAs and ESMA's direct supervision.

In October, ESMA published the [joint criteria on the independence of supervisory authorities](#) developed with EBA and EIOPA. They are organised around four key principles: (i) operational independence, (ii) personal independence, (iii) financial independence, and (iv) accountability and transparency. The criteria can be used by national supervisory authorities as a tool to enhance their independence and, at a later stage, by the ESAs to assess this topic across the EU. Supervisory independence is key to ensure that fair, effective and transparent decisions are taken by appropriately resourced authorities. This should ultimately ensure adequate protection for consumers of financial services and confidence in the financial system.

Enhanced risk prioritisation and outcome-based supervision

ESMA continued to reinforce and streamline its framework to identify supervisory risks across the EU. In 2023, ESMA identified the supervisory priorities for its direct supervision and supervisory convergence. We discussed with the NCAs the evolution of key supervisory risks for securities markets, including in relation to developing trends such as the growing use of artificial intelligence (AI).

ESMA also continued working on promoting outcome-based supervision across NCAs, notably



identifying key outcomes to achieve through the multiannual Union Strategic Supervisory Priorities (USSPs) (see further below). ESMA also took stock on progress against such outcomes, setting out expectations for follow-up work in future years.

ESMA supervision

ESMA continued to fulfil its role as an effective gatekeeper, performing a thorough assessment of the received applications to ensure that authorisations are granted if the applicants are able to fully demonstrate compliance and meet supervisory expectations. In 2023, ESMA granted recognition to a third country benchmark administrator located in the United Kingdom following an extensive engagement. ESMA has also engaged with several other entities interested in potential registration within the EU across various ESMA mandates. In 2023, ESMA, being responsible for the direct supervision of third-country CCPs, exercised its authority by recognizing three new entities and withdrawing recognition from four.

Expanding its toolkit, in 2023 ESMA observed board meetings across mandates, gaining insights into governance dynamics. Additionally, targeted industry briefings and roundtables were held to foster collaboration among key functions, like internal audit. Leveraging data access, ESMA enhanced risk identification and monitoring through tools like risk dashboards and targeted assessments. For example, these tools provided regular risk updates to the CCP Supervisory Committee using dashboards with relevant indicators. Supporting this data-driven approach, ESMA invested in improving its big data capabilities for efficient storage and analysis.

Recognising the need for clearer application of proportionality and consistency across its mandates, ESMA initiated the development of common policy documents in 2023. These documents will outline expectations for firm governance, internal controls and reporting procedures.

Finally, ESMA started engaging with its supervised entities in preparation for the entry into application of DORA. ESMA shared its expectations with respect to the planning steps these entities should take to ensure that they meet the requirements in DORA as of January 2025. ESMA has also started increasing its monitoring activities over the implementation of the new requirements by the entities under its remit.

Common enforcement culture

To best strengthen effective supervision and enforcement – as one of its key strategic priorities for the 2023–2028 period – ESMA has turned its network of national enforcers into a permanent WG and has also set up a forum for high-level enforcers to further boost the establishment of a common enforcement culture and provide steering on national enforcement strategies. Such a culture shall be characterised by consistent outcomes for similar infringements across the EU, thereby directly contributing to effective protection of European investors.

Through these groups, ESMA continued to facilitate closer dialogue and the exchange of best practices among NCAs in the enforcement field. This work included ongoing convergence initiatives on the ESMA sanctions register and the finalisation of important projects, in areas such as the calculation of financial penalties and on the use of informal tools in an enforcement context.

Alongside this, ESMA continued to engage in thematic discussions of real enforcement cases, which covered a wide variety of wrongdoing, and often gave rise to highly engaged and detailed exchanges among NCAs. This remains an important component of ESMA's convergence work, as it seeks to promote the use of similar approaches for similar risks, for instance in the calculation of fines or in referral decisions.

More detailed information on the sanctioning activities carried out by NCAs in 2023 will be presented in a dedicated report to be published on ESMA's website in the fourth quarter of 2024.

ESMA enforcement

In 2023, ESMA adopted a sanction decision against a CRA and completed an independent investigation against another CRA, which was subsequently referred to the ESMA Board of Supervisors. In the past 5 years, ESMA has imposed fines on 4 distinct TRs and 4 distinct CRAs.

Peer review follow-up reports

In 2023, ESMA published two follow-up reports to peer reviews, one in June on the guidelines on ETFs and other issues and another in July on national supervision of the compliance function under MiFID I. These reports assessed the evolution of supervisory

practices following the findings and recommendations from peer reviews conducted respectively in 2018 and 2017.

The follow-up report on the implementation and application of the guidelines on ETFs and other UCITS found that NCAs have strengthened their supervisory practices, enhanced internal and external guidance, and performed supervisory work in the area of ETFs and other UCITS since 2018. However, the report notes that there are still concerns in relation to the level of costs for some UCITS using efficient portfolio management techniques, and that NCAs are expected to continue monitoring the effective application of the guidelines, taking supervisory action when needed.

The follow-up to the peer review on certain aspects of the compliance function under MiFID I showed that NCAs made progress by strengthening their supervisory frameworks, undertaking investigations and thematic reviews and making use of their enforcement tools to deter poor behaviour by firms. The report highlights the importance the compliance function plays in promoting sound and compliant behaviour by firms and staff. Therefore, all NCAs should continue monitoring the effective application of the guidelines, taking appropriate action to address any weaknesses.

Voluntary supervisory colleges

ESMA continued to increasingly focus on coordinated effective supervision on the ground.

As part of this, in 2023 ESMA coordinated voluntary supervisory colleges for three complex multi-jurisdictional firms that offer financial services in the EU, covering both investment services and investment management activities. The voluntary supervisory colleges are a practical, dynamic and flexible tool to enhance the supervision of complex firms that operate in the EU by exchanging information between participating home NCAs, reducing supervisory fragmentation, promoting best practices and undertaking joint supervisory work.

Finally, ESMA started a review of its supervisory convergence toolkit to increase effectiveness and diversity of the activities carried out.

2.2.3. Retail investor protection

Objectives for 2023

Contribute to the development of a single rulebook in the area of investment services, crowdfunding services and, following the adoption of MiCA, crypto assets.

Identify opportunities and risks relating to financial innovation and systematically monitor retail investor trends and ESG market developments.



Common supervisory actions

In July, ESMA presented the results of the 2022 CSA and Mystery shopping exercise on MiFID II requirements on information on costs and charges. The CSA has shown an adequate level of compliance with most elements of the ex-post costs and charges requirements under MiFID II, although with varying degrees across Member States. The CSA exercise revealed certain shortcomings in information provided to retail clients and suggests areas for improvement regarding both disclosure format and content. ESMA's first mystery shopping exercise on the ex-ante cost and charges information showed that, in most cases, mystery shoppers received information about costs and charges before the investment service was provided, however the quality and the timing of the information provided differed between firms.

In response to these findings, ESMA called on investment firms to improve their compliance with MiFID II requirements. ESMA also urged firms to provide information on costs and charges in a clear, concise, and consistent manner. Additionally, ESMA invited the NCAs to take a more proactive role in monitoring compliance with MiFID II requirements. ESMA believes that this will help to ensure that all firms are meeting their obligations and that investors are receiving the information they need to make informed investment decisions.

In 2023, ESMA launched a CSA with NCAs on the application of MiFID II disclosure rules with regard to marketing communications across the EU. The CSA focused on ensuring that all firms marketing financial products in the EU provide accurate and consistent information to consumers. This initiative will aim to identify any weaknesses in firms' disclosures and ensure that consumers have access to the necessary information to make informed investment decisions.

Promoting consistent application of MiFID II and MiFIR

In 2023, ESMA played a crucial role in safeguarding investor protection and market integrity through initiatives enhancing MiFID II effectiveness, retail investor protection, and addressing financial market risks. ESMA updated its guidance on product governance to provide clarity on obligations and regulatory requirements.

ESMA guidelines on MiFID II suitability requirements, focusing on the integration of clients' sustainability preferences within the suitability assessment, entered into application in 2023. A Call for Evidence in June gathered industry feedback on sustainability in suitability and product governance.

As a result of shortcomings emerged from the peer review on the supervision of cross-border provision of investment services, ESMA reviewed the technical standards on passporting under MiFID; the final report, adopted in July, aimed at promoting further convergence and an increased focus on the supervision of cross-border activities. An ESMA statement in May highlighted risks arising from investment firms offering unregulated products and/or services. Another July Statement warned of risks in securities lending to retail investors, urging caution and adequate risk management. ESMA's annual report on sanctions and measures imposed under MiFID II, revealed 281 sanctions in 25 EU/EEA Member States in 2022 of an aggregated value of more than EUR 21 million.

ESMA updated Q & As on MiFID II and MiFIR investor protection. Additional Q & As covered crowdfunding, aiding compliance and promoting a functional EU crowdfunding market.

In 2023, ESMA published a discussion paper on digitalisation of retail investment services, analysing the evolving landscape of retail investments, examining risks and benefits of the recent surge in the adoption of digital tools and social media by firms and investors following the Covid-19 pandemic, and exploring how technology impacts retail investor behaviour and decision-making.

Product intervention

ESMA also plays a prominent role in the development and implementation of product intervention measures. In 2023 ESMA issued an opinion on a proposed product intervention measure adopted by the Spanish National Securities Market Commission (CNMV) to address concerns about the sale of complex financial products to retail investors. ESMA supported the CNMV's proposal, which included measures to restrict the marketing of CFDs and the introduction of initial margin and margin close out requirements to products where the investor may lose more than initially invested.

Cross-border investment activity

In 2023, ESMA conducted a comprehensive analysis of cross-border investment activity by EU/EEA firms. The analysis revealed that around 380 firms provided cross-border investment services to retail clients in 2022. The analysis also found that more than 75 % of EU/EEA retail clients receiving cross-border investment services were served by firms based in three jurisdictions: Cyprus, Germany and Sweden. The rise in cross-border financial services provides advantages for consumers and firms by promoting competition and expanding market options. However, it necessitates heightened efforts from the NCAs in supervising and cooperating to address challenges associated with these activities.

In July, ESMA published its second report on cross-border distribution of funds on marketing requirements and marketing communications. The report provided an overview of national rules governing fund marketing. This overview serves as a valuable resource for market participants seeking clarity on the regulatory landscape across EU member states. Understanding the diverse regulatory requirements is crucial for fund managers and marketers, facilitating compliance with applicable rules and promoting cross-border fund distribution.

Review of ITS on cooperation between NCAs

ESMA published in March a final report on the review of the ITS on cooperation in supervisory activities under MiFID II. The report found that the ITS is generally fit for purpose, but there are some areas where it could be improved so as to promote further and facilitate cooperation between competent authorities, a need highlighted by the rise of cross-border activities. ESMA proposed a number of amendments to the ITS, which are now being considered by the Commission.

Opinion to the Commission on undue costs of UCITS and AIFs

In May, ESMA published an opinion urging legislative amendments in the UCITS directive and AIFMD concerning undue costs, prompted by divergent market practices revealed in the 2021 CSA on costs and fees. ESMA believes this lack of harmonisation in defining 'due' or 'undue' costs could lead to regulatory arbitrage and unequal investor protection levels

based on fund or manager domicile. The opinion has been taken into consideration in the Commission's legislative proposals on the Retail Investment Strategy (RIS).

Finally, in January ESMA published a market report on the costs and performance of EU retail investment products (see section 2.1.3).

2.2.4. Sustainable finance

Objectives for 2023

Deliver on the priorities set out in the ESMA strategy and the sustainable finance roadmap 2022–2024.

Contribute to facilitating the financing of the EU transition towards a more sustainable economy, while preserving market integrity and financial stability, along with a high level of investor protection.

Promote effective and consistent integration of sustainability-related factors in supervisory, convergence, risk assessment and regulatory activities.

In 2023, ESMA played a key role in advancing sustainability disclosures and combating greenwashing (see section Joint Committee, on 2.5.2). ESMA's progress report on greenwashing (see section 2.1.5) covered the entire sustainable investment value chain, focusing on issuers, investment managers, service providers and benchmark administrators.

Cross-sectoral achievements included progress in building capacity and the establishment of a live sustainable finance knowledge hub by the end of 2023. The hub facilitates tailored training for ESMA and NCAs staff involved in sustainable finance work. ESMA, through the Commission's 2023 technical support instrument, supports NCAs in developing tools to detect potential greenwashing in investment management. The project, initiated in December 2023, is set to continue until December 2025.

ESMA took stock on the first year's implementation of the USSP on ESG disclosures. Notably, ESMA considered the extensive actions undertaken by NCAs – and by ESMA, as highlighted in other sections



of this report – to increase investor understanding, tackle greenwashing, and embed sustainability requirements when firms advise investors. ESMA identified focus areas for NCAs' supervision under this USSP in 2024, including to continue supervising marketing material and potential greenwashing cases, implement relevant briefings and guidelines and increase supervisory checks to ensure that firms integrate ESG factors in their long-term plans.

Issuer disclosure

In 2023, ESMA played an important role in enhancing sustainability disclosures. ESMA's January opinion on the draft ESRS by the European Financial Reporting Advisory Group (EFRAG) found that ESRS Set 1 meets investor protection objectives and does not undermine financial stability. Throughout the year, ESMA actively participated in the development and application of ESRS, acting as an observer at EFRAG's sustainability reporting technical expert group and board.

In March and October, ESMA released extracts from its Database of Enforcement, highlighting enforcer decisions relating to International Financial Reporting Standard (IFRS) requirements on climate and environmental matters. In July, ESMA issued a statement on complying with prospectus regulation disclosure requirements regarding sustainability in equity and non-equity prospectuses. The statement emphasised the significance of non-financial reporting under the non-financial reporting directive and the forthcoming sustainability reporting under the corporate sustainability reporting directive.

As part of its work to promote the adoption of internationally interoperable requirements for sustainability reporting, ESMA actively contributed to IOSCO's assessment of the standard-setting work of

the International Sustainability Standards Board (ISSB), which ultimately led to IOSCO's decision to endorse the IFRS Sustainability Disclosure Standards (issued June 2023) in July 2023. In this context, ESMA also commented on the ISSB's consultations on agenda priorities and internationalisation of SASB standards, highlighting the importance of prioritising the development of implementation support material for sustainability standards and addressing gaps in the ESG spectrum. On the sustainability assurance side, ESMA engaged with the International Auditing and Assurance Standards Board (IAASB), supporting the proposed sustainability assurance standard and calling for improvements in communication with financial auditors and clarity on materiality considerations in relation to sustainability matters.

In October, as part of its European common enforcement priorities, ESMA provided targeted recommendations for improved disclosures on climate and environmental matters. ESMA also published the report 'The Heat is On: Disclosures of Climate-Related Matters in the Financial Statements'. This report aimed to assist and to enhance the ability of issuers to provide more robust disclosures and create more consistency in how climate-related matters are accounted for in the IFRS financial statements.

In December, ESMA published draft guidelines for consistent supervision of sustainability information across the EU, aiming to establish a link between sustainability and financial reporting, inspired by guidelines on financial information enforcement.

Investment management

In December, ESMA updated the market on its progress regarding guidelines for investment funds with ESG or sustainability-related terms in their names. ESMA announced its intention to use new mandates in amendments to the UCITS directive and AIFMD for developing these guidelines. The guidelines are expected to be published after the amending directives entered into force in 2024.

Analysis of ESG market developments and risks: TRV articles

In October, ESMA published an article on the ESG names and claims in the EU fund industry. The article showed a growing trend in the use of ESG-related language in the EU fund names. In 2023, more than

14 % of EU UCITS investment funds had ESG words in their name, compared to less than 3 % in 2013. The article further showed that investors consistently preferred funds using ESG words in their name, highlighting the importance of ensuring that fund names accurately reflect portfolio composition from an ESG perspective.

In October, ESMA also published an article on the European sustainable debt market analysing a potential pricing benefit for ESG bond issuers. The analysis found that companies with prior ESG engagement have experienced lower financing costs in the past, even if this trend does not continue into the present. The analysis did not find a systematic pricing advantage regarding any ESG bond type.

ESMA has also developed a methodology to assess climate risk, a stress testing model that simulates the impact of asset price shocks from adverse climate scenarios. The framework was published in a risk article in December 2023.

To monitor greenwashing, in December ESMA introduced a method to monitor risk by analysing ESG controversies.

In December, an article on dynamic modelling of climate-related shocks in the fund sector underscored efforts to assess and mitigate environmental risks. A second article examined the relevance of ESG controversies for greenwashing monitoring, and whether greenwashing-related controversies had an impact on financial metrics. It highlighted the need for clear policy guidance by regulators and efforts by supervisors to ensure the credibility of sustainability-related claims.

Structured finance products

ESMA played a crucial role in promoting transparency and aligning financial markets with ESG considerations. The year has witnessed significant progress in strengthening sustainability disclosures, particularly in structured finance products and investment funds. ESMA collaborated with the European Central Bank (ECB) to issue in March a joint statement calling for enhanced climate-related disclosures for structured finance products. The statement emphasised the need for harmonised data requirements and standardised reporting formats to facilitate effective risk assessment and informed investment decisions.

2.2.5. Technological innovation

Objectives for 2023

Adapt to digitalisation in financial markets by strengthening the single rulebook and promoting supervisory convergence.

Foster convergence in the regulatory and supervisory treatment of new or innovative financial activities and technological innovation.

ESMA actively contributed to the development and implementation of MiCA throughout 2023, engaging with stakeholders, publishing consultations and offering guidance for a smooth transition to the new regulatory framework (see details in section 2.1.1).

Analysis of innovation developments and risks: TRV articles

ESMA published three TRV Risk Analysis articles, focusing on the risks and implications of technological innovation in EU financial markets. These articles highlighted risks to consumers, new forms of market abuse, and potential vulnerabilities to financial stability.

The first article discussed the risks associated with decentralised finance, emphasising concerns about investor protection due to speculative arrangements and operational vulnerabilities. While the risks to financial stability are currently limited due to decentralised finance's small size, ongoing monitoring is necessary. Additionally, the unique features of decentralised finance pose challenges relating to market manipulation.

The second article introduced a methodology to categorise smart contracts using natural language processing (NLP) and topic modelling on source code. This unsupervised learning approach provides insights into the prevalence of different smart contract categories over time, contributing to a nuanced understanding of decentralised finance and associated risks.

The third article focused on AI in EU securities markets, offering an overview of AI use cases and assessing its adoption. While AI is increasingly used to optimise activities, it has not led to a rapid and disruptive overhaul of business processes. The article



emphasised potential risks, including the concentration of systems and models among a few major players, requiring ongoing attention and monitoring to ensure a thorough understanding and consideration of AI developments and associated risks.

Distributed ledger technology pilot regime

As of March, the distributed ledger technology (DLT) pilot regime provided the legal framework for trading and settling transactions involving crypto assets qualifying as financial instruments under MiFID II. This regulation facilitates the establishment of new market infrastructures, such as DLT multilateral trading facilities, settlement systems and combined trading and settlement systems. New entrants, or established investment firms, market operators or CSDs, may apply for the DLT pilot regime, with ESMA playing a coordination and convergence role and having the authority to issue opinions on national authorisations.

ESMA has already issued Q & As for clarity and, in March, published guidelines for standard forms, formats and templates for applying for permission to operate a DLT market infrastructure.

Digital Operational Resilience Act

DORA officially entered into force on 16 January 2023, and will apply from 17 January 2025. The three ESAs worked jointly on the development of the numerous and complex policy mandates prescribed by DORA,

through the JC Subcommittee on Digital Operational Resilience (JC SC DOR) and organised workshops to engage with the ICT third party service providers (see section 2.5.3).

Cybersecurity as a new USSP

In November, ESMA selected cyber risk and digital resilience as a new USSP (alongside ESG disclosures), to be kicked off in 2024. With this new priority, NCAs and ESMA (in its direct supervision role) will put greater emphasis on reinforcing firms' ICT risk management through close monitoring and supervisory actions, building new supervisory capacity and expertise. The aim is to keep pace with market and technological developments, and closely monitor potential contagion effects of attacks and disruptions across markets and firms.

Supervisory Digital Finance Academy

ESMA, together with EBA, EIOPA and the Commission, are contributing to the activities of the three-year EU Supervisory Digital Finance Academy launched in 2022. The academy aims to strengthen the supervisory capacity of NCAs' staff in dealing with the risks and opportunities arising from the use of advanced technologies in the financial sector. The academy includes a comprehensive training curriculum on digital finance and a series of workshops on practical issues stemming from the regulation and supervision of innovations used by financial entities.

Retail investment services

In December, ESMA published a discussion paper on the digitalisation of retail investment services, emphasising opportunities and potential risks. The paper's feedback covered diverse aspects of digital investment services, encompassing information layering and accessibility, digital marketing communications, influencer usage, social features in investment apps, gamification, nudging techniques and dark patterns.

2.2.6. Effective use of data and ICT technologies

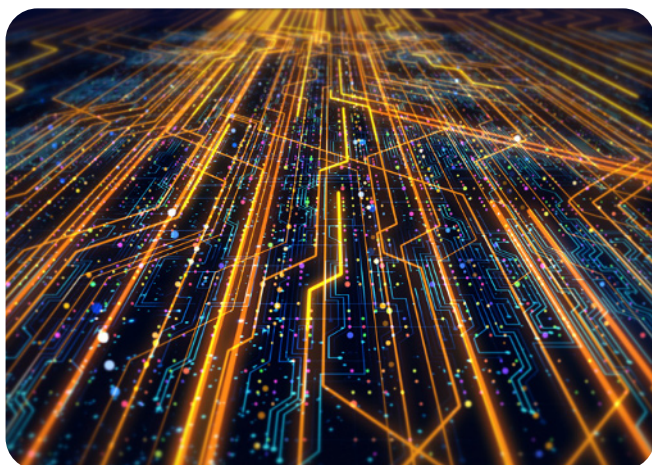
Objectives for 2023

Enhance the access to and quality of data and information by stakeholders, reinforcing ESMA's role as a data hub.

Promote efficiency, transparency and cooperation in data policy, and reduce reporting burden by promoting the use of data standards, new technologies and reporting innovations.

Enable systematic use of data for evidence-based policy development, direct supervision, supervisory convergence and risk assessment.

Following the adoption of its Data Strategy 2023-2028⁹ in May 2023, ESMA has progressed according to its implementation plan and started delivering on the first steps of its roadmap. In 2023, some of these initiatives comprised preparations for the onboarding



of NCAs, EBA and EIOPA on its data platform, the revision of its data governance framework, the establishment of a new annual Data & IT Work Programme, or the migration of suitable datasets to its new data platform, the engagement with stakeholders on the development of joint supervisory tools for crypto-asset services providers under MiCA, the establishment of a forum with the ECB and ESAs to discuss common data and technological initiatives and explore ways to ensure efficient exchange of data.

ESMA has become over the years a reliable data hub for EU securities markets through the development of many centralised systems that provide data to multiple authorities, market participants and the public. Its exchange systems provide authorities with access to supervisory data such as transaction data under MiFIR or trade repositories (TR) data under EMIR or the securities financing transactions regulation (SFTR). Moreover, ESMA publishes a wide range of cross-EU data sets, including reference and transparency data on financial instruments, which is important for market participants and the well-functioning of EU financial markets.

Periodic ESMA publications and calculations under MiFID II/MiFIR

ESMA continued to make significant strides in enhancing market transparency and data quality through data monitoring initiatives in 2023. An important part of ESMA's role is to publish a range of periodical reports and data extracts to support national supervisors and market participants. This includes (i) quarterly liquidity assessments for bonds subject to the pre- and post-trade requirements of MiFID II and MiFIR, (ii) quarterly reports with data for the systematic internaliser quarterly calculations for equity and equity-like instruments, bonds and other non-equity instruments under MiFID II and MiFIR, and (iii) annual transparency calculations for equity, equity-like and non-equity instruments. Amended rules for transparency calculations under MiFIR started applying in June 2023 (see section 2.4.5).

ESMA's quarterly liquidity assessments for bonds provided valuable insights into the market's ability to absorb and process large orders without significant price impact. The 2023 assessments, based on quantitative liquidity criteria, revealed that the

⁹ https://www.esma.europa.eu/sites/default/files/2023-06/ESMA50-157-3404_ESMA_Data_Strategy_2023-2028.pdf

majority of bond market segments exhibit sufficient liquidity. However, specific segments require continued monitoring and attention.

Data quality under EMIR and SFTR

In April, ESMA published the third edition of its data quality report under EMIR and SFTR. The report highlighted the increased use of transaction data by EU financial regulatory authorities in their day-to-day supervision and identifies significant quality improvements following a new approach to data monitoring. In addition, it sets out how ESMA, together with the NCAs, the ECB and the European Systemic Risk Board (ESRB), has incorporated key insights from its data monitoring in several internal workstreams.

FIRDS Transparency System

In December, ESMA published updated instructions on how to download the Financial Instrument Reference Data System (FIRDS) transparency data from ESMA's website. This data includes information on the prices, volumes, and other characteristics of financial instruments traded on EU markets. The data is available for free and can be used by market participants to inform their trading decisions.

Rating data monitoring

In 2023, ESMA revamped its Central Repository of Ratings (CEREP), providing market participants with a comprehensive and up-to-date source of statistical data on the performance of credit ratings.

Transaction data under the DLT pilot regime and MiCA

Following the entry into force of the DLT pilot regime in June 2022, ESMA published two studies in October 2023, on the extraction of transaction data and on the registration of transactions in blockchains/DLTs. Transaction data plays a crucial role in current financial markets as it provides regulators with insights into market movements and trends as well as overall market stability. The studies were also

instrumental to support ESMA's assessment of the data elements that could be relevant for the purposes of supervising on-chain activities under MiCA.

International work on global data standards and response to the Commission targeted consultation

ESMA contributes to the development and successful implementation of international data standards, such as the Legal Entity Identifier (LEI), Unique Transaction Identifier, Unique Product Identifier, International Securities Identification Number and many others. These standards are instrumental for both the regulators and the industry to move away from a regime-specific and silo approach, towards a more holistic approach to data and integrated reporting. In this context, ESMA published a response to the Commission targeted consultation on over-the-counter (OTC) derivatives identifiers under the revised MiFIR.

2.3. Investors and issuers

2.3.1. Investment services

Objectives for 2023

Achieve greater convergence and consistency of NCAs' supervisory approaches and practices in relation to investor protection, taking into account technological developments and the evolution of the framework in relation to sustainable finance.

Contribute to the application of the MiFIR TC regime, if and when relevant.

Supervisory convergence under MiFID II

In 2023, ESMA continued to strengthen its efforts to ensure the consistent and effective application of MiFID II requirements. Guidelines on certain aspects



of the MiFID II remuneration requirements, which were published in 2022, entered into force in 2023. ESMA expects these guidelines to promote greater convergence in the interpretation of, and supervisory approaches to, the MiFID II remuneration requirements as well as the MiFID II conflicts of interest and conduct of business requirements in the area of remuneration by emphasising a number of important issues. By helping to ensure that firms comply with regulatory standards, ESMA anticipates a corresponding strengthening of investor protection.

Promoting consistent application of the Investment Firms Regulation and Directive (IFR/IFD)

ESMA collaborated with EBA to issue Joint Guidelines on common procedures and methodologies for SREP under IFD, which entered into application in 2023. SREP is one of the main tools for supervision, through which competent authorities form a comprehensive view on the business model and risk profile of the supervised entity, as well as its overall viability and sustainability.

The guidelines specified common procedures and methodologies for SREP which are proportionate to the different sizes and business models of investment firms, and the nature, scale and complexity of their activities. In particular, investment firms are classified into four distinct categories, which translate into different frequency, depth and intensity of the assessments, and the engagement of the competent authority.

Section 2.2.3, retail investor protection, outlines further deliverables achieved by ESMA in 2023 to promote investor protection.

2.3.2. Investment management

Objectives for 2023

Contribute to the single rulebook in line with the ongoing and upcoming reviews of AIFMD, European long-term investment funds (ELTIF) and MMF, and through the JC work on regulations on packaged retail and insurance-based investment products (PRIIPs) and the sustainable finance disclosure regulation (SFDR) / taxonomy regulation.

Achieve greater convergence and consistency of NCAs' supervisory approaches and practices in relation to the EU legislation on investment management, with a particular focus on improving investor protection and financial stability.

Money market funds

In February, ESMA issued its first market report on EU MMFs, offering a comprehensive market-level perspective based on regulatory data collected jointly with NCAs. The MMF regulation introduced a reporting obligation for managers of MMFs to inform competent authorities' supervisory activity, allowing ESMA to publish this first overview using regulatory data. The report found that the EU MMF sector had total assets reaching approximately EUR 1.5 trillion in 2021. The majority of MMFs, approximately 89 %, were domiciled in Ireland, France and Luxembourg.

In June, ESMA published an article regarding the stress test for MMFs, conducted at the end of 2021. The findings indicated that, in an adverse scenario, liquidity and credit risks could adversely affect MMFs. Despite this, MMFs displayed general resilience and the ability to meet redemption requests. Notably, low volatility net asset value MMFs showed a higher risk of surpassing liquidity buffers under severe stress, emphasising the need for ongoing monitoring and risk management practices.

To enhance stress test practices, in January 2023, ESMA initiated a consultation on MMF stress tests, publishing an updated report in December with revised parameters and methodologies.

Reporting under AIFMD

In 2023, ESMA updated its reporting IT technical guidance under AIFMD, to take into account the latest developments on the application of AIFMD, along with some clarifications and correction of inconsistencies with reporting documents.

In parallel, in July ESMA published data on exposures of AIFs to commercial real estate markets in the EU, in accordance with the ESRB recommendation on closing real estate data gaps.

European long-term investment funds

In December, ESMA concluded the technical standards under the revised ELTIF regulation, aiming

to enhance clarity and detail on various aspects. The final report covered topics such as the redemption policy, matching mechanism and costs disclosure for ELTIFs.

Furthermore, in 2023 ESMA updated on an ongoing basis the register of the authorised ELTIFs, which serves as a central repository of information on ELTIFs authorised in the EU. As of 30 April 2024, 117 ELTIFs were registered in the ESMA register.

Common supervisory action on valuation

In May, ESMA published a report on the CSA on the supervision of the asset valuation rules under the UCITS directive and AIFMD. The CSA aimed to assess compliance of supervised entities with the relevant valuation-related provisions in the UCITS and AIFMD frameworks, in particular the valuation of less liquid assets, and this was conducted throughout 2022. The report identified room for improvement in a number of areas. ESMA has facilitated discussions among NCAs on the topic of asset valuation in order to ensure that both market participants and NCAs are better prepared to address valuation-related challenges in future periods of stress. In November, ESMA organised a workshop on the topic of liquidity and valuation in the investment fund sector.

Annual sanction reports under UCITS and AIFMD

In July, ESMA also published sanctions reports for UCITS and AIFMD, shedding light on enforcement

activities in the fund sector. These reports offered insights into regulatory breaches, the types of sanctions imposed, and the overall enforcement landscape. In total, 38 penalties were reported to ESMA in 2022 under the UCITS directive, with a total value of EUR 97 million, imposed by nine NCAs. Ten NCAs imposed a total of 128 penalties under AIFMD in 2022, with a total value of EUR 2.5 million. Respectively 98 % and 60 % of the total amounts of penalties were imposed by the same single NCA. The pattern evidenced by the reports throughout the years (since 2013 for AIFMD and 2016 for UCITS) showed that, besides a limited number of NCAs issuing an increasing number of sanctions, the level of sanctions issued at national level remains stable and generally low, in particular when it comes to penalties.

2.3.3. Issuer disclosure

Objectives for 2023

Contribute to the single rulebook under the prospectus regulation, the shareholder rights directive II, the takeover bids directive and the transparency directive, and in relation to financial and sustainability reporting. Maintain an updated regulatory framework for digital reporting.

Achieve greater convergence and consistency of NCAs' supervisory approaches and practices in relation to the areas mentioned above.



ESMA's activities in 2023 covered a broad spectrum within its purview, addressing key elements of financial disclosure, and reporting and regulatory enforcement. ESMA focused on overseeing issuer disclosure, highlighting enforcement actions, and outlining common enforcement priorities. Notably, attention is given to ESMA's extracts of the European Enforcers Coordination Sessions (EECS) database, its involvement in European Single Electronic Format (ESEF) reporting and contributions to IFRS.

Furthermore, ESMA played a significant role in strengthening sustainability disclosures and tackling the issue of greenwashing (see section 2.2.4).

Annual report on issuer disclosure enforcement and regulatory activities

In March, ESMA published its 2022 Corporate reporting enforcement and regulatory activities report with the aim of promoting investor protection, by providing transparency and accountability to the market on the activities carried out by ESMA and enforcers activities on financial and non-financial information and ESEF reporting. ESMA made recommendations to issuers and auditors to improve future financial and non-financial reports, by assessing how issuers comply with IFRS and non-financial reporting obligations and adhere to ESMA's recommendations.

Public statement on the 2023 European common enforcement priorities

In October, ESMA issued its annual public statement on European common enforcement priorities, which sets out the expectations of ESMA and NCAs with regard to specific areas of focus for the enforcement of the annual financial reports of issuers, including financial and sustainability reporting, ESEF reporting and alternative performance measures. In particular, for the 2023 priorities, the areas for attention identified a focus on cross-cutting topics, such as climate and environmental-related matters and the macroeconomic environment.

27th and 28th extracts of EECS's database of enforcement

In March and October, ESMA issued respectively the 27th and 28th extracts of its EECS database of enforcement of financial reporting. The decisions included in the extract were taken by national

enforcers in the periods from December 2020 to January 2023 and from June 2022 to July 2023. ESMA regularly publishes such extracts with the aim of strengthening supervisory convergence and providing issuers and users of financial information with relevant information on the appropriate application of the IFRS.

European Single Electronic Format

ESMA published the annual update of the ESEF reporting manual in September to reflect the latest reporting requirements and provide technical improvements. However, ESMA decided to postpone to 2024 the amendment of the ESEF RTS. This decision is in part due to the limited changes in the 2023 update to the IFRS taxonomy. Throughout 2023, ESMA monitored the implementation of the ESEF requirements, assessed how to improve digital reporting and started developing the ESEF sustainability taxonomy and requirements.

In December, ESMA updated the ESEF financial reporting taxonomy files and conformance suite to improve usability and fix minor errors. This update is important for companies that are required to comply with the ESEF regulation.

ESMA has continued participating in the IFRS Foundation's IFRS Taxonomy Consultative Group and in EFRAG's ESRS Digital Reporting Consultative Forum.

International Financial Reporting Standards

In 2023, ESMA continued to contribute to developing high-quality IFRS through international cooperation. ESMA is a member of the IFRS Foundation's Advisory Council, which advises the foundation and its two standard-setting boards, the International Sustainability Standards Board and the International Accounting Standards Board (IASB). ESMA is also an observer in EFRAG's Financial Reporting Technical Expert Group and Board, and in various working and advisory groups to EFRAG. ESMA commented on the IASB's exposure drafts on the international tax reform, on amendments to the classification and measurement of financial instruments and on the annual improvements to IFRS. Additionally, ESMA submitted two letters to the IASB, following their request for information on the post-implementation review of IFRS 9 on impairment requirements and

IFRS 15 on revenue from contracts with customers. The letters addressed to the IASB were coupled with letters to EFRAG on the same subjects.

ESMA also responded to the IFRS Interpretations Committee's publication of a tentative agenda decision relating to IFRS 17 and IFRS 9 and participated in the committees' meetings in the capacity of adviser to the Commission, which is an observer in this committee.

Prospectus

ESMA incorporated the recommendations received from the 2022 prospectus peer review into an updated supervisory briefing. A number of supervisory cases and questions were discussed and a statement on expected sustainability disclosures in prospectus published (see section 2.2.4).

Revision of the shareholder rights directive

ESMA and the EBA assessed the implementation of the revised shareholder rights directive, in particular in connection to Chapter I (a) regulating the investment chain and Article 3(j) on the transparency of proxy advisors. The authorities identified a number of challenges in the implementation of these frameworks. ESMA and EBA made recommendations to the Commission (in the form of a report in July 2023) to address these challenges in the upcoming review of the directive.

2.3.4. Benchmark administrators

Objectives for 2023

Assess any registration applications and ensure delivery within regulatory deadlines and quality standards.

Identify in timely manner – through the use of data-driven tools – the key industry trends, supervisory risks and concerns to support a risk-based, proactive and outcome-focused supervision of EU critical and recognised TC benchmarks.

Request timely and effective remediation and adopt enforcement actions where breaches against the regulation are identified.

Develop tools in support of ESMA's and NCAs' supervisory activities and promote supervisory convergence across Europe.

Effectively fulfil ESMA's role and responsibilities as secretariat of the WG on euro risk-free rates and chair of the Euro Interbank Offered Rate (Euribor) college of supervisors.

Supervision of critical and third-country recognised benchmarks

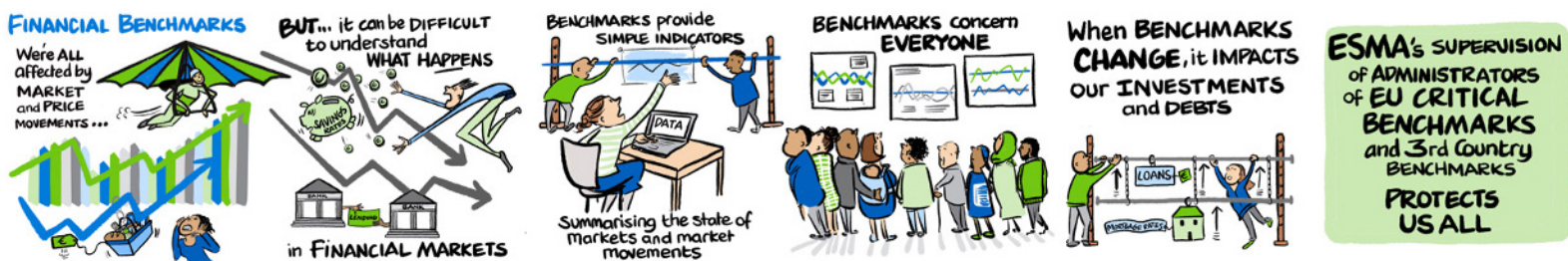
In 2023, ESMA's supervision of benchmark administrators focused on the representativeness of the EU critical benchmark (Euribor) and robustness of its methodology, including the required transparency provided to investors. Furthermore, the use of technology and outsourcing was monitored, following the recent adoption of the ESMA cloud outsourcing guidelines.

ESMA's assessment of Euribor representativeness was enhanced through the development of data analytics using a variety of data sources. ESMA closely monitored and engaged with EMMI (Euribor's administrator) in the context of the proposed material changes to the Euribor methodology. As the chair of the Euribor College¹⁰, ESMA fostered exchange of information, data sharing and common supervisory practices.

During 2023, ESMA recognised the first UK-based benchmarks administrator. As a result, ESMA's direct supervisory remit increased to 11 entities in 2023 (i.e., one administrator of EU critical benchmarks and 10 third country recognised administrators). Moreover, ESMA has engaged with several other TC administrators interested in potential recognition. ESMA encourages TC administrators willing to apply for recognition to engage with ESMA ahead of submitting their formal application.

In 2023, ESMA launched a CSA on the benchmarks ESG disclosure requirements under the BMR. The CSA focused on the disclosure requirements for ESG benchmarks, in particular EU climate transition

¹⁰ The Euribor College is composed of the supervisors of the credit institutions contributing to Euribor and, where relevant, the competent authorities of other Member States for whom the cessation of Euribor provision would have a significant adverse impact on market integrity, financial stability, consumers, the real economy, or the financing of households and businesses in those Member States



benchmarks and EU Paris aligned benchmarks. The CSA aims at enhancing transparency and comprehensibility of ESG disclosures, with a view to protecting investors and further supporting the development of a credible ESG market. This initiative will aim to identify any weaknesses in benchmarks' ESG disclosures and work towards ensuring that investors have access to the information required by the regulation.

As the BMR empowers ESMA with direct supervisory responsibilities, this is the first CSA to which ESMA participates as a competent authority, in addition to its coordination role.

Policy work, supervisory converge and international cooperation

In 2023, ESMA provided several inputs to the Commission on the BMR framework and the TC regime. This included proposals to address shortcomings of the current BMR framework with the aim to ensure the continued use by supervised entities of TC benchmarks. ESMA's input included a data analysis based on its internal databases and informal surveys of national supervisors.

ESMA published in May a final report on the review of the regulatory technical standards (RTS) on authorisation and registration of benchmarks under BMR. The report sets out ESMA's assessment of the existing RTSs and proposes a number of modifications, with a view to i) aligning the information requested for an application for authorisation/registration and an application for recognition, and ii) ensuring a level playing field between EU and TC administrators.

ESMA has updated the BMR Q & As to provide further clarification on transitional provisions related to TC benchmarks and to reflect the recent BMR reform. ESMA also updated existing Q & As on the TC regime regarding the scope of the BMR for benchmarks used only outside the Union and the legal representative in the context of a recognition application.

In January, ESMA and the UK Financial Conduct Authority signed two MOUs on the recognition of UK benchmark administrators and on EU critical benchmarks. The first MOU regards cooperation and the exchange of information with respect to benchmark administrators based in the UK and concerns benchmark administrators who seek recognition or are recognised in the EU. The second MOU set out the arrangements for the exchange of information in relation to EU critical benchmarks.

EUR risk-free rate working group

During 2023, the EUR risk-free rate WG fulfilled its mandate and came to an end. The WG convened for a final in-person meeting in November 2023 and published its final statement in December 2023. ESMA has held the secretariat of the WG since May 2021 and in this capacity played a role in fulfilling the group's mandate. The final statement set out the main achievements of the WG, namely the WG's active contribution to the successful implementation in the EU of the global interest rate reform and the related discontinuation of LIBORs. Looking forward, the final statement reiterated the need for market participants to do further work in the adoption of robust fallbacks, notably in mortgages, in order to increase legal certainty, enhance financial stability and comply with the BMR.

2.3.5. Credit-rating agencies

Objectives for 2023

Ensure credit ratings in the EU are independent, objective and of high quality by conducting effective supervisory activities.

Assess any registration applications and ensure delivery within regulatory deadlines and quality standards.

Identify in a timely manner – through the use of data-driven tools – the key industry trends, supervisory risks and concerns to support a risk-based, pro-active and outcome-focused supervision of CRAs.

Request timely and effective remediation and initiate enforcement actions where breaches against the regulation are identified.

Engage with market participants to exchange views on market trends and CRA practices.

ESMA played an important role in promoting the transparency and integrity of the EU credit ratings market throughout 2023. In April, ESMA published its market report on the EU credit ratings market, which provided a comprehensive overview of the market, including its size and structure, and the activities of CRAs. In December, ESMA published a report providing the CRA market share in the EU. The report highlighted the factors that can affect CRA market share, such as the type of rating, the issuer and the country of domicile.

Through its regulatory initiatives, market monitoring, and supervisory actions, ESMA has addressed key challenges facing the market and contributed to its overall development. In addition, ESMA withdrew the CRA registration of two entities: Qivalio SAS in January,

following the asset transfer of the credit rating activities from Qivalio SAS to EthiFinance Ratings S.L. (formerly Axesor), and Scope Hamburg GmbH in February, both at the request of the CRAs.

Supervision

In the context of the US banking crisis in the first part of 2023, ESMA has taken supervisory actions to ensure that relevant methodologies are sufficiently robust and systematically applied. ESMA has also coordinated with other regulators to share insights and address common concerns.

ESMA continued its engagement to ensure that CRAs have sufficiently robust surveillance processes to monitor evolving market conditions. In particular, ESMA focused on the requirement to review credit ratings on an annual basis. ESMA also looked at the role and functioning of CRAs' review function, in terms of level of challenge and robustness of process.

Through its data-driven monitoring and active engagement with CRAs, ESMA further consolidated its views on certain areas of potential risk, for example in the context of potential impact of commercial driven considerations on rating decisions, CRAs' rating surveillance processes and application of specific methodologies. In addition, ESMA looked extensively into practices around the withdrawal of ratings and the application of "default" definitions.



In December, ESMA published a report on EU collateralised loan obligation credit ratings, detailing the risk of conflicts of interest relating to methodology changes. ESMA's report reviewed key rating agencies practices around market outreach, both commercial and analytical, and CRAs' conflict of interest management around collateralised loan obligation methodology changes. ESMA stressed the importance of CRAs to have in place sufficient safeguards to ensure that changes to their methodologies are based on objective reasons, including around market outreach activities.

In 2023, ESMA also continued to actively engage with senior management of CRAs. ESMA focused on the integrity and effectiveness of CRAs' boards, assessing their independence from the rating business and their ability to provide sufficient oversight. In its interactions, ESMA also covered CRAs' business development in new markets, including as relates to non-rating products.

In relation to control functions, ESMA worked on addressing remaining concerns related to CRAs' control environment, to enhance their effectiveness and ensure proper balance and independence across different functions.

Finally, throughout the year, ESMA reviewed all IT and information security incidents and had follow-up discussions with CRAs where needed. And ESMA continued to engage with CRAs to assess their approach to cyber risk and to assess preparedness for additional regulatory requirements in this area.

Policy

In July, ESMA reviewed its Q & As on the reporting of errors in rating methodologies in order to provide a clarification to CRAs on the scope of reportable errors, as well as the timing and content of error notifications to ESMA, affected rated entities and users of credit ratings.

ESMA's efforts to strengthen transparency, enhance market monitoring, and take supervisory actions have had a positive impact on the EU credit ratings market. The guidelines on disclosure requirements for initial reviews and preliminary ratings have promoted greater transparency in rating methodologies.

Enforcement action

In March, ESMA issued a public notice against S&P Global Ratings Europe Limited (S&P GR) and fined the entity EUR 1.11 million for failures relating to the premature release of credit ratings to the public. ESMA found that S&P GR published credit ratings before the concerned securities were issued by the rated entities and announced to the market. This was due to internal control failures and led to breaches by S&P GR of its transparency obligations.

2.4. Markets and infrastructures

2.4.1. Central counterparties (third countries)

Objectives for 2023

Recognition and tiering of TC CCPs and monitoring of the evolution of TC regulatory frameworks and market developments.

Conduct ongoing monitoring of Tier 1 CCPs and enhanced scrutiny of risks relating to EU activities. Conduct ongoing supervision of Tier 2 CCPs, including compliance with EMIR, validation of risk models and stress-testing exercises.

Address systemic risks resulting from TC CCPs or clearing services deemed substantially systemic for the financial stability of the EU or one or more of its Member States (if any).

Recognition and withdrawals of recognition of TC CCPs

In 2023, ESMA extended recognition to three additional TC CCPs.

These recognitions followed the conclusion of standard MOUs between ESMA and their respective supervisory authorities: the Financial Superintendencia of Colombia (Superintendencia Financiera de Colombia), the Israel Securities Authority and the Indonesia Financial Services Authority (Otoritas Jasa Keuangan). These MOUs established a framework for cooperation and information exchange between

ESMA and its foreign counterparts, ensuring that ESMA can effectively monitor the EU-related activities of these TC CCPs and maintain regulatory oversight.

In parallel, ESMA has withdrawn its recognition of one CCP established in South Africa and three CCPs established in the United Arab Emirates, due to the countries' inclusion on the EU's list of high-risk TCs with strategic deficiencies in their national anti-money laundering and counter-terrorist financing regimes. These withdrawals aim to ensure that ESMA can effectively monitor CCPs, thereby maintaining market stability and investor protection.

With these decisions, the total number of TC CCPs recognised by ESMA decreased to 36 at the end of 2023.

Monitoring of TC CCP activities and regulatory developments

ESMA relies on annual submission of key reference data from Tier 1 CCPs (either directly or via TC authorities) to monitor developments on their activities in the EU (the annual Tier 1 CCP survey), and on notifications by TC authorities of any regulatory changes in their jurisdiction to monitor regulatory and supervisory developments in TC. In March, ESMA completed its 2022 annual review of Tier 1 CCPs (based on the previous year's survey).

Fees charged to Tier 1 CCPs

In October, ESMA published a consultation paper on Tier 1 CCP fees. The paper aimed to gather feedback on the appropriateness of current fee levels and possible adjustments to increase proportionality.

The consultation paper proposed a number of potential changes to the fee structure to enhancing proportionality, including introducing a tiered fee system based on the size and complexity of the trades cleared.

Tier 2 CCPs

ESMA is the direct supervisor of two TC CCPs established in the United Kingdom – LCH Ltd and ICE Clear Europe Ltd – which are deemed systemically important for the EU or one of its Member States (Tier 2 CCPs). As part of this supervision, ESMA completed the 2023 annual review cycle, which assessed compliance with each relevant EMIR article and allowed to assess risks and prioritise follow-up

supervisory actions in a risk-based and outcome-focused manner. ESMA also held regular technical and strategic meetings with the supervised entities. One area of close monitoring was the closure of the ICE Clear Europe Ltd's CDS service, which was completed in Q4 2023.

An important element of ESMA's supervisory approach is the effective collaboration with the Bank of England. In 2023, ESMA held regular meetings with Bank staff, worked in joint reviews covering a wide range of supervisory topics, and participated in the global colleges of the Tier 2 CCPs.

Over the past year, ESMA further enhanced its data-driven supervision with the development of risk dashboards and indicators, and with regular updates to the CCP Supervisory Committee on supervisory and market developments. In this regard, ESMA closely monitored developments in the energy market and contributed to analytical work on the EU natural gas derivatives market (see section 2.4.5). Additional improvements in ESMA's Tier 2 CCP supervisory framework include the ongoing development of operational key performance indicators (KPIs) and risk management tools.

ESMA examined several initiatives notified by Tier 2 CCPs in order to assess whether they qualified as significant model or parameter changes. Out of these, two were deemed significant and ESMA completed their validations in 2023. In each case, the validation was documented in a report to the CCP Supervisory Committee, presenting a risk assessment of the significant change. The reports included an evaluation of the conceptual soundness of the model, a review of the parameters and assumptions, an analysis of the outcome of testing results, a review of the associated ongoing monitoring procedures and other elements required for a comprehensive validation according to EMIR.

2.4.2. Central counterparties (EU)

Objectives for 2023

Enhance supervisory convergence by developing a common supervisory culture and ensuring a consistent implementation of the EMIR and CCP recovery and resolution regulation (RRR) framework for EU CCPs.

Assess the resilience of CCPs to adverse market developments and identify potential risks for financial stability with the use of CCP stress tests and an enhanced supervisory database.

Complete the single rulebook by reviewing existing RTS/ITS where necessary to cater for market developments and new risks and finalise these guidelines with respect to the CCP RRR.

Single rulebook under the European market infrastructure regulation

In July, ESMA published a final report reviewing the technical standards to further enhance the effectiveness of anti-procyclicality margin measures. These measures are designed to mitigate the build-up of excessive margin requirements during periods of market stress, reducing the risk of procyclicality and promoting financial stability.

In October, ESMA published a final report extending further the temporary measures for CCP collateral requirements by 6 months, in order to avoid disruptions on cleared energy markets during the colder season while providing sufficient time for the co-legislators to finalise the EMIR 3 review.

Finally, in October ESMA also published an opinion on CCP back testing, aiming to clarify the implementation and use of back tests across EU CCPs under EMIR. The opinion in particular clarifies the different purpose and structure of each type of back test, and how they should be applied by CCPs.

Single rulebook under the central counterparty recovery and resolution regulation

In 2023, all single rulebook mandates under the CCP RRR were completed.

In March, ESMA published a final report on the draft RTS on business reorganisation plans. The RTS set out the requirements for the content and form of business reorganisation plans required under the CCP RRR.

In June, ESMA also published two sets of ESMA guidelines to assist NCAs in the implementation of the CCP resolution regime under the CCP RRR. The guidelines cover the template written arrangement for the establishment and functioning of the

resolution college and the summary of resolution plans.

The guidelines and the RTS are important steps towards ensuring that the CCP resolution regime is effectively implemented across the EU and that CCPs are adequately prepared to cope with crises.

Supervisory convergence

ESMA continued participating in CCP supervisory colleges established under EMIR and started participating in the new CCP resolution colleges established under CCP RRR, from which it gathers the relevant topics for further work on supervisory convergence.

Through the CCP Supervisory Committee, ESMA facilitated exchanges of information among NCAs and the central banks of issue on relevant market developments (such as the implementation of the Market Correction Mechanism or MCM) and discussions on the CCP recovery plans, while also promoting coordinated supervision in the area of outsourcing and governance.

Furthermore, ESMA focused on *ex ante* convergence work in order to assist the national resolution authorities in the setup and the functioning of the 14 resolution colleges. Going forward, ESMA will focus its convergence efforts on the elaboration of resolution plans, the operationalisation of resolution strategies, on establishing a common approach for the assessment of EU CCPs' critical functions and supporting the transition from crisis management groups to resolution colleges.

Peer review

As noted in section 2.1.2, in December ESMA published the 2022 CCP peer review on due diligence of clearing members. The peer review assessed the effectiveness of NCAs in supervising how CCPs effectively conduct due diligence on their clearing members.

Stress test

In May, ESMA launched its fifth stress test exercise for CCPs. The CCP stress test framework is complemented by an adverse market scenario provided by the ESRB. In all, 14 CCPs authorised in the EU and the two UK CCPs classified as Tier 2 are included in this exercise. The objective is to assess



the resilience of CCPs and their ecosystem to a wide range of risks including credit, concentration, liquidity and, for the first time, climate risk, in line with ESMA's mandate. The results of the stress test will provide valuable insights into the vulnerabilities of CCPs and inform future regulatory actions.

Opinions on NCA draft decisions

In 2023, ESMA assessed eight draft decisions from NCAs relating to various aspects of EMIR, including extensions of activities, qualifying holding acquisitions and outsourcing arrangements. ESMA issued an opinion to encourage a more consistent and coherent application of EMIR.

In each case, ESMA's review was documented in a report to the CCP Supervisory Committee based on the draft decision and the risk assessment provided by the NCA.

Validation of significant model changes

ESMA examined several initiatives notified by EU CCPs in order to assess whether they qualified as significant model changes under EMIR. Out of these, 13 were deemed significant and ESMA completed their validation in 2023. In each case, the validation was documented in a report to the CCP Supervisory Committee presenting a risk assessment of the significant change. The reports included an evaluation of the conceptual soundness of the model, a review of the parameters and assumptions, an analysis of the outcome of testing results, a review of the associated ongoing monitoring procedures and other

elements required for a comprehensive validation according to EMIR. Where needed, the validation decisions included conditions and/or recommendations as required to ensure or enhance compliance with regulatory requirements.

Global fire drill exercise

In November, ESMA actively participated in a global fire drill with the majority of EU CCPs to test their readiness to handle potential defaults of clearing members. This exercise simulated the default of a hypothetical common defaulting clearing member and allowed participants to assess their procedures and operational capabilities. It was jointly coordinated by ESMA, in cooperation with EU and non-EU authorities, CCPs and industry associations. The exercise provided valuable insights into default management best practices among CCPs and highlighted areas for further improvement.

Cooperation arrangements

Finally, ESMA and the Single Supervisory Mechanism (SSM) have entered into a cooperative arrangement to enhance cooperation in the supervision of the CCPs. The arrangement aimed to promote consistent and effective supervision of CCPs across the EU and contribute to the stability and resilience of the financial system. The arrangement includes regular meetings between ESMA and the SSM, information sharing, joint supervisory activities and a focus on promoting consistent supervisory practices.

In addition, the MOU between ESMA and the ECB has been revised, including in particular as regards cooperation and information sharing with regard to CCPs.

Similarly, the cooperative arrangements with ECB and SSM also apply to CRAs and benchmarks, reflecting mutual collaboration to ensure consistent and effective oversight, promoting stability and resilience in the financial sector.

2.4.3. Data reporting service providers

Objectives for 2023

Ensure the highest quality of the transaction data provided by approved reporting mechanisms (ARMs) to NCAs and of the data reported and published by approved publication arrangements (APAs), in collaboration with those NCAs that are responsible for supervision of market participants reporting through/to ARMs/APAs.

Assess any authorisation applications and ensure delivery within regulatory deadlines and quality standards.

Ensure a robust and consistent application of ESMA's outcome-focused, risk based and data-driven approach to the supervision of data reporting service providers (DRSP).

Request timely and effective remediation and adopt enforcement actions where breaches against the regulation are identified.

Supervision

In 2023, ESMA continued active engagement with the DRSPs under its supervision. ESMA's focus was on the operational resilience of DRSPs by analysing the periodic information and the IT and information security incidents reported by DRSPs. ESMA followed up where appropriate with the DRSPs to ensure that any identified issues were addressed. ESMA also assessed key aspects of DRSPs' IT governance and internal controls, and their implementation of cloud solutions.

Additionally, ESMA hosted a roundtable with DRSPs, presenting current policy and supervisory matters and allowing the entities to express their views and

positions. ESMA also monitored the smooth withdrawal of the authorisation of one DRSP, which expressly renounced its authorisation.

Derogation assessment

In October, ESMA conducted its first annual assessment of DRSPs to determine their relevance for EU financial markets. Indeed, ESMA is mandated to conduct an annual assessment of the relevance of the APAs and ARMs for the EU markets. The assessment found that two DRSPs exceeded the derogation thresholds, indicating that they meet the criteria for direct supervision by ESMA. These DRSPs will fall under ESMA's direct oversight if they maintain their high transaction volumes and cross-border activity in 2024.

2.4.4. Trade repositories

Objectives for 2023

Ensure the highest quality of EMIR and SFTR data reported to and made available by TRs, in collaboration with those NCAs that are responsible for supervision of market participants reporting to TRs.

Assess any registration applications and ensure delivery within regulatory deadlines and quality standards.

Ensure a robust and consistent application of ESMA's outcome-focused, risk based and data-driven approach to the supervision of TRs under EMIR and SFTR with a main focus on ensuring TR data quality and operational resilience.

Request timely and effective remediation and adopt enforcement actions where breaches against the regulation are identified.

Supervision

In 2023, ESMA closely monitored the progress of the implementation of the new EMIR refit requirements by TRs, and by reporting participants, to ensure a smooth go-live of the new regime in April 2024.

As for other market infrastructure entities under its remit, ESMA focused on the operational resilience of TRs by analysing the periodic information and the IT



and information security incidents reported by TRs. ESMA also assessed key aspects of TRs' IT governance and internal controls, along with their implementation of cloud solutions.

Supervisory convergence

In anticipation of the forthcoming changes to the EMIR reporting requirements introduced by EMIR refit, ESMA has been actively engaging with TRs, NCAs and other stakeholders. ESMA has been providing the necessary policy and technical clarifications to facilitate the seamless adoption of the new reporting regime.

Position calculations for TRs

In March, ESMA launched a consultation seeking input from market participants on amendments to its guidelines for TRs on position calculation under EMIR. ESMA expects to enhance the consistency of position calculation under EMIR refit standards. The consultation focused on the scope of data to be used, the time of calculation and the methodology for calculating positions.

In December, ESMA published a final report on guidelines for position calculation under EMIR. The report provided guidance on how TRs should calculate their positions for different types of derivatives. The guidelines are designed to ensure that TRs accurately reflect the risks associated with

the derivatives they trade. The report also included examples to illustrate the calculation methodology.

2.4.5. Trading

Objectives for 2023

Promote consistent application of EMIR and MiFID II/MiFIR requirements, in particular in relation to the boundaries of multilateral systems, outages, pre-trade controls used by investment firms and the transparency framework.

Provide technical input to the negotiations of the MiFIR review and prepare the provision of technical advice and/or development of technical standards and guidance as a follow-up to the MiFID II/MiFIR review covering transparency, including the establishment of a consolidated tape, data reporting and market structure.

Accompany the implementation and ongoing compliance of the EMIR requirements in relation to clearing and risk mitigation requirements of OTC derivatives through active monitoring and by providing further guidance to market participants.

Continue to further adapt the single rulebook and ensure supervisory convergence in relation to the clearing obligation, the clearing threshold and risk mitigation techniques for OTC derivatives.



Common supervisory action on pre-trade controls

In late 2023, ESMA launched a CSA with NCAs, with the objective of assessing the implementation of pre-trade controls (PTCs) by EU investment firms using algorithmic trading techniques.

PTCs are used by investment firms to carry out checks at order entry to limit and prevent sending erroneous orders for execution to trading venues. Following the May 2022 flash crash, ESMA and NCAs have focused their attention on the implementation of PTCs in the EU, gathering evidence through questionnaires submitted to a sample of EU investment firms. As a follow up, ESMA and NCAs have decided to launch a CSA with the goal of gathering further and more detailed insights on how firms are using PTCs across the EU. This initiative and the related sharing of practices across NCAs aim at ensuring consistent application of EU rules, helping to promote stable and orderly markets in line with ESMA's objectives.

Manual on post-trade transparency

ESMA published this manual in July, as a user-friendly tool for post-trade transparency and transparency calculations. The manual provides market participants and NCAs with guidance on how to apply the relevant MiFIR obligations in a consistent manner.

With an aim to provide clarity amongst the large scope of instruments covered under MiFIR and the complexity of the system, this manual covers, amongst others, which instruments and transactions

are subject to post-trade transparency; who has to report and publish post-trade transparency information and when to report; which post-trade information has to be made public; and the common aspects and differences between the post-trade transparency regime and the transparency calculations in relation to the scope of instruments and transactions.

ESMA intends to update the manual on a regular basis when further guidance is necessary or legal and legislative changes occur, such as following the review of MiFIR and the revision of its relevant level 2.

MiFIR review and CTP

The co-legislators finalised the negotiations on the MiFIR review legislative package in late 2023. ESMA closely monitored the negotiations and provided, where asked, technical input to co-legislators on relevant subjects. In anticipation of amended, changed and new legislative requirements and mandates, ESMA has been preparing the work needed to implement these. Given the tight deadlines, ESMA has started working on drafting level 2 regulations to deliver these in time over the coming period and has also started preparing for its role of selecting and authorising CTPs, one for each class of financial instruments (bonds, derivatives and equities/ETFs).

Neobrokers

The ongoing expansion of digital trading platforms (neobrokers) continues to attract ESMA's attention. The work that started in 2022 to map and analyse developments in this area continued in 2023 to further understand neobrokers' activity and their impact on the EU market structure.

Convergence

To further contribute to ESMA's mission to increase supervisory convergence, ESMA continues to work together with the NCAs to share supervisory practices and to identify and address divergent supervisory approaches. Most notably, in 2023 ESMA and NCAs discussed the application of the guidelines on market data. In addition, ESMA issued several waiver opinions related to transparency requirements, in line with its mandate.

Commodity derivatives

Energy derivatives remained high on ESMA's commodity derivatives agenda.

As mandated in the regulation establishing an MCM to protect EU citizens and the economy against excessively high prices, ESMA published a preliminary data report on the introduction of the MCM in January, followed by an effect assessment of the impact of the MCM on financial markets in March. In the assessment, ESMA noted that no measurable impact of the MCM could be identified at the time of publication but stressed that the impact of the MCM could be different as the market environment changes and if the activation of the MCM were anticipated by market participants. The two reports were published in coordination with the Agency for the Cooperation of Energy Regulators (ACER).

The emergency measures adopted by the Council at the end of 2022 in response to the significant increase in energy price also included a requirement for trading venues trading energy-related commodity derivatives to put in place intra-day volatility management mechanisms (IVM) to limit price volatility. In June, ESMA published a report on the implementation and functioning of the IVM, noting that circuit breakers, as per MiFID requirements, are appropriate and suitable tools for dealing with intra-day price volatility. ESMA followed-up on its IVM report with a supervisory briefing on circuit breakers in October.

ESMA has strengthened its cooperation with ACER by signing an updated MOU in March on their respective roles and responsibilities in monitoring and addressing market risks. An ACER/ESMA task force has been established to facilitate a more coordinated approach regarding the regulation of wholesale energy markets which encompass spot and derivative energy markets.

The review of the regulation on energy markets integrity and transparency introduced a double competence of ACER / national regulatory authorities and NCAs in case of potential insider dealing or market manipulation involving wholesale products qualifying as financial instruments under MiFID. This will require enhanced cooperation between energy and financial markets regulators in identifying and prosecuting market abuse cases to avoid overlapping investigations. ESMA has also started to analyse the

impact that the proposed reform of the electricity market design may have on the EU electricity derivative markets.

In 2023, ESMA published four opinions on proposed position limits for the milling wheat, rapeseed, corn and fish pool farmed salmon contracts. ESMA agreed with the position limits notified by the French and Norwegian NCAs. ESMA found that those limits are consistent with the objectives established in MiFID II and with the methodology developed for setting the limits.

Clearing and derivatives trading obligations

In February, ESMA published a final report reviewing the scope of the clearing and derivatives trading obligations (DTO), incorporating changes to reflect the benchmark transition. The report proposed draft RTS amending the scope of the clearing obligations and DTO for OTC interest rate derivatives denominated in euro, pounds sterling, yen and US dollars.

In addition, in response to the benchmark transition and the impending closure of ICE Clear Europe's credit default swap clearing service, ESMA issued a statement in March to support the orderly migration of positions to other CCPs. The statement provided clarity on the application of the clearing obligations and DTOs during this transition period.

Transparency

ESMA also issued a letter to the Commission in the context of the MiFIR review on the transparency regime for single name credit default swaps and standardised OTC derivatives. The letter pointed out the current lack of transparency in the EU for OTC derivatives, notably single-name credit default swaps, and developed ESMA's views on the interpretation of the MiFIR transparency rules, including the scope of the reporting obligation and the format of the reports.

Post-trading

In June, ESMA and the other ESAs sent a letter to the Commission on the EMIR bilateral margining framework and equity options. The letter set out the ESAs position on the interpretation of the MiFID II and EMIR margining requirements, with specific regard to

the use of independent collateral management firms and the margining of equity options.

ESMA updated the list of designated authorities, payment systems and securities settlement systems under the settlement finality directive.

2.4.6. Market integrity

Objectives for 2023

Promoting consistent application of the market abuse regulation and short selling regulation requirements.

Monitoring market developments and evolution of net short positions at EU level, enhancing coordination in case of possible threats that may require the adoption of emergency measures under the short selling regulation.

Monitoring developments in commodity derivative markets and assessing the need for potential policy recommendations to further support orderly markets and financial stability.

Short Selling Reporting System

In 2023, ESMA updated its Short Selling Reporting System to increase the frequency of reporting of net short selling positions by NCAs to ESMA ⁽¹¹⁾ from quarterly to daily. As NCAs phase in the new frequency of reporting into their systems, this will ultimately provide ESMA with a unique and more timely view of short selling activity at the EEA level, granting it the capacity to better monitor it and make more informed decisions (in particular when issuing opinions).

ESMA letter on changes to the insider list regime

A key focus of ESMA's efforts was addressing concerns regarding proposed changes to the insider list regime in market abuse regulation (MAR) as part of the listings act proposal. In this context, ESMA addressed a letter to the Parliament and the Council highlighting that those changes to the insider list, which would no longer be event-based, as proposed by the Commission, could potentially have significant

detrimental effects, including on the identification and enforcement of market abuse cases.

Feedback report on pre-hedging

In July, ESMA published a report on the feedback received to the 2022 call for evidence on pre-hedging, where it acknowledged the risks associated with this market practice and urged market participants to exercise due diligence, despite not finding sufficient evidence to support a ban on pre-hedging practices. ESMA underscored the importance of proportionate measures to address the potential for market manipulation and price distortions stemming from pre-hedging activities.

Report on suspicious transactions and order reports

Also in July, ESMA published a report on suspicious transactions and order reports. In the report, ESMA emphasised the role of these reports in uncovering potential market abuse and ensuring market fairness, by providing an overview of how they are used across different jurisdictions in the context of the detection and investigation of market abuse, and how their use has evolved over time.

2.4.7. Central securities depositories

Objectives for 2023

Monitor and contribute to the consistent implementation and application of the central securities depositories regulation (CSDR), in particular by providing guidance to market participants and NCAs, and through dedicated supervisory case discussions and the development of reports.

Provide technical input in the context of the CSDR review and, following the completion of the review, contribute to the single rulebook in the area of settlement and CSD requirements by reviewing and/or developing technical standards and ESMA guidance.

Recognise TC CSDs and monitor compliance with recognition decisions, if any.

¹¹ NCAs receive notifications of net short positions exceeding the reporting threshold (e.g., 0.1 % of the issued share capital for shares) directly from market participants. Still taking the example of shares, the positions are then aggregated by NCAs at the instrument level and sent to ESMA.

Internalised settlement reporting instructions

ESMA updated the CSDR internalised settlement technical reporting instructions, to accept reports including LEIs with 'Retired' status, and to add a check to validate the issuer CSD LEIs against a reference list of issuer CSDs. The instructions provide guidance on the reporting of transactions that are settled outside securities settlement systems operated by CSDs.

Potential shortening of settlement cycle

In 2014, CSDR introduced for the first time in the EU a requirement for all transactions in transferable securities which are executed on trading venues to be settled by no later than the second business day after the trading takes place (commonly referred to as a 'T + 2' settlement cycle). Given market and technical developments, settlement cycles in many jurisdictions around the world are being shortened to T+1 or even T+0. In this context, in October 2023, ESMA launched a call for evidence to gather feedback from stakeholders to form a better view on the following four aspects: (i) what would be the potential impact of shortening the settlement cycle on EU market players; (ii) what would be the costs and the benefits of shortening the settlement cycle in the EU; (iii) how and when the shortening of the settlement cycle could be achieved in the EU; and (iv) what are the main international developments on settlement cycles and how they impact the EU's capital markets.

The feedback received will help ESMA prepare a report to the Commission including its main findings.

Technical advice on the CSDR penalty mechanism

In December, ESMA published a consultation paper on technical advice to the Commission relating to the CSDR penalty mechanism. The aim of the consultation is to collect evidence and data from stakeholders on the effectiveness of the current penalty mechanism in discouraging settlement fails and incentivising their rapid resolution. In addition, it seeks feedback on ESMA's preliminary proposals regarding i) alternative parameters, when the official interest rate for overnight credit charged by the central bank issuing the settlement currency is not available, ii) the treatment of historical reference data for the calculation of late matching fail penalties, and iii)



alternative methods for calculating cash penalties, including progressive penalty rates.

2.4.8. Securitisation repositories

Objectives for 2023

Ensure the highest quality of securitisation data reported to and made available by securitisation repositories (SRs), in collaboration with those NCAs that are responsible for supervision of market participants reporting to SRs.

Assess any registration applications and ensure delivery within regulatory deadlines and quality standards.

Ensure a robust and consistent application of ESMA's outcome-focused, risk based and data-driven approach to the supervision of SRs under the securitisation regulation (SECR) with a main focus on ensuring SR data quality and operational resilience.

Request timely and effective remediation and adopt enforcement actions where breaches against the regulation are identified.

Engage with market participants to exchange views on the securitisation market and the functioning of the transparency regime.

Review ESMA's securitisation disclosure requirements with a view to ensuring further proportionality and the usefulness of the information for regulators and investors.

Promote convergence amongst regulators in carrying out their supervisory responsibilities under the SECR, and amongst market participants in reporting data to SRs.

Supervision

In 2023, ESMA's supervisory focus was to continue ensuring the quality of the data reported to and made available by SRs and ensuring the continued access, integrity and availability of SR data. ESMA's focus was also on the operational resilience of SRs by analysing IT and information security incidents reported by SRs to ESMA. ESMA followed up where appropriate with the SRs to ensure that any identified issues were addressed.

Furthermore, ESMA continued to cooperate with relevant stakeholders of SR data and other regulatory and supervisory bodies at the EU and TC levels.

Publication of a TRV article for securitisation

In September, ESMA published a TRV Article providing an overview of the EU securitisation market, focusing

on its key features and developments. The study highlighted the growing importance of simple, transparent and standardised securitisations (STS), which have gained traction among investors seeking higher-quality assets. The ESMA STS register contained over 580 STS notifications for both asset-backed and non-asset-backed commercial paper as of 31 December 2022, demonstrating the growing adoption of these products. Despite this growth, the overall securitisation market remains subdued, reflecting the lingering impact of the COVID-19 pandemic and regulatory changes.

Consultation on the revision of the securitisation disclosure templates

In December, ESMA launched a consultation on the securitisation disclosure templates under Article 7 of the SECR, aligning with the October 2022 Commission report on the SECR. The consultation paper proposed four strategic implementation options as a way forward for the review of the transparency requirements, including considerations around a possible dedicated template for private securitisation. ESMA will consider and assess the feedback received, to choose the best way forward for the revision of the disclosure framework in line with the requirements of the SECR.



2.5. Joint Committee

In 2023, the JC under the chairmanship of the EBA continued to play a coordinating role and facilitated discussions and exchange of information across the three ESAs, the Commission and the ESRB. The JC focused on issues of cross-sectoral relevance, including joint risk assessments, sustainable finance, operational risk and digital resilience, consumer protection and financial innovation, securitisation, financial conglomerates, central clearing and the ESAP.

2.5.1. Joint risk assessments

The JC prepared two joint risk reports in spring and autumn respectively. The spring report underlines that in spite of relative stable EU financial markets, supervisors, financial institutions and market participants should remain vigilant amid increased economic and geopolitical risks, a challenging market environment and market pressure in the banking sector. It notes the importance to remain prepared for a deterioration in asset quality, to account for the broader impact of policy rate increases and sudden rises in risk premia on financial institutions, and to closely monitor the impacts of inflation risks. Banks should pursue prudent capital distribution policies to ensure their long-term financial resilience in an uncertain outlook for

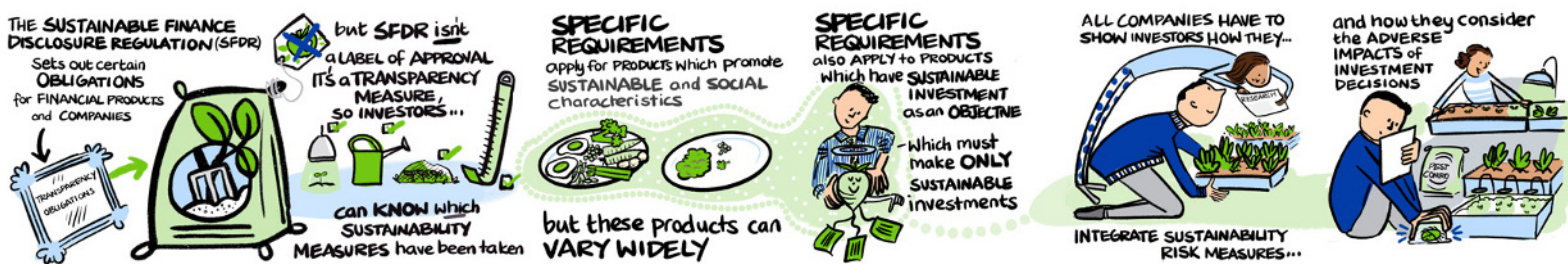
profitability, while all financial institutions should allocate adequate resources and skills to ensure the security of their ICT infrastructure and adequate ICT risk management.

The autumn joint risk report identified interest rate risk, liquidity risk, and credit risk to be of high importance across various sectors within the financial industry. It underlines that these risks pose challenges to banks, insurers, asset managers, and other financial institutions, and that their proper management is crucial for maintaining financial stability and adequately mitigating systemic risk. It also addresses the banking turmoil in the US and Switzerland, noting the importance of effective risk management and governance arrangements for financial institutions, in particular in relation to liquidity risk and interest rate risk. Banking turmoil and a series of further adverse events, including the Russian aggression against Ukraine, highlight the continued sensitivity of the European financial system to exogenous shocks and high market uncertainty. The report calls on financial institutions to remain resilient to the impact of future substantial interest rate changes.

2.5.2. Sustainable finance

Sustainable finance continued to be a central element of the work of the JC in 2023, which focused on the SFDR.





Following the 2022 mandate from the Commission, the ESAs published the Final Report on draft Regulatory Technical Standards on the review of Principal Adverse Impacts (PAI) and financial product disclosures in the SFDR Delegated Regulation on 4 December 2023. The draft RTS propose the following changes: i) extension of the list of social indicators for PAI; ii) refinement of the content of several of the other indicators for adverse impacts and their respective definitions, applicable methodologies, metrics, and presentation; iii) amendments regarding decarbonisation targets. Further proposed changes cover the Do No Significant Harm (DNSH) disclosure design options and the simplification of the templates, among other technical changes.

In the light of the Commission's ongoing re-assessment of the SFDR framework, the ESAs are preparing a joint opinion contributing to such assessment. By way of background, the Commission launched two consultations in September 2023 on the implementation of SFDR to identify potential shortcomings in the current framework.

Further assistance to the Commission in its next comprehensive assessment of the SFDR was provided by way of the ESAs second annual report, published in September 2023, on the extent of voluntary disclosure of PAI under the Article 18 SFDR. As in 2022, this report presented the findings from a survey of NCAs with the aim to assess the state of entity-level and product-level voluntary PAI disclosures under the SFDR. The report also includes a preliminary, indicative, and non-exhaustive overview of good practices and areas offering room for improvement.

2.5.3. Digital operational resilience

The implementation of the new DORA was at the core of the JC work in 2023. DORA mandated the ESAs to develop several policy products, before its application date (17 January 2025), to supplement the legal framework. The newly established JC SC DOR was

assigned with this task, with participation from all the competent authorities across the three sub-sectors and relevant European authorities such as ENISA, ECB, ESRB and the SRB. This task covers the development of policy in the areas of ICT risk management, ICT-related incident reporting, digital operational resilience testing, ICT third-party risk management and oversight of critical ICT third-party providers.

Throughout 2023, the JC developed a response to the Commission's call for advice on criteria for designation of critical ICT third-party providers and on oversight fees and published the first batch of DORA policy products (RTS on risk management framework, RTS on classification of major ICT-related incidents, RTS on policy on ICT services and ITS on the registers of information), which were submitted to the Commission (January 2024). The ESAs also published consultation papers on the second batch of DORA draft policy products on 8 December 2023 (RTS on sub-contracting, RTS on threat-led penetration testing, RTS and ITS on content and format of incident reporting, guidelines on costs and losses from major incidents, RTS on oversight conduct and guidelines on oversight cooperation between ESAs and CAs), which are due for submission to the Commission by July 2024. Moreover, the JC developed two deliverables related to an ESRB recommendation on the set-up of a pan-European systemic cyber incident coordination framework (EU-SCICF), including an interim report on the gradual establishment of the framework and a report on the points of contact.

The JC SC DOR work was complemented by a joint-ESAs report on the landscape of ICT third-party providers in the EU finance sector, which was developed to inform preparations for the application of the DORA.

Lastly, in terms of stakeholder engagement, the ESAs organised a joint event in February 2023 providing a

general introduction to DORA and key policy mandates.

2.5.4. European Forum for Innovation Facilitators

EFIF is a key forum set up to facilitate information exchange and supervisory convergence in innovation in the fintech sector in the EU. In 2023, the EFIF produced a number of deliverables including the Joint ESAs Report on an update on the functioning of innovation facilitators. The report identifies a number of benefits and challenges relating to the operation and design of innovation facilitators and presents recommendations and considerations towards NCAs, the ESAs and the Commission to further enhance the role and efficiency of innovation facilitators in the financial sector across the EEA. The list of innovation hubs and regulatory sandboxes in the EU was subsequently updated based on the report.

In addition to this, EFIF also drafted a joint ESAs report on the 2023 stocktaking of big techs' direct financial services provision in the EU. It highlights inherent opportunities, risks, regulatory and supervisory challenges, and recommends that the ESAs continue to strengthen the monitoring of the relevance of big tech in the EU financial services sector, including via the establishment of a new monitoring data matrix.

Finally, EFIF developed a new taxonomy of financial innovation. It includes a matrix that helps classify financial innovations and an updated glossary for financial innovation. The taxonomy is aimed at helping NCAs and ESAs categorise financial innovations for consistent innovation monitoring and policy work, while being non-exhaustive, future proof and non-binding.

2.5.5. Consumer protection and financial innovation

Consumer protection remained at the heart of cross-sectoral work in 2023. The ESAs published a thematic report on the implementation across the EU of national financial education initiatives on digitalisation, with a focus on cybersecurity, scams and fraud. The report provides insights for NCAs and other public entities on good practices when designing and

implementing financial education initiatives, which can help increase the reach and effectiveness of their financial education initiatives and thereby help improve consumers' digital financial literacy.

The ESAs published additional Q & As concerning the requirements in the PRIIPs regulation and delegated regulation. They also collected information from NCAs on administrative sanctions and measures imposed. In 2023, a total of 14 administrative sanctions or measures under the PRIIPs regulation were reported to the ESAs by the competent authorities in five member states (Belgium, Denmark, Hungary, Austria and Romania). These measures were administrative fines ⁽¹²⁾, a public warning, and other types of sanctions or measures ⁽¹³⁾, such as different types of orders.

As part of its efforts to coordinate education initiatives of national authorities, the JC developed two sets of interactive factsheets addressed to consumers, one on the impact of inflation and rising interest rates, which was accompanied with an interactive video summarising the key points of the factsheet, and another one on sustainable finance, published together with an animation made available on social media. The factsheets were translated into all official EU languages, published on the ESAs websites and reproduced by EU NCAs to better reach consumers at the national level. In addition, the ESAs organised a workshop to allow NCAs to exchange good practices and share experiences on financial education initiatives on sustainable finance.

The ESAs also organised their annual Joint Consumer Protection Day in Madrid. The hybrid event focused on consumer protection topics including greenwashing, the regulation of crypto assets in the EU and cross-selling.

2.5.6. Securitisation

The ESAs continued their cross-sectoral work on securitisation throughout 2023. The ESAs published the JC final report containing the draft RTS on the ESG impact disclosure for STS securitisations under the SECR. These RTS aim to help market participants make informed decisions about the sustainability impact of their investments. The key proposals

¹² The Central Bank of Hungary reported four fines totalling HUF 2 960 000 (EUR 7 732), the Romanian Financial Supervisory Authority reported one fine of RON 5 000 (EUR 1 008) and the Finanzmarktaufsicht (Austria) reported one fine (EUR 50 000).

¹³ In accordance with Article 24(3) of the PRIIPs regulation.

included in the RTS specify ESG disclosures which would apply to STS securitisations where the underlying exposures are residential loans, auto loans and leases. They aim to ensure consistency with those developed under the SFDR, which distinguish between the publication of available information on mandatory indicators (e.g., energy efficiency) and on additional indicators (e.g., emissions).

The ESAs also produced in February, a new set of 11 joint Q & As which cover a wide range of issues, including the application of EMIR to securitisation transactions, securitisation exposures backed by several collaterals and the use of estimated Energy Performance Certificate values among others.

The JC also initiated the preparatory work for the drafting of the JC report on the functioning of the SECR, launching a targeted consultation among market participants and competent authorities in December 2023.

2.5.7. Financial conglomerates

The JC published its 2023 annual list of identified financial conglomerates, which includes 63 financial conglomerates with the head of group located in the EU or the EEA.

Following the adoption and publication by the Commission of the draft ITS on reporting templates for conglomerates on intra-group transactions and risk concentration (which entered into force on 31 December 2023), the JC worked on several joint Q & As that will be finalised and published in 2024.

2.5.8. European Single Access Point

In 2023, the ESAs closely cooperated on the ESAP project. The legislative package, made up of the ESAP regulation accompanied by an omnibus directive and an omnibus regulation, was published in the *Official Journal of the European Union* on 20 December 2023. Its purpose is to facilitate access to publicly available information of relevance to financial services, capital markets and sustainability.

The ESAP regulation mandates the JC to develop several ITSs to set up the ESAP system, most notably specifying certain functionalities and tasks of

collection bodies. In addition, the omnibus directive and regulation empower EBA, ESMA and EIOPA (jointly or separately, depending on the legislative framework) to develop sectoral ITS to further specify the structuring, format or metadata of the information to be submitted to the ESAP.

With the objective to support the fulfilment of the mandates under the ESAP regulation in a timely manner and to ensure cooperation for the development of the sectoral ITS by the individual ESAs, an ESAs coordination group for ESAP was created in June 2023. The coordination group discussed progress on IT implementation and provided a forum to discuss the preparation of the ITS by the individual ESAs and the JC. Additionally, a joint consultative meeting, composed by competent authorities from the three ESAs, was set up to discuss specific topics and seek out views regarding the main deliverables of the ESAs coordination group.

Throughout 2023, the ESAs worked on a joint ESAs consultation paper on draft ITS, specifying certain tasks of collection bodies and certain functionalities of the ESAP on the basis of the empowerments contained in Article 5 and Article 7 of the ESAP regulation. The consultation paper was published in January 2024¹⁴ for a 2-month consultation period.

2.5.9. Other relevant cross-sectoral JC work

On central clearing, in December the ESAs published a joint draft RTS under EMIR where they proposed a 2-year extension to the equity option exemption from bilateral margining, and also issued a no-action opinion. The draft RTS sought to provide clarity to market participants on how to handle equity options as of January 2024, the date on which the current temporary exemption is set to expire. In addition to this, the ESAs issued a no-action opinion which includes clarifications on the supervisory expectations.

As part of their new task to foster and monitor supervisory independence, the ESAs also published their joint criteria on the independence of supervisory authorities which are organised around four principles. These principles are operational independence, personal independence, financial independence, and accountability and transparency. The joint criteria can

¹⁴ JC_2023_78_CP_on ITS_on ESAP_tasks_of_collection_bodies_and_ESAP_functionalities.pdf (europa.eu).

be used by supervisory authorities as a tool to enhance their independence and, at a later stage, by the ESAs to assess supervisory independence in the EU.

Another area of joint work has been the development of two amended joint ITS on the mapping of ECAI's (External Credit Assessment Institution) credit assessments to risk weights under CRR and Solvency II (ECAIs). The amendments reflect the outcome of a monitoring exercise on the adequacy of existing mappings and the deregistration of three CRAs.

Finally, the JC launched a second consultation related to the joint guidelines on the system for the exchange of information relevant to fit and proper assessments. The consultation specifically covered amendments extending the scope of the joint guidelines to legal persons, thus ensuring the complete coverage of data subjects. This followed a first consultation on the joint guidelines earlier in 2023, which did not lead to drafting changes. Work also continued on the related IT solution consisting of a cross-sectoral NCA contact list and searchable shared database of holders of qualifying holdings, directors and key function holders assessed for fitness and propriety.

2.5.10. ESA Joint Board of Appeal

The Board of Appeal is a joint independent body of the ESAs, introduced to effectively protect the rights of parties affected by decisions adopted by the authorities and is responsible for deciding on appeals against certain decisions by the ESAs.

In 2023, four appeals were lodged against the ESAs, three against EIOPA and one against ESMA. In the course of that year, the Board of Appeal dismissed one of the appeals against EIOPA, deciding that it was inadmissible. It also dismissed the appeal against ESMA (in January 2024), after it had provisionally suspended the operation of ESMA's contested decision in October 2023.

2.6. ESMA as an organisation

2.6.1. Governance and external affairs

Objectives for 2023

Ensure robust functioning of ESMA's governance bodies and strong internal governance and internal control.

Steer strategic direction for the authority and provide annual and multiannual planning and reporting.

Ensure effective external communication and engagement with stakeholders.

Ensure robust and trusted interinstitutional relationships, primarily with the EU institutions and contribute to ESMA's accountability and transparency.

Maintain strong relations and cooperation with international regulatory bodies (e.g., IOSCO, FSB) and non-EU securities regulators.

Governance

In 2023, ESMA provided support to the Board of Supervisors and the Management Board. This included the provision of support to a new Board of Supervisors Task Force, established to reflect on ways to improve the effectiveness and attractiveness of EU capital markets. Moreover, ESMA continued to support the JC and the Board of Appeal.

In line with its obligations under its founding regulation and financial regulation, in 2023 ESMA produced and sent to the EU institutions a multiannual programming document for 2024–2026. This document incorporated a comprehensive annual work programme for 2024, along with the integration of a new set of strategic KPIs measuring ESMA's fulfilment of its strategic priorities.

EU institutions and international cooperation

In 2023, ESMA continued to closely cooperate with the EU institutions. ESMA notably provided advice on



legislative initiatives within its remit to the Parliament, the Council and the Commission, in line with ESMA's mandate and strategy.

As part of its commitment to ensure its accountability as an agency of the EU, the ESMA Chair presented ESMA's key achievements and the main challenges for the EU securities markets to the Economic and Monetary Affairs Committee of the Parliament at the annual hearing of the ESA Chairs. At the invitation of the committee, ESMA also took part in two public exchanges of views with Members of the European Parliament, one dedicated to the retail investment strategy and the other one focused on the Listing Act.

Regarding international cooperation, ESMA continued its active involvement in the work of standard-setting bodies, such as the FSB and IOSCO, where it played an important role in advancing standards that may reduce global fragmentation and inform the design of EU laws. This included a prominent role in the sustainability work being undertaken by IOSCO, including through the ESMA Chair's role in co-leading work on carbon markets.

Furthermore, ESMA also engaged in regulatory and supervisory cooperation with third-country authorities.

Finally, in the context of its equivalence monitoring duties, ESMA assessed regulatory and supervisory developments associated with equivalence decisions with non-EU jurisdictions. The findings of this exercise informed a confidential report to the Parliament, the Council and the Commission in December 2023, as mandated by the ESMA regulation.

Communications

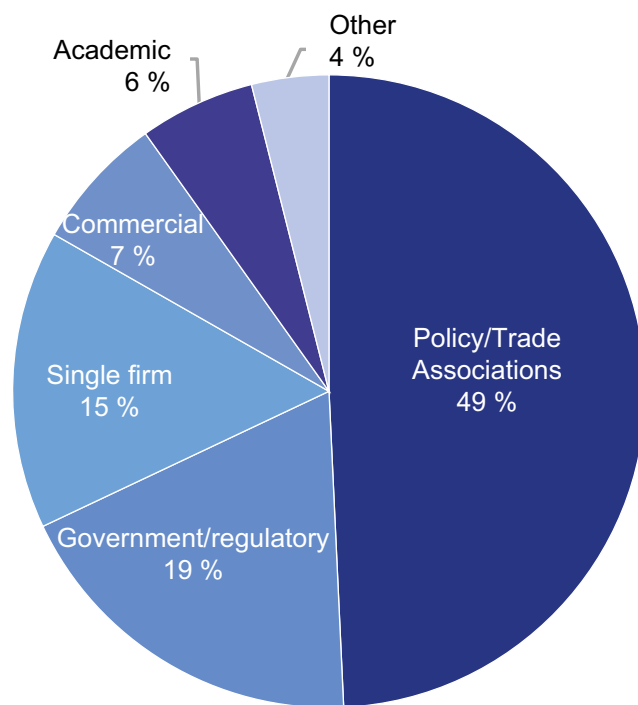
In January, ESMA unveiled a new logo and visual identity, with a design fully embracing the ESMA strategy for 2023-2028 and its key twin drivers of sustainability and technological and data innovation. ESMA also launched a new website with a modernised design and improved functionalities for a better user experience. ESMA designed, developed and successfully launched a new intranet, providing staff with up-to-date and easily accessible information needed in their day-to-day work.

ESMA continued to expand the use of online open hearings and webinars to gather input from stakeholders and present key publications to a wider audience. Open hearings took place on topics such as ESG terms in fund names, DORA and SFDR, and webinars were organised presenting ESMA's risk reports, data quality report, articles on ESG names, claims and pricing effects and on decentralised finance.

In terms of external communications, in 2023 ESMA focused on the production of news items, press releases and statements in support of its policy work. These were all published on ESMA's website, which reached a total of 2.15 million visits during the year. Among ESMA's key publications were the monthly 'Spotlight on Markets' newsletters, focusing on the most impactful achievements and developments in the period covered.

A significant aspect of ESMA's external communications is its contact with members of the press across the EU. In 2023 ESMA organised 57 interviews and briefings with 21 different media outlets from across the EU, leading to a sharp increase in the number of mentions of ESMA in the media, totalling almost 50 000 mentions during the year.

ESMA continued its policy of prioritising appearances at events aimed at reaching the broadest stakeholder audience and events organised by governmental, institutional and regulatory authorities and EU-focused trade associations bodies, which accounted for 74.4 % of appearances.

Figure 1. Accepted organiser types

Social media

In terms of followers and engagement, ESMA's social media channels (Twitter and LinkedIn) saw considerable growth in 2023.

In terms of numbers, our LinkedIn account increased by 19.5 %, with just over 13 465 new joiners to 82 400, while the Twitter account increased by 3.8 %, adding more than 771 new followers to reach 21 014. The differing growth and follower numbers reflect LinkedIn's use by finance industry participants, our more specialised target audience.

2.6.2. Legal and compliance

Objectives for 2023

Identify and minimise the legal risks of ESMA's actions and defend the authority in case of legal challenge.

Advise on and enhance the legal drafting and soundness of legal acts adopted by ESMA, notably through the sign-off process of draft technical standards and legal review of guidelines.

Promote a strong compliance and integrity culture at ESMA on ethics and COI policies, professional secrecy and data protection rules, along with good administration principles.

Facilitate the settlement of disagreements between NCAs in cross- border situations.

Legal advice and legal review

ESMA ensured legal support was provided on the full range of ESMA's activities, including its direct supervisory activities, the development of regulatory guidance and standards and other significant projects. Furthermore, ESMA reviewed from a legal perspective all guidelines and draft technical standards issued in 2023.

Litigation

In 2023, ESMA notably acted, either as main or intervening party, in two cases before the Court of Justice of the European Union. The cases concerned, respectively, (i) a procurement procedure for IT consultancy services run by ESMA, and (ii) Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Union, specifically with respect to pension rights. The first case is still pending. The second case was concluded with an out-of-court settlement between the main parties.

In addition, ESMA defended itself in the appeal proceedings initiated before the ESAs' Joint Board of Appeal by a Third Country CCP contesting certain aspects of the EMIR-based decision of the Board of Supervisors to withdraw its recognition and requesting (by way of interim measure) the suspension of the effects of this decision pending the outcome of the appeal. While the Board of Appeal initially granted the requested suspension, the decision on the merits of the appeal (delivered and published in January 2024) upheld ESMA's defence, confirmed the ESMA decision and terminated the previously granted suspension.

Breach of EU law

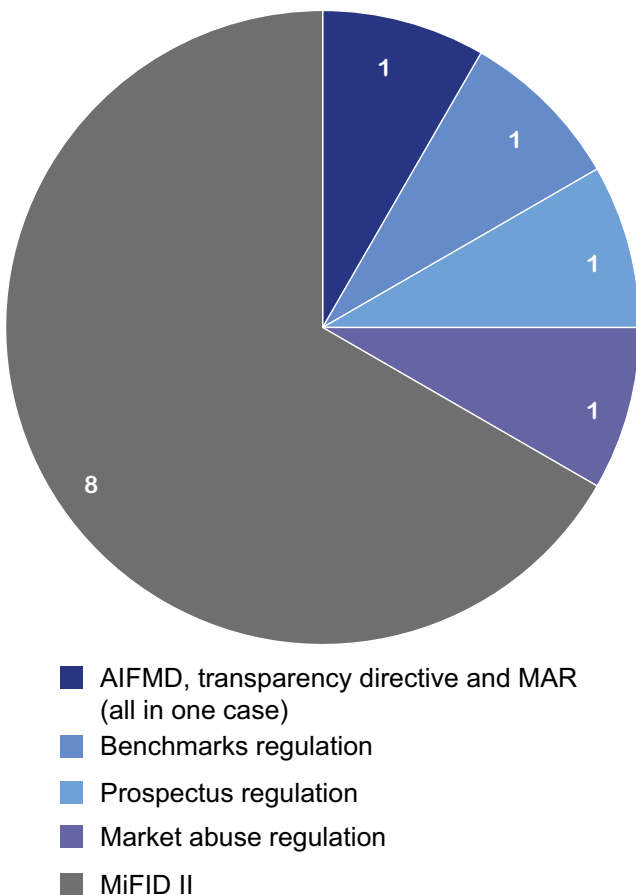
During 2023, ESMA received and handled 199 complaints. Of these complaints, most (184) were considered inadmissible because they were outside ESMA's remit or failed to refer (explicitly or implicitly) to an NCA. For example, this is the case of the

numerous complaints received in relation to alleged breaches of EU law by financial market participants, which do not contain allegations of a breach by an NCA.

Altogether, 22 admissible complaints (including 7 that were carried forward from 2022) have been the subject of a preliminary investigation by ESMA during 2023. When ESMA receives several complaints referring to the same facts, it deals with them jointly as a single case, which makes a total of 10 admissible cases in 2023. In addition to the complaints received, ESMA assessed 2 cases initiated *ex officio*.

More precisely, the admissible cases referred to potential breaches of the MiFID II / MiFIR framework, the AIFM directive, the benchmark regulation, the prospectus regulation and the market abuse regulation by 8 NCAs.

Figure 2. Admissible cases per legislative act



To formally obtain clarifications / additional information from the concerned NCAs, ESMA sent three requests for information under Article 35 of the ESMA regulation in 2023 and had numerous contacts at the staff level with the NCAs.

In most of the cases, the complainants referred to alleged NCA failures to act in relation to complaints that they initially submitted at the national level about investment firms' practices, as a result of which they would have lost money. For such complaints, ESMA needs to be reassured that the subject matter has not been left unaddressed by the concerned NCA. Such cases are usually closed based on the detailed information submitted by the NCAs to ESMA about their supervisory/enforcement actions. Additionally, in 2023 ESMA assessed a case containing allegations falling under BMR for the first time. ESMA also received complaints relating to the transposition of the EU legislation into the national law rather than NCAs' practices and thus liaised with the Commission, which is better placed to address these matters.

Following ESMA's preliminary investigations, 10 admissible cases were closed in 2023, while two cases were still under assessment in early 2024.

In 2023, no formal breach of European Union law (BUL) investigation was initiated pursuant to Article 17 of the ESMA regulation.

The overall objective of ESMA's breach of EU law and complaint-handling activities is not the opening of formal breach of EU law investigations as such, but rather the achievement of greater supervisory convergence outcomes through a structured dialogue between ESMA and NCAs leading to effective changes, during the preliminary investigations, in the contested national supervisory approaches.

Misuse of ESMA logo and identity

In 2023, ESMA received and replied to a record number of queries (1 119) regarding the fraudulent use of ESMA's logo and identity. These queries come from victims of frauds and include fake documents, statements or certificates with ESMA's logo, fake signatures of ESMA employees or even phone calls and WhatsApp/SMS texts from scammers who pretend to work at ESMA.

ESMA standard procedure is to respond to such emails as soon as possible, informing the senders about their rights and encouraging them to (i) cease all interactions with the scammer, and (ii) report their case to the domestic law enforcement authorities (such as their local police force).

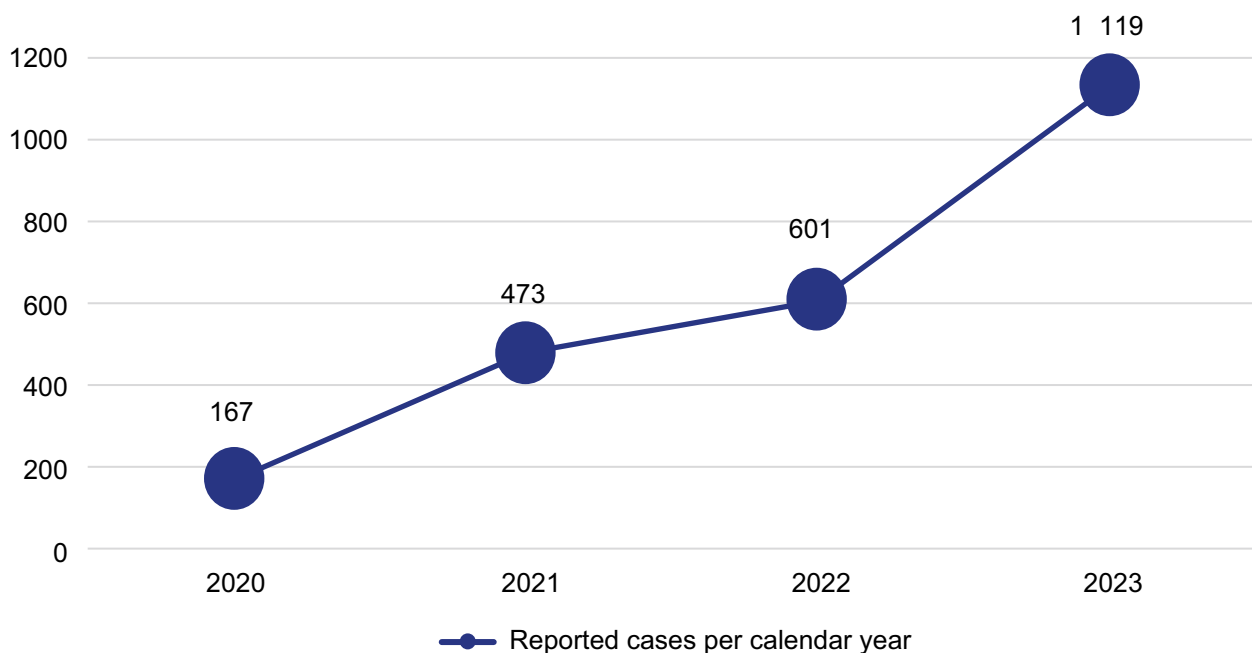
The growing sophistication of scams necessitates quick and efficient responses. In 2023, to reinforce the efficiency of its practices and address as much as possible the investor detriment, ESMA undertook several measures, such as the use of an IT security service provider which detects fraudulent and copycat websites (thus allowing prompt identification and closure before harm to investors can be done), the requests for closure of fake websites imitating ESMA's website and domain name, restructuring and streamlining its internal templates and processes,

and liaising with NCAs and other ESAs in order to exchange valuable information in relation to fraud cases.

In 2023, ESMA also created a new and dedicated functional mailbox (scamreport@esma.europa.eu) to speed up the responses to victims of this kind of fraud by establishing a direct line of communication.

Additional technical solutions and further automation to tackle the growing number of queries efficiently will continue to be further assessed.

Figure 3. Fraudulent use of ESMA's logo and identity cases per calendar year



Data protection

Throughout 2023, ESMA provided consistent support to ensure compliance with Regulation (EU) 2018/1725, covering a diverse range of areas. This included ongoing assistance in building and implementing large-scale databases, offering regular support and advice on new tools or processing operations at ESMA. The outcomes of these efforts were reflected in the publication of four updated data records on ESMA's website and the implementation of red-flag checks for external providers.

ESMA also conducted assessments and notified the European Data Protection Supervisor of any personal data breaches as necessary. Continuous awareness-raising initiatives were undertaken, targeting both newcomers and existing staff at ESMA. This was achieved through the establishment of the data protection coordinators network, the enhancement

of practical information for staff and the development of a new tailor-made training program for all ESMA personnel.

Notably, 2023 witnessed an increased involvement of the Data Protection Office (DPO) in the drafting process of RTS and ITS, ensuring a proactive approach to addressing potential data protection implications in a timely manner.

Transparency

In 2023, ESMA received 32 requests for access to documents (initial applications) and 2 confirmatory applications. In 16 cases, ESMA granted access, whereas on 5 occasions, access to (some of) the requested documents was refused. No complaints were lodged before the European Ombudsman. In 3 cases, given the broad scope of the requests, ESMA

proactively engaged with the applicants and managed to find a solution that suited them. In 8 cases, ESMA was not in possession of the requested documents.

2.6.3. Finance and procurement

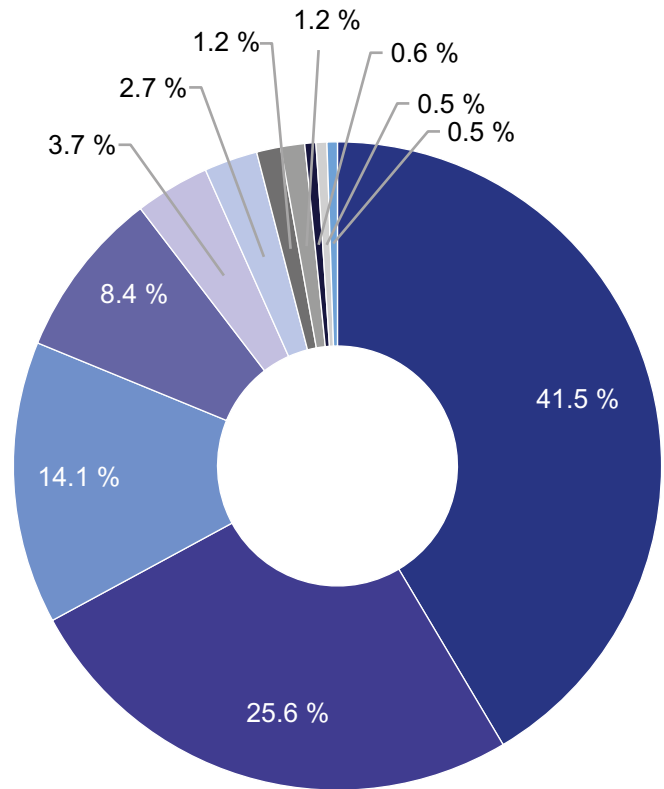
Objectives for 2023

Continue enhancing the efficiency of ESMA's financial and procurement processes and ensuring their accuracy and regularity in light of the EU financial regulation.

ESMA spent 99.0 % of its 2023 budget, amounting to EUR 71 715 542 (excluding EUR 394 149 from the Directorate-General (DG) for Structural Reform Support (DG Structural Reform Support) and the contributions from the NCAs and other external entities for the IT delegated task TRACE, which represented EUR 399 966 in 2023). In 2023, the total ESMA budget was + 6.3 % higher than in 2022.

In 2023, ESMA was financed by 11 streams of income, as shown in the figure below.

Figure 4. 2023 revenues by source



- National Competent Authorities
- European Union
- Credit rating agencies
- EMIR 2.2
- Data reporting service provider
- Trade repositories under EMIR
- Trade repositories under SFTR
- Benchmark administrators
- NCAs and external entities—for TRACE
- EU DG REFORM projects
- Securitisation repositories

In 2023, ESMA continued to benefit from the full digitalisation of all financial and procurement processes. During the year, 10 procurement procedures were managed and six were finalised.

2.6.4. Corporate services

Objectives for 2023

Provide proactive and effective support by ensuring the smooth running of the facilities and the acquisition of goods and services, in accordance with the EU public procurement rules and procedures.



Ensure the health and safety of ESMA staff and visitors.

Provide support to ESMA's core business by offering an appropriate working place for staff and visitors, organising missions and events, and managing a secure, robust, efficient and collaborative document management system fulfilling the regulatory requirements and business needs of an EU authority.

2023 was the first year to be fully pandemic-free after 3 years significantly impacted by the COVID-19 restrictions. In this context, the organisation functioned all year long under the 'new normal' characterised by new ways of working, including more remote and hybrid meetings, less travelling, but also more flexibility for the organisation and a greater focus on the environmental performance compared to the pre-COVID era.

The lessons learnt from the past years continued to be considered to adapt to new ways of working and reinforce the sustainability of ESMA's activities and workplace, for example by looking for more efficient ways to travel and consume resources. In the context of the energy crisis, ESMA maintained its action plan to decrease energy consumption at its premises.

Once again, sustainability has been a key focus area for the organisation. ESMA maintained and improved its EMS to keep the European eco-management and audit scheme (EMAS) and ISO 14001 registration

obtained in 2022. The full EMAS cycle ran successfully with all regulatory audits and verification checks, with the second environmental statement published in October 2023.

ESMA also pushed forward its environmental agenda by reducing the number of missions for its staff compared to the pre-pandemic period and promoting online attendance to meetings and events when feasible and practical.

In 2023, ESMA staff undertook 412 missions versus 261 in 2022, a year still partially impacted by the COVID-19 crisis, and versus 670 in 2019, the last pre-pandemic year. ESMA reached its objective to reduce its number of missions per FTE by 50 % compared to the benchmark year 2019.

2.6.5. Information and communication technologies

Objectives for 2023

Contribute to ESMA's operations by leveraging information technologies, delivering IT services and solutions, and advising and collaborating to deliver ESMA's objectives.

Provide effective and proactive ICT support to staff and manage ESMA's ICT resources in a flexible and efficient way.

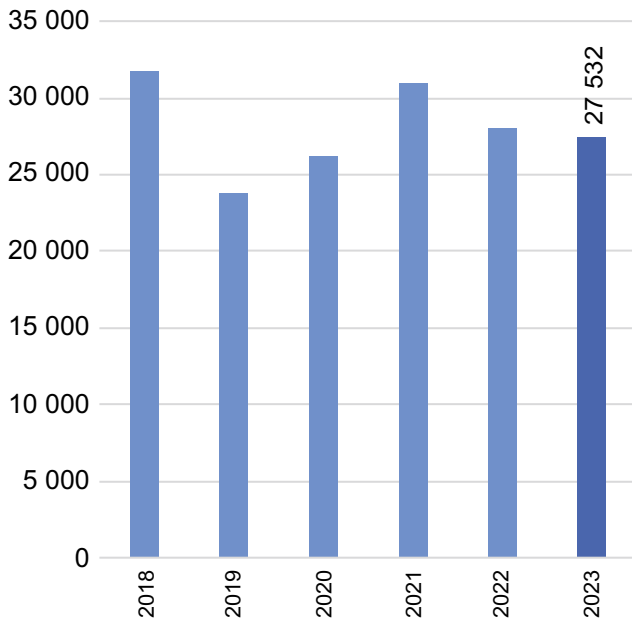
At the end of 2023, there were 3 238 users of ESMA's systems, an increase of + 35.4 % compared to 2022. A vast majority (2 647 or 81.7 %) were external active users from NCAs, trading venues, CRAs, TRs, etc.

The ICT helpdesk continued to face a heavy workload: in 2023, it managed 27 532 tickets, a decrease of - 3.3 % compared to 2022. We faced an increase of + 18 % in the number of incidents, corresponding to half of the increase in number of stakeholders to support. The average time of closing requests was 4 days, and the average time of closing incidents was 7 days, both above the target of 3 days.

The chart below shows the annual evolution of the total number of tickets managed by the ICT helpdesk since 2018.



Figure 5. Number of IT tickets for support



In 2023, ESMA continued to upgrade its workplace tools. In this regard, ESMA implemented a collaborative and records management platform for ESMA staff and external stakeholders, aiming to improve WG collaboration (via migration of Extranet to SharePoint Online) and collaboration with NCAs via MS Teams, along with ESMA's records management processes and assistance with submitting Board papers.

2.7. Management

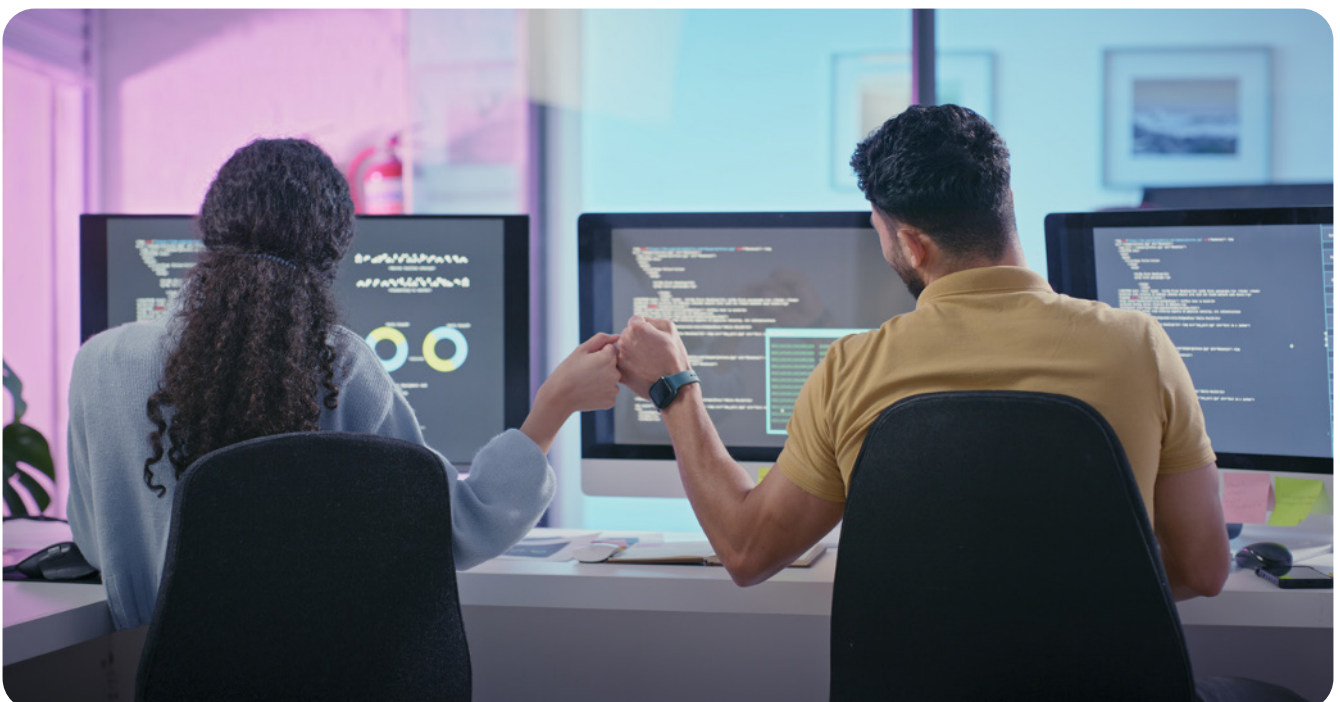
2.7.1. Follow-up on audits and evaluations

European Court of Auditors

ESMA is audited every year by the European Court of Auditors (ECA). The audit provides a statement of assurance of the reliability of the accounts of the authority and the legality and regularity of the underlying transactions.

The 2022 statement of assurance indicated that the accounts of the authority for the year ending on 31 December 2022 presented fairly, in all material respects, the financial position of the authority on 31 December 2022, the results of its operations, its cash flows and the changes in net assets. These were in accordance with its financial regulation and with accounting rules adopted by the Commission's accounting officer. It also stated that the revenues and payments underlying the annual accounts for the year ending 31 December 2022 were legal and regular in all material respects.

The 2022 ECA statement of assurance included one observation relating to budgetary management (ceiling of a framework contract exceeded). ESMA has already reinforced its internal control system by putting in place the following actions:





- detailed work instructions for enhancing in the financial circuit the ex-ante control on the verification of the budget ceiling in all framework contracts
- introduction of the ABAC Legal Commitment Kernel tool for the monitoring of the budget consumption of all framework contracts.

Based on the measures implemented, ECA has agreed to close the recommendation.

Two recommendations from previous years were considered outstanding, and ECA recognised that solving these recommendations is not under ESMA's control, as they relate to the need to resolve issues in the regulation of fees.

Internal Audit Service

ESMA is also audited by the IAS of the Commission.

In January 2023, IAS issued the 2023–2025 strategic audit plan for ESMA, containing the list of prospective topics that will be audited during this period. The list of prospective topics selected were:

- enforcement in direct supervision,

- new direct supervisory mandates,
- data security.

In addition, IAS decided to launch a multi-entity audit on coordination between the Directorate-General for Financial Stability, Financial Services and Capital Markets Union and the decentralised agencies EBA, EIOPA and ESMA. This audit was launched in 2023 and is expected to be finalised by Q3 2024.

ESMA does not have any overdue pending recommendation nor any open "critical" or "very important" recommendation.

2.7.2. Follow-up on observations from the discharge authority

On 10 May 2023 the Parliament adopted in its plenary meeting the report on discharge in respect of the implementation of the budget of ESMA for the financial year 2021 (2022/2115(DEC)) – the '2021 discharge report' ⁽¹⁵⁾.

The ESMA regulation prescribes that ESMA should provide a reasoned opinion on the position of the

¹⁵ https://www.europarl.europa.eu/doceo/document/TA-9-2023-0174_EN.pdf.



Parliament and on any other observations provided by the Parliament in the discharge procedure. The corresponding opinion ⁽¹⁶⁾ was published on 5 July 2023 by ESMA and included the following key points in the light of the 2021 discharge report.

1. Regarding its funding model, ESMA reiterated that, given the growing complexity of its budget structure, it deemed the revision of its fee-funding model necessary to be able to react to significant financial market developments while being able to manage more efficiently the high number of fee sources derived from direct supervisory mandates.
2. On performance, ESMA noted the Parliament's recognition of ESMA's achievements and confirmed its efforts to focus on missions with clear European added value. ESMA mentioned that it remained committed to use relevant KPIs to measure and monitor progress.
3. With regard to the prevention and management of conflict of interest, ESMA stressed that it had launched the revision of its internal guidelines on declarations of interests by selection board

members and mentioned that it intended to finalise these guidelines in the second half of 2023.

4. On staff policy, ESMA reasserted its engagement to develop a 'Diversity and inclusion policy'.

2.7.3. Strategy for efficiency gains

ESMA continues to pursue efficiency gains and synergies in its areas of activity. This section gives some examples of areas in which efficiency gains have been or are being made.

ESMA carried out an assessment of its tasks and commitments that were outlined in its 2023 AWP to enhance efficiency. As part of a wider effort to continually improve efficiency, this prioritisation exercise aimed to ensure that resources are appropriately allocated, also in light of external factors impacting on ESMA's workload since the publication of the 2023 AWP.

The primary external factors which affected ESMA during 2023 were (i) the high concentration of time-critical deliverables under DORA and MiCA, (ii) the ongoing crisis management linked to the measures

¹⁶ https://www.esma.europa.eu/sites/default/files/2023-07/ESMA24-450544452-1809-ESMA_opinion_on_2021_discharge_report.pdf.

taken following the energy crisis and the market volatility, and (iii) the overall resource constraints.

In order to ensure ESMA's ability to deliver most effectively on its 2023 work programme taking into account these factors, ESMA identified among its planned work a set of deliverables which have been deprioritised. In particular, the deprioritisation of specific outputs enabled the redeployment of resources to ensure timely delivery of critical outputs under DORA and MiCA.

Regarding administrative efficiencies, in 2023 ESMA continued to benefit from the efforts made in the past years to increase the efficiency of all its support functions. For instance, all areas of ESMA administration (including HR, finance and procurement, facility management and ethics processes) have been entirely digitised (zero paper) for several years. This has led to a general improvement in efficiency in these areas, notably in terms of speed, reliability and traceability, while also contributing to environmental sustainability by reducing paper consumption.

The extensive digitalisation effort that enabled ESMA staff to maintain efficiency while working remotely during the COVID-19 pandemic laid solid foundations for the 'new normal' and the new hybrid working model in 2023. The digitalisation of processes has reinforced ESMA's organisational agility and facilitated cost-efficient and sustainable operations. Cost savings were achieved by promoting fewer business trips and on-site meetings, while at the same time

continuing to implement measures to decrease energy consumption at ESMA premises.

In terms of systems and tools, in 2023 ESMA successfully onboarded various tools from the Commission into its support functions, spanning HR, procurement, contract management and business travel management. Leveraging tools already employed by other EU institutions typically saves costs, shortens implementation timelines, increases operational efficiency and facilitates adherence to specific EU rules. Moreover, it improves tool integration and reduces the administrative workload relating to common systems among EU institutions, allowing the organisation to concentrate on its core activities.

Similarly, in 2023 most ICT and cybersecurity services provided to ESMA were sourced through interinstitutional framework contracts, including a service-level agreement with the Commission. This arrangement helped ESMA to further streamline its IT budget and enhance efficiency through synergies and economies of scale. Additionally, ESMA continued to save costs by having migrated its ICT infrastructure to the public cloud, a transition completed in 2021.

2.7.4. Budgetary and financial management

Statistics on financial management

Budget execution C1

2023 C1	Voted budget			Payments (3)		To be carried forward (4)	
	for 2023 (after transfers) (1)	Commitments (2)	(2) / (1) (%)	Paid (EUR)	(3) / (1) (%)	(2) – (3) (EUR)	(4) / (1) (%)
ESMA's budget title	Budget for 2023 (EUR)	Committed (EUR)	(2) / (1) (%)	Paid (EUR)	(3) / (1) (%)	(2) – (3) (EUR)	(4) / (1) (%)
I	47 250 718	47 147 303	99.78	46 707 315	99.07	439 988	0.93
II	8 377 417	8 231 654	98.26	7 510 888	91.24	720 766	8.76
III	16 087 373	15 616 375	97.07	11 293 332	72.32	4 323 043	27.68
IV	34					34	
Total C1	71 715 542	66 839 617	99.00	65 511 535	92.28	5 483 797	7.72

NB: Appropriations corresponding to the EU contribution for the current year.

ESMA spent 99.00 % of its 2023 budget, amounting to EUR 71 715 542 (excluding the contributions from the NCAs and other external entities for the IT

delegated task, which represented EUR 399 966 in 2023 and EUR 394 149 from DG Structural Reform Support).

Number and value of budget transfers

ESMA's Budget Title	2023 INITIAL BUDGET (A)	1st budget amend-ment	1st budget transfer	2nd budget transfer	3rd budget transfer	2nd budget amend-ment	4th budget transfer	2023 FINAL BUDGET (B)	B-A	VAR %
1 Staff	48 197 629	42 000	(544 000)	(75 000)	(983 788)	-	613 877	47 250 718	(946 911)	- 2 %
2. Infrastructure & administration	8 310 700	-	134 000	46 000	(28 000)	-	(85 283)	8 377 417	66 717	1 %
3. Operating expenditure	14 948 911	-	410 000	29 000	1 011 788	216 268	(528 594)	16 087 373	1 138 462	8 %
4. Delegated tasks - only core budget	66 000	-	-	-	-	(65 966)	-	34	(65 966)	- 100 %
TOTAL	71 523 240	42 000	-	-	-	150 302	-	71 715 542	192 302	0 %

NB: Due to rounding, there may be a EUR 1 difference in the totals.

Interest charged for late supplier payments

In 2023, ESMA has not paid any interest for late payments to suppliers.

Budget outturn and cancellation of appropriations (data from provisional accounts for 2023) (EUR)

Calculation of budget outturn	2021	2022	2023
Reserve from the previous year's surplus (+)	—	—	—
Revenue actually received (+)	60 881 221	67 854 647	72 188 568
Payments made (-)	- 54 236 666	- 61 491 034	- 66 391 756
Carry-over of appropriations (-)	- 7 422 820	- 7 684 750	- 6 266 387
Cancellation of appropriations carried over (+)	301 932	300 324	209 043
Adjustment for carry-over of assigned revenue appropriation from previous year (+)	1 081 073	1 532 034	989 786
Exchange rate differences (±)	- 994	- 3 582	- 880
Adjustment for negative balance from previous year (-)	0	0	0
Total ⁽¹⁷⁾	603 746	507 639	728 374 ⁽¹⁸⁾

Budget outturn

For the calculation of budget outturn, the following parameters are considered. The revenue entered in the accounts is the amount actually received during the year. For the purposes of calculating the budget result for the year, expenditure comprises payments made against the year's appropriations plus any of the appropriations for that year that are carried over to the following year. Payments made against the year's appropriations are payments that are made by

the accounting officer by 31 December of the financial year.

The following are added to or deducted from the resulting figure: the net balance of cancellations of payment appropriations carried over from previous years; any payments that, because of fluctuations in the euro rate, exceed non-differentiated appropriations carried over from the previous year; and the balance of exchange-rate gains and losses recorded during the year.

¹⁷ Due to rounding, there may be a EUR 1 difference in the sub-totals and totals.

¹⁸ 2023 outturn figures will only be final by the time of the presentation of the provisional annual accounts.

Payment appropriations carried over include automatic carry-overs and carry-overs by decision. The cancellation of unused payment appropriations carried over from the previous year includes the cancellations on appropriations carried over automatically and by decision. It also includes the decrease in assigned revenue appropriations carried over to the next year in comparison with the previous year.

C1 cancelled appropriations

ESMA uses non-differentiated appropriations for its C1 credits. In 2023, the total amount of appropriations inscribed as C1 funds that were not used at the end of the year equalled EUR 720 210.

C8 cancelled appropriations

In 2023, out of a total of EUR 6 056 564 C8 payment appropriations, 96.57 % was consumed (EUR 5 848 776). A total of EUR 207 788 (or 3.43 % of the C8 appropriations for the year) was cancelled.

Costs and benefits of controls

The controls in place are designed to optimise their effectiveness and efficiency, by striking the right balance between the benefits of the controls, regarding in particular the legality and regularity of the underlying transactions, and the effectiveness and efficiency of the controls considering the risks involved.

ESMA estimated the costs of controls in 2023.

The calculation method has been inspired by the approach used in the Commission and the guidelines provided by the Performance Development Network of EU Agencies. The estimated costs of controls include the estimated salary costs (including social charges) of the staff directly involved in the relevant control systems. These activities were centred on the following areas: finance and verification processes, *ex ante* and *ex post* controls, procurement monitoring and control, budgetary and accounting activities, along with external financial audit coordination.

Taking the above into consideration, in 2023 ESMA allocated EUR 0.901 million for control activities, amounting to 1.26 % of the authority's 2023 total budget.

Regarding the effectiveness of the controls, the ECA has given ESMA an unqualified opinion on the 2022 accounts. No other indications were found that the controls in place were not effective. Regarding the efficiency and economy of the controls, no serious anomalies were reported to indicate that the efficiency and economy were under question. Considering the positive result of the *ex ante* and *ex post* control verifications, the absence of critical recommendations stemming from audits, the well-established framework to manage exceptions and the regularity of operations, the overall balance between effectiveness, efficiency and economy of controls is reasonably satisfactory.

2.7.5. Delegation and subdelegation of the powers of budget implementation to ESMA's staff

Pursuant to Articles 73, 74 and 90 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of the European Union laying down detailed rules for the implementation of the financial regulation and the internal rules on the implementation of the budget, the Executive Director, as the authorising officer of ESMA, has delegated financial powers to the heads of department, heads of unit and team leaders for the budget lines they are responsible for in line with their activities.

The ESMA subdelegation breakdown per budget line is organised to ensure:

- business continuity (e.g., through the identification of backups for each budget line);
- efficiency, through an appropriate balance between the maximum ceiling of each subdelegation and the authorising officer by the subdelegation's responsibility in ESMA.

The authorising officers by subdelegation have to accept the delegations granted to them in writing, following Article 11 and Article 11a of the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Union, and paragraph 3.2 of the charter for authorising officers by subdelegation.

On a yearly basis, ESMA controls the implementation of the subdelegations granted by the Executive Director in accrual-based accounting.

2.7.6. Human Resources management

Objectives for 2023

Deliver human resources (HR) services, enabling ESMA to attract, train, develop and retain the talents required to successfully perform its tasks and achieve its objectives, and ensuring efficient HR administration while at the same time fulfilling the regulatory requirements of an EU authority, in the context of a larger organisation.

The most significant achievements of 2023 were the work on ESMA's people strategy, the work on the competency framework and the approval of the Diversity, Equity and Inclusion Strategy. These will

steer ESMA's people management processes and actions in the next 4 years. There were no Implementing Rules adopted in 2023.

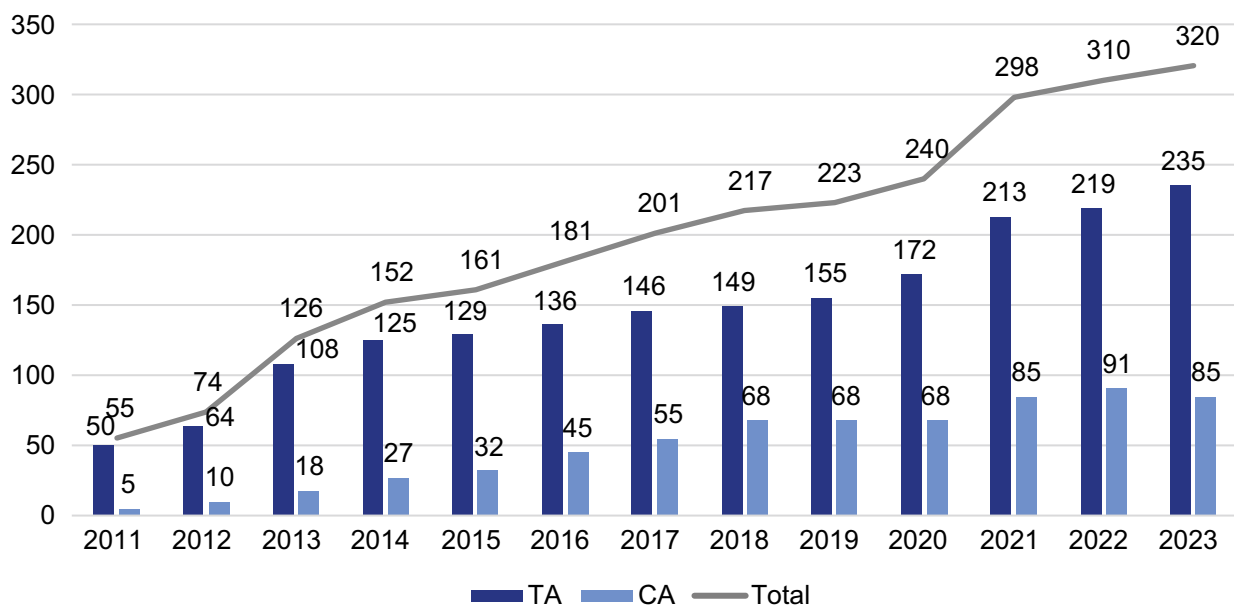
ESMA employs different categories of staff:

- Temporary Agents (TAs),
- Contract Agents (CAs), and
- Seconded National Experts (SNEs).

At the end of 2023, ESMA employed 320 statutory staff members (TA/CA): 235 TAs and 85 CAs. That was 10 more statutory staff members than 2022, or a + 3 % increase.

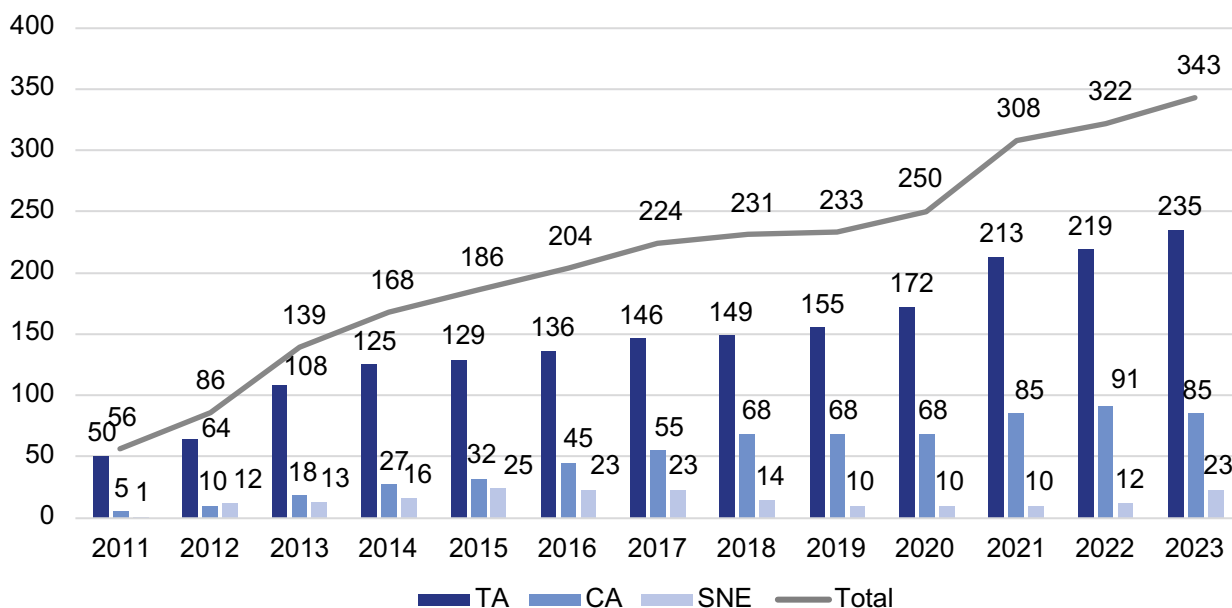
Staff evolution

Figure 6. Statutory staff population (TA & CA) - year-end view



At the end of 2023, ESMA was employing 23 SNEs (12 in 2022), bringing the total number of ESMA staff (TAs/CAs/SNEs) to 343, versus 322 staff 1 year before, or a + 7 % increase.

Figure 7. Statutory staff population (TA & CA) - year-end view



The increase in SNEs was possible due to the shared effort of ESMA, the NCAs and other eligible institutions. SNEs bring highly valuable specific expertise, such as direct supervisory experience, and secondments create knowledge-sharing opportunities between the organisations involved.

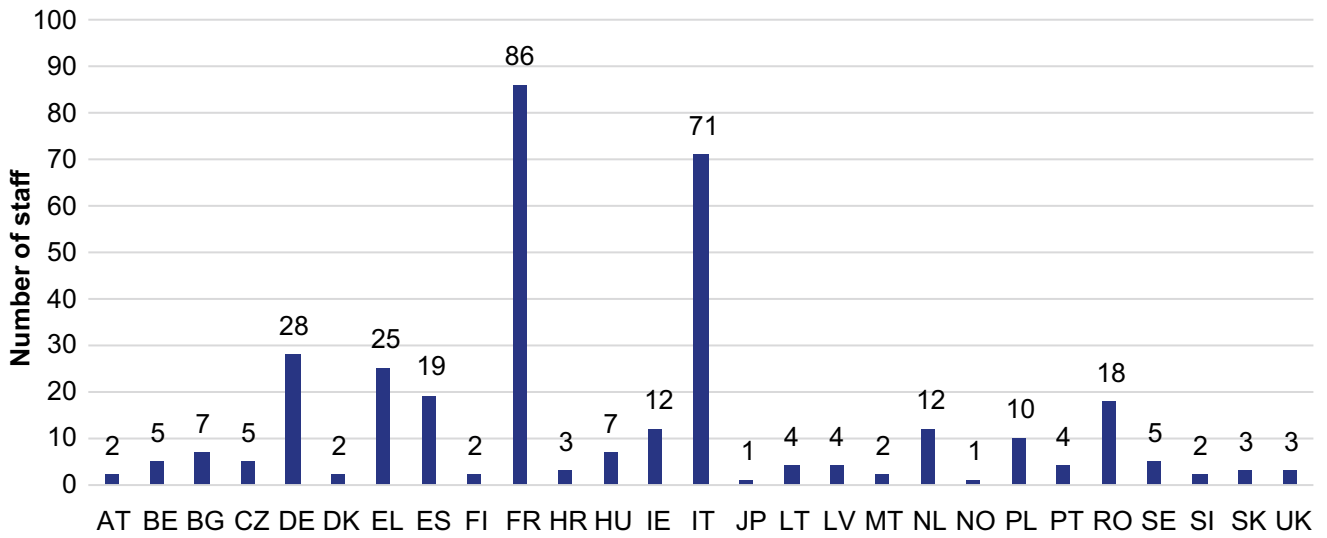
At the end of 2023, ESMA staff (TAs/CAs/SNEs) included 24 different EU nationalities, 3 nationals from the United Kingdom, 1 national from the EEA (Norway) and 1 from Japan.

The following table shows the distribution of nationalities per contract type and function group.

	AT	BE	BG	CZ	DE	DK	EL	ES	FI	FR	HR	HU	IE	IT	JP	LT	LV	MT	NL	NO	PL	PT	RO	SE	SI	SK	UK	Total
TA	2	2	5	3	20	2	14	12	2	62		4	8	50		3	2	1	7	1	5	3	15	5	1	3	3	235
CA		3	2	1	4		10	3		23	1	3	2	18		1	2		2		5	1	3		1			85
SNE				1	4		1	4		1	2		2	3	1			1	3									23
Total	2	5	7	5	28	2	25	19	2	86	3	7	12	71	1	4	4	2	12	1	10	4	18	5	2	3	3	343
%	1%	1%	2%	1%	8%	1%	7%	6%	1%	25%	1%	2%	3%	21%	0%	1%	1%	1%	3%	0%	3%	1%	5%	1%	1%	1%	1%	100%

The following chart shows the distribution of nationalities for ESMA staff (TAs/CAs/SNEs) at the end of 2023.

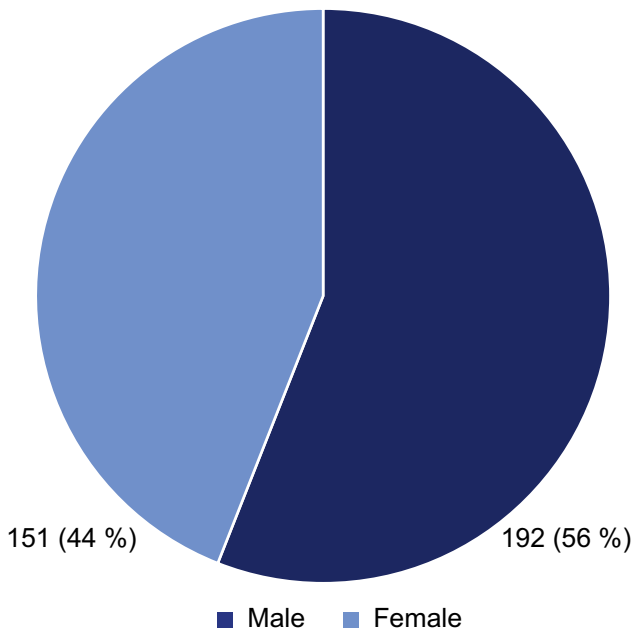
Figure 8. Nationalities at ESMA (TA/CA/SNE)



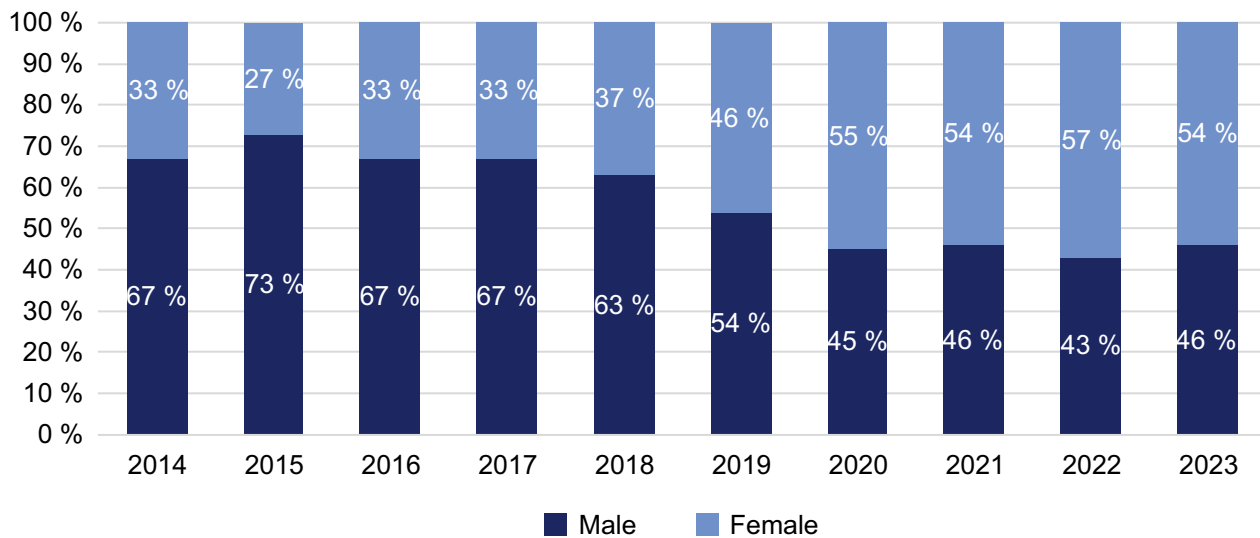
Gender Balance

The global gender balance amongst ESMA staff (TAs, CAs and SNEs) was 56 % male – 44 % female in 2023, versus 54 % male – 46 % female in 2022.

Figure 9. Gender distribution at ESMA



The evolution of the gender balance (in all staff groups) over the last 10 years indicates that the proportion of female staff members has progressively increased from 37 % in 2012 and stabilised at an average of 45 % in the recent years.

Figure 10. Male/female % in managerial functions

The staff turnover rate was 3.9 % in 2023 versus 2.6 % in 2022.

Recruitment

In 2023, 24 recruitment procedures were launched (versus 17 in 2022), and 2 777 CVs were screened (versus 1 288 in 2022). The Selection Boards interviewed 184 candidates (versus 114 in 2022) and 59 recruitment offers were accepted⁽⁴⁹⁾ by candidates. In addition, ESMA recruited 50 trainees throughout the year (the same as 2022).

The average recruitment lead time, defined as the number of days from the publication date of the vacancy notice until the date when the reserve list of successful candidates is established, decreased to 137 days on average (versus 142 in 2022). The recruitment activities (interviews and written tests) were almost exclusively conducted remotely, contributing to lower greenhouse gas emissions, in line with ESMA's environmental policy.

Training

ESMA internal staff (TAs, CAs and SNEs) attended a total of 850 days of training in 2023 versus 834 days in 2022, or an average of 2.6 days per full-time equivalent (FTE) like the year before and 2.2 days in 2021. The positive trend of the last 2 years is notably the result of the virtual delivery of training courses that allows more flexibility and encourages participation. Virtual classes can be followed everywhere, schedules are more convenient in

length and pace than classroom courses, and associated travelling costs and emissions are also positively impacted.

Training provided to national competent authorities

In 2023, ESMA organised 14 training events for the NCAs, all online. These took place in 18 days as a number of trainings were multi-day events.

The total number of participants reached over 3 700 (more than triple compared to 2022). In 2023, the average number of participants per event was 264, over twice the previous year's average (109). The participants of the external training events were from 30 European countries or territories.

The average satisfaction rate was 85 %, above the target of 80 %.

2.7.7. Environment Management

ESMA has established an EMS which was recognised in 2022 under ISO 14001 and EMAS, the premium management instrument developed by the Commission for organisations to evaluate, report and improve their environmental performance.

The scope of ESMA's EMS and the environmental policy remains in accordance with the EMAS regulation. It covers ESMA's operations and activities, the commitment to reduce the environmental impact of its work, along with its mandates relating to the

⁴⁹ Including candidates from external recruitments, staff benefiting from internal selection procedures, replacement of staff turnover and staff who went on unpaid leave.

integration of sustainability and ESG factors. This alignment is central to ESMA's mission of enhancing investor protection, promoting orderly financial markets and safeguarding financial stability.

To improve its environmental performance, ESMA continually assesses the environmental impact of its actions. It sets objectives and targets and reviews them on a regular basis.

The EMAS registration is annually verified and validated by an external verifier to ensure that continuous progress is achieved towards the organisation's environmental objectives.

An environmental review is conducted to determine the significant environmental aspects, accompanied by a regulatory check to ensure compliance with EU, national and local environmental requirements.

The measurement and monitoring of impacts, and progress towards achieving objectives, are performed through a KPI control panel. These are documented and reported annually in the environmental statement, which is published on ESMA's website.

To achieve these engagements, ESMA collaborates with its staff and suppliers to minimise waste, enhance recycling efforts and reduce travel through

the effective use of technology, digital tools and video conferencing. The entire ESMA administration has been digitalised for several years. In addition, ESMA's premises have High Environmental Quality certification, based on the principles of sustainable development, for its construction, conception and operations.

2.8. Internal control

2.8.1. Effectiveness of the internal control system

The internal control framework supplements the financial regulation and other applicable rules and regulations with a view to aligning ESMA's standards with the highest international standards set by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) internal control integrated framework. ESMA's internal control framework was adopted by its Management Board in November 2018, replacing the previously approved 2012 internal control standards.



The COSO framework was reviewed in 2013 to move from a compliance-based to a principle-based system, with the aim of ensuring robust internal control through consistent assessment, while providing the necessary flexibility to allow it to be adapted to the specific characteristics and circumstances of different businesses. To keep up with these recent changes in international best practice, it was appropriate to update ESMA's internal control framework accordingly.

ESMA's internal control framework consists of five internal control components, which are built on 17 principles, based on the 2013 COSO internal control integrated framework and further supported by several characteristics.

To assess the status of the internal control system in 2023, in Q1 2023 ESMA performed its annual self-assessment of the effectiveness of the implementation of the internal control principles in accordance with the framework.

2.8.2. Conclusions of the assessment of internal control systems

The main objective of the self-assessment is to analyse in detail whether all of the internal control principles are present and functioning in the organisation.

To do so, in 2023 ESMA measured 77 internal control indicators, covering all internal control principles, as the primary source of information. In addition, ESMA analysed secondary sources of information, including audit reports.

This information allowed ESMA to identify the main strengths and deficiencies of each principle and finally assess each principle and component. In total, ESMA identified 36 deficiencies, most of which were minor or moderate and none of which called into question the presence and proper functioning of the principles. ESMA concluded in its self-assessment that the internal control system is effective overall with some improvements needed, mainly in the control environment, control activities and information and communication components.

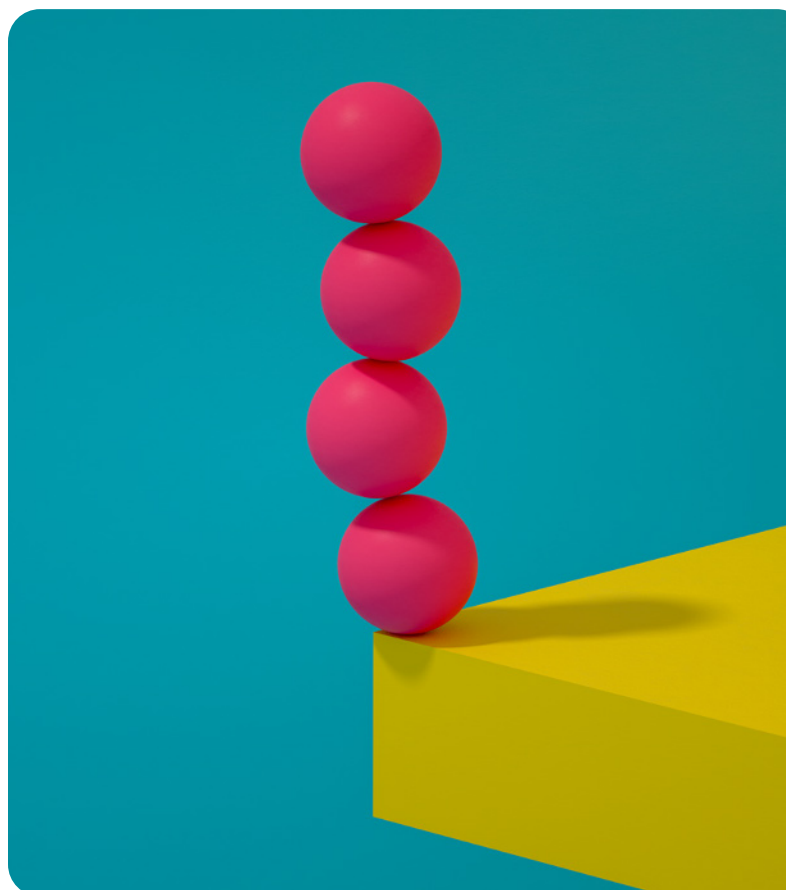
2.8.3. Risk management

ESMA operates in an ever-changing environment with many uncertainties. ESMA has developed an

annual process of identifying and assessing risks to assist in the mitigation of risks that could threaten the delivery of its mission. The annual organisational risk assessment takes a combination of bottom-up and top-down approaches: the bottom-up approach involves identifying risks at the department level and the top-down approach involves a management assessment and evaluation of strategic risks considering the input from departments. Significant risks are then reviewed by ESMA's Management Board, which endorses the risks and action plans.

The top risks identified during the assessment are summarised and included in ESMA's programming document. The top risks identified in 2023 in relation to the 2024 work programme were:

- critical market developments, including geopolitical events, could affect financial stability, may put investors at risk and increase supervisory risks at ESMA, and impact ESMA tasks and priorities;
- a high number of new legislative proposals, including specific tasks for ESMA with no allocation of additional resources and with uncertainties in timing and final outcome,



impacting the correct planning and delivery of our mandates;

- increasingly complex funding model, fee structure and budget management, putting at risk an efficient budget implementation at ESMA.

2.8.4. Ethics, integrity and anti-fraud measures

In 2023, ESMA provided guidance and support in areas regarded as key for ethical behaviour, integrity and the prevention of Conflict of interest and fraud at both the staff and non-staff levels.

Ethics and integrity

Internal reviews were undertaken to promote ethical behaviour and integrity of processes, for example in the context of recruitment procedures and on the use of social media by ESMA staff. In addition, ESMA contributed to two ethics-related surveys initiated by the legal network of EU agencies: one on revolving doors and another on declarations of interest for staff. To ensure consistent and efficient approaches for similar ethical issues across EU institutions and bodies, ESMA also maintained close interaction with the other ESAs and the Single Resolution Board.

Special attention was dedicated to raising awareness on COI and ethics rules to ensure an effective compliance on the ground. In particular, ESMA conducted systematic induction sessions for newcomers and presented ethical expectations to the members and observers of the new CCP Resolution Committee.

ESMA also reviewed annual COI declarations from its staff and governing body members. It also managed various ethics-related inquiries and declarations, such as confidentiality agreements for new hires, spousal/partner employment disclosures, outside activity requests, publication/speech approvals, pre-financial instrument dealings requests, leave-related activity disclosures and post-ESMA activity intentions. COI issues were infrequent and promptly addressed, including granting partial clearance for certain financial instrument dealings.

Anti-fraud measures

In 2023, ESMA closely followed up the implementation of its anti-fraud strategy for 2022–2025, whose main objectives are to (i) enhance anti-fraud culture across the organisation, (ii) strengthen measures for the detection of fraud, and (iii) maintain an efficient reporting system. In particular, a new online secure whistleblowing tool protecting the identity of whistleblowers was developed with a view to



enhance ESMA's anti-fraud toolbox. ESMA furthermore reviewed its procedures and guidelines to reinforce anti-fraud in the context of procurement procedures.

2.8.5. Statement of the ICC in charge of risk management and internal control

I, the undersigned, ICC in charge of risk management and internal control within ESMA,

In my capacity as ICC in charge of risk management and internal control, I declare that in accordance with ESMA's Internal Control Framework, I have reported my advice and recommendations on the overall state of internal control in the Agency to the Executive Director.

I hereby certify that the information provided in the corresponding section of this report and in its annexes is, to the best of my knowledge, accurate, reliable and complete.

Paris, 22 May 2024

Elena Munoz Aguilar

Internal Control Coordinator

European Securities and Markets Authority

2.9. Declaration of assurance

2.9.1. Review of the elements supporting assurance

The level of reasonable assurance is down to the personal judgement of ESMA's Executive Director and the authorising officers by delegation, based on all information at their disposal. This information can be structured around pillars or building blocks of assurance.

The main building blocks of the Executive Director's declaration of assurance are:

- the Executive Director's own knowledge of the management and control system in place;
- the observations of the ECA known at the time of the declaration;

- the observations of the IAS known at the time of the declaration;
- the observations of the discharge authority at the time of the declaration;
- the declarations of assurance made by the authorising officers by delegation to the Executive Director;
- the results of the assessment of the internal control system;
- the *ex ante* and *ex post* controls;
- the validation of the accounting systems;
- an analysis of the list of recorded exceptions;
- a summary of European Anti-Fraud Office activities relevant to ESMA.

In support of the annual activity report, all authorising officers and heads of department are asked to sign a declaration of assurance for their areas of responsibility.

The purpose of these declarations is to confirm, on the basis of the facts in their possession, that the information contained in the report gives a true and fair view – except if otherwise specified in any reservations relating to defined areas of revenue and expenditure – and that the resources assigned have been used for their intended purpose and in accordance with the principles of sound financial management. The heads of department and the authorising officers by delegation confirmed their reasonable assurance that, overall, suitable controls are in place and working as intended and that the risks identified are being appropriately monitored and mitigated.

Given the control system in place, the information obtained from the building blocks above and the lack of critical findings from the ECA and the IAS at the time of the declaration, there is no reason to question the efficiency and effectiveness of the control system in place.

2.9.2. Reservations

Based on the assurance provided by the control system in place, the Executive Director sees nothing that would justify or require having any reservations.

Materiality criteria used

In line with the guidelines on the preparation of the annual activity report, ESMA used the qualitative and quantitative materiality criteria described below to assess whether the issues identified merited having any reservations.

Qualitative criteria used

ESMA considers any weakness in the internal control system that falls under certain qualitative criteria to be significant, namely:

- significant errors detected during the control exercises;
- a significant weakness in the control system;
- situations in which ESMA does not have sufficient evidence from the internal control system or audit coverage to be confident in providing the necessary assurance;
- situations in which a major issue has been highlighted by the ECA or the IAS of the Commission (critical audit recommendations for underlying weaknesses) relevant to the area covered by the declaration of assurance that are not adequately addressed by other internal controls and for which the materiality threshold is exceeded;
- situations revealed through ESMA's own control work or audits in which significant risks remain unmitigated;
- a significant reputational risk.

Quantitative criterion used

In accordance with the Commission's guidelines on the preparation of annual activity reports, the ECA uses a 2 % materiality threshold. ESMA has therefore set the quantitative criterion of materiality at 2 % of its total budget.

2.9.3. Overall conclusions on assurance

Taking into account the review of the elements supporting assurance, the Executive Director is of the opinion that the management and control systems in place at ESMA are working as intended, that risks are being appropriately monitored and mitigated, and

necessary improvements and reinforcements are being implemented.

Based on all of the facts presented in the report and in the light of the opinions expressed by the ECA on the reliability of the accounts and on the legality and regularity of the transactions underlying the accounts, ESMA can conclude that the systems in place provide reasonable assurance that the resources under the responsibility of the Executive Director were used for their intended purposes and in accordance with the principles of sound financial management.

2.9.4. 2023 declaration of assurance by the Executive Director of ESMA

I, the undersigned, Executive Director of the European Securities and Markets Authority,

In my capacity as authorising officer,

Declare that the information contained in this report gives a true and fair view.

State that I have reasonable assurance that the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

This reasonable assurance is based on my own judgement and on the information at my disposal, such as the results of the self-assessment, *ex post* controls, the work of the Internal Audit Service and the lessons learnt from the reports of the Court of Auditors for years prior to the year of this declaration.

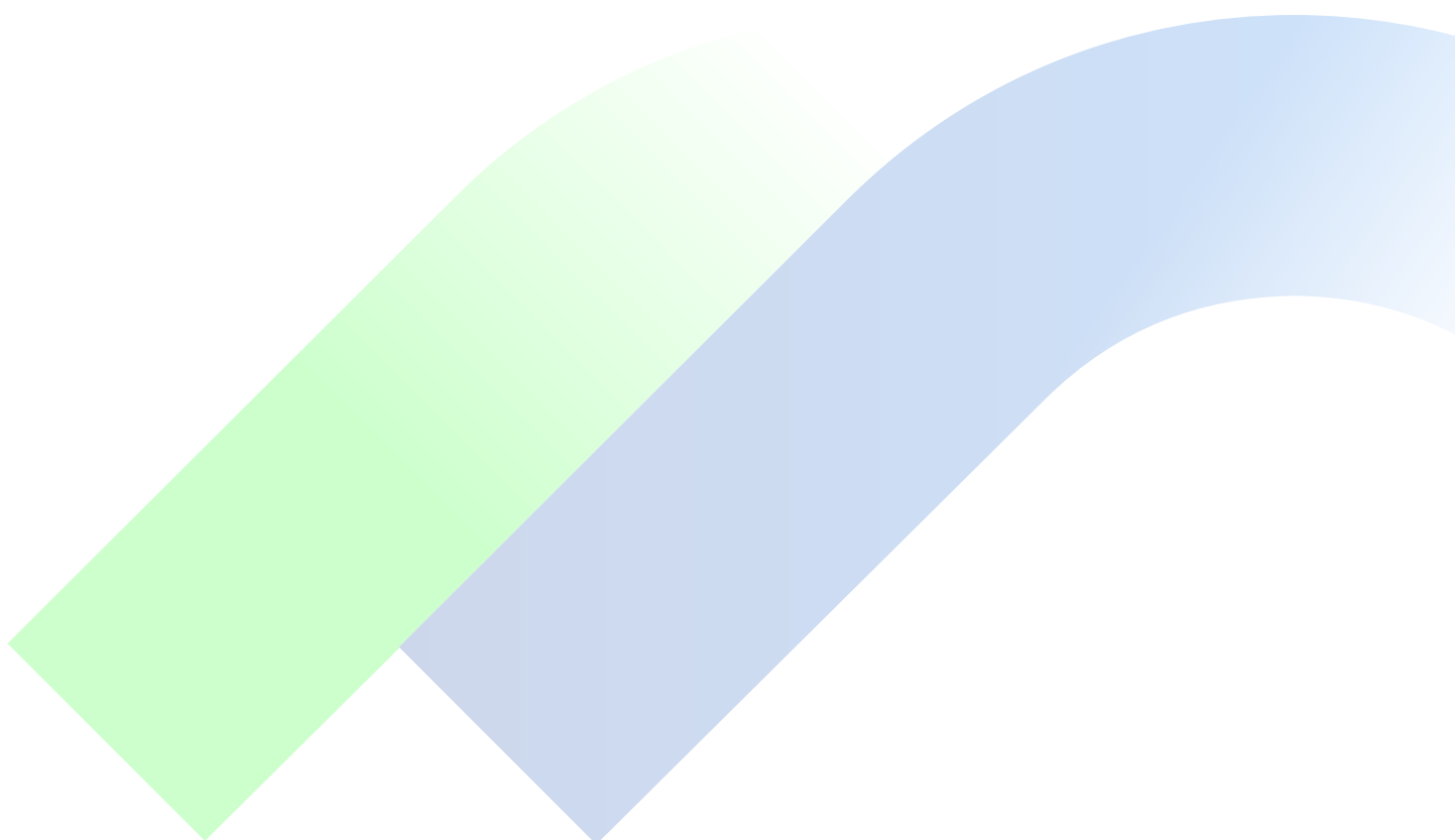
Confirm that I am not aware of anything not reported that could harm the interests of the European Securities and Markets Authority.

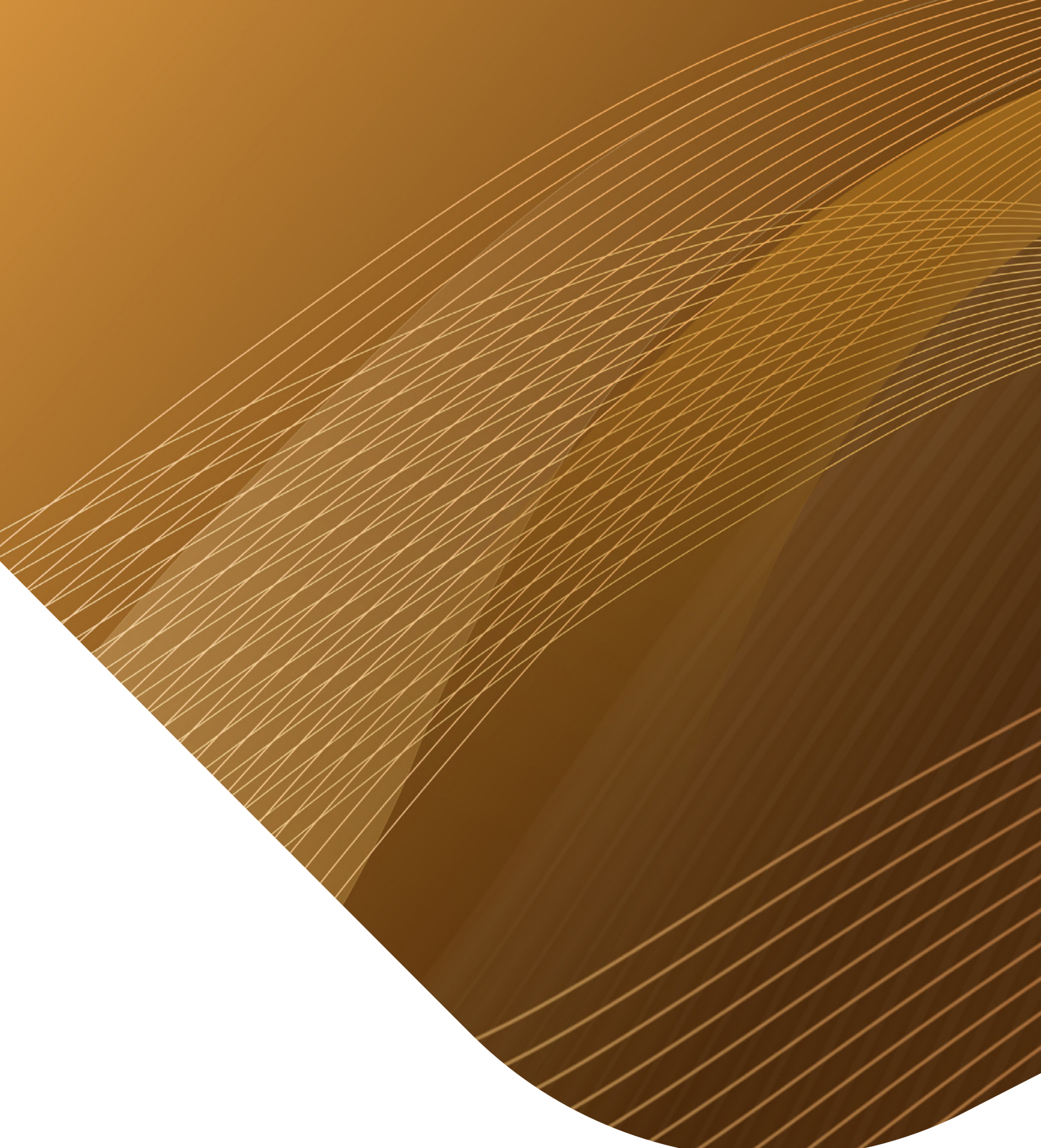
Paris, 31 May 2024

Natasha Cazenave

Executive Director

European Securities and Markets Authority





3. Annexes

Annex I – Reporting on key performance indicators

ESMA has defined a list of KPIs that are regularly reported to the Management Board. ESMA's work programme in 2023 was measured against the following indicators, marking the final reporting cycle for this set, as a new set of KPIs has been implemented.

Activity	KPI	Target	2022 results	2023 results
Promoting supervisory convergence	Business-related KPIs			
	Number of cases of non-compliance with guidelines and recommendations	N/A	25	26
	Number of peer reviews and follow-ups conducted	4	4	4
	IT project-related KPIs			
	IT systems delivered compared with those planned (%)	80	87	85
	Project budget execution for the current year (%)	95	96	97.8
	Maintenance budget execution for the current year (%)	95	96	98.6
	Open tickets versus closed tickets (%)	> 95	99.3	97.1
Assessing risks to investors, markets and financial stability	Number of risk topics analysed	8	10	13
	Number of risk monitoring reports delivered against the annual work programme, including ESMA trends, risks and vulnerabilities reports (2), ESMA risk dashboards (2), Joint Committee of the ESAs risk reports (2) and ESMA annual statistical reports (4)	10	10	10
	Data and statistics: coverage of ESMA databases under central data management (%)	90	80	85
	Cases that met the time designated for the overall enforcement process (%)	> 50	100	67
Direct supervision of specific financial entities	Risk scenarios that triggered a supervisory action and resulted in a drop in the risk following the action (%)	> 70	70.5	61
Single rulebook	Technical standards reviewed (%)	N/A	16	8

Activity	KPI	Target	2022 results	2023 results
Organisational implications	Rate of implementation of commitment appropriations (%)	> 95	99.7	99.0
	Rate of cancellation of payment appropriations (%)	< 5	5.1	3.4
	Rate of payments executed within legal/contractual deadlines (%)	> 95	97.2	96.9
	Average vacancy rate (%)	< 10	6	4
	Staff turnover rate (%)	< 10	2.6	3.8
	Completion of the activities of the annual work programme (%)	> 85	90	94
	Rate of implementation of audit recommendations (%)	> 85	80	50

NB: N/A, not applicable.

Annex II - Establishment plan and benchmarking exercise

ESMA's staff population in 2023 (all categories of staff)

Staff population		Headcount as of 31 December 2022	Headcount as of 31 December 2023
Officials	ADs	–	–
	ASTs	–	–
	ASTs/SCs	–	–
TAs	ADs	211	223
	ASTs	8	12
	ASTs/SCs	–	–
Total TAs		219	235
CAs (FG IV)		62	60
CAs (FG III)		29	25
CAs (FG II)		–	–
CAs (FG I)		–	–
Total CAs		91	85
SNEs		12	23
Total		322	343

NB: AD, Administrator; AST, Assistant; FG, function group; SC, Secretary; SNE, Seconded National Expert.

Indicative table - Information on recruitment grade/ function group for each type of post

Key functions	Type of contract (official, TA or CA)	Function group, grade of recruitment*	Indication whether the function is dedicated to administrative support or operations
Chair	TA	AD15	Operations
Executive Director	TA	AD14	Operations
Chair of the CCP Supervisory Committee	TA	AD16	Operations
Independent Member of the CCP Supervisory Committee	TA	AD15	Operations
Head of Department	TA	AD12	Operations
Head of Resources Department	TA	AD12	Administrative support
Head of Unit	TA	AD9	Operations
Head of Unit in Resources Department	TA	AD9	Administrative support
Team leader	TA	AD8	Operations
ICT Team leaders	TA	AD8	Administrative support
Communication Team leader	TA	AD8	Administrative support
Senior Officer	TA	AD7	In all areas
Chief Information Security Officer	TA	AD7	Administrative support
Senior Internal Control Officer	TA	AD8	Administrative support
Accounting Officer	TA	AD7	Shared with EBA
Officer	TA	AD5	In all areas
Officer	CA	FGIV	In all areas
Senior Assistant	TA	AST3	Administrative support
Personal Assistant	TA	AST3	Administrative support
Assistant	TA	AST3	Administrative support
Assistant	CA	FGIII	Administrative support

Benchmarking against the previous year's results

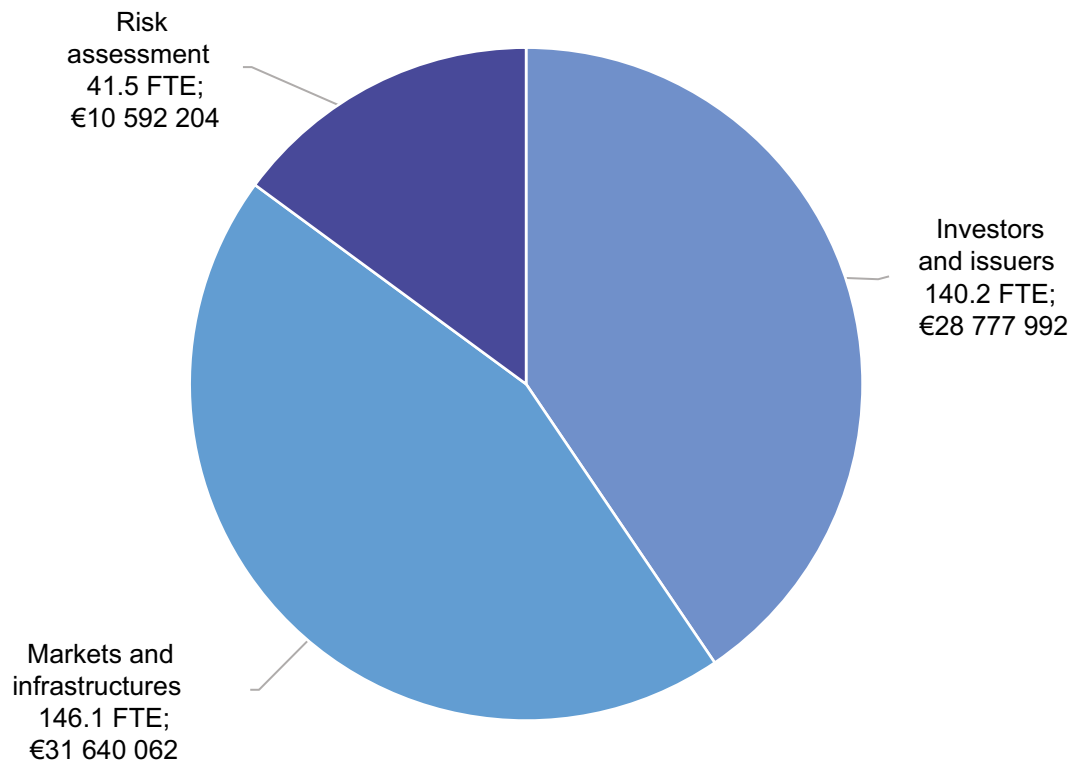
The table below outlines the results of the seventh job-screening exercise conducted in ESMA and in all EU regulatory agencies. The exercise is based on Articles 29(3) and 38(1) of the framework financial regulation. The methodology was designed by a WG including representatives from different EU agencies (including ESMA) and from the Commission (the Secretariat-General, the Directorate-General for Budget and the Directorate-General for Human Resources and Security). It was generated as an adaptation and clarification of the Commission's job-screening methodology, which it had been implementing for several years.

Job (sub)category	2022 (%)	2023 (%)
Administrative support and coordination	16.4	15.95
Administrative support	13.5	12.15
Coordination	2.9	3.8
Operational	79.6	79.24
General operational activities	15.1	13.16
Programme management and implementation	47.5	47.35
Top operational coordination	5.1	5.32
Evaluation and impact assessment	11.9	13.42
Neutral	4.0	4.81
Accounting, finance, non-operational procurement, contract management and quality management, internal audit and control	4.0	4.81
Linguistic activities	0	0

NB: Reference dates – 31 December 2022/2023.

Annex III – Human and financial resources by activity

The total costs for 2023 amount to **EUR 71 010 258**, with **327.8** internal FTEs (TAs, CAs and SNEs), excluding EUR 802 226 and 1.7 FTE for the delegated projects and DG Structural Reform Support projects.



NB: FTE, full-time equivalent.

Annex IV – Contribution, grant and service-level agreements

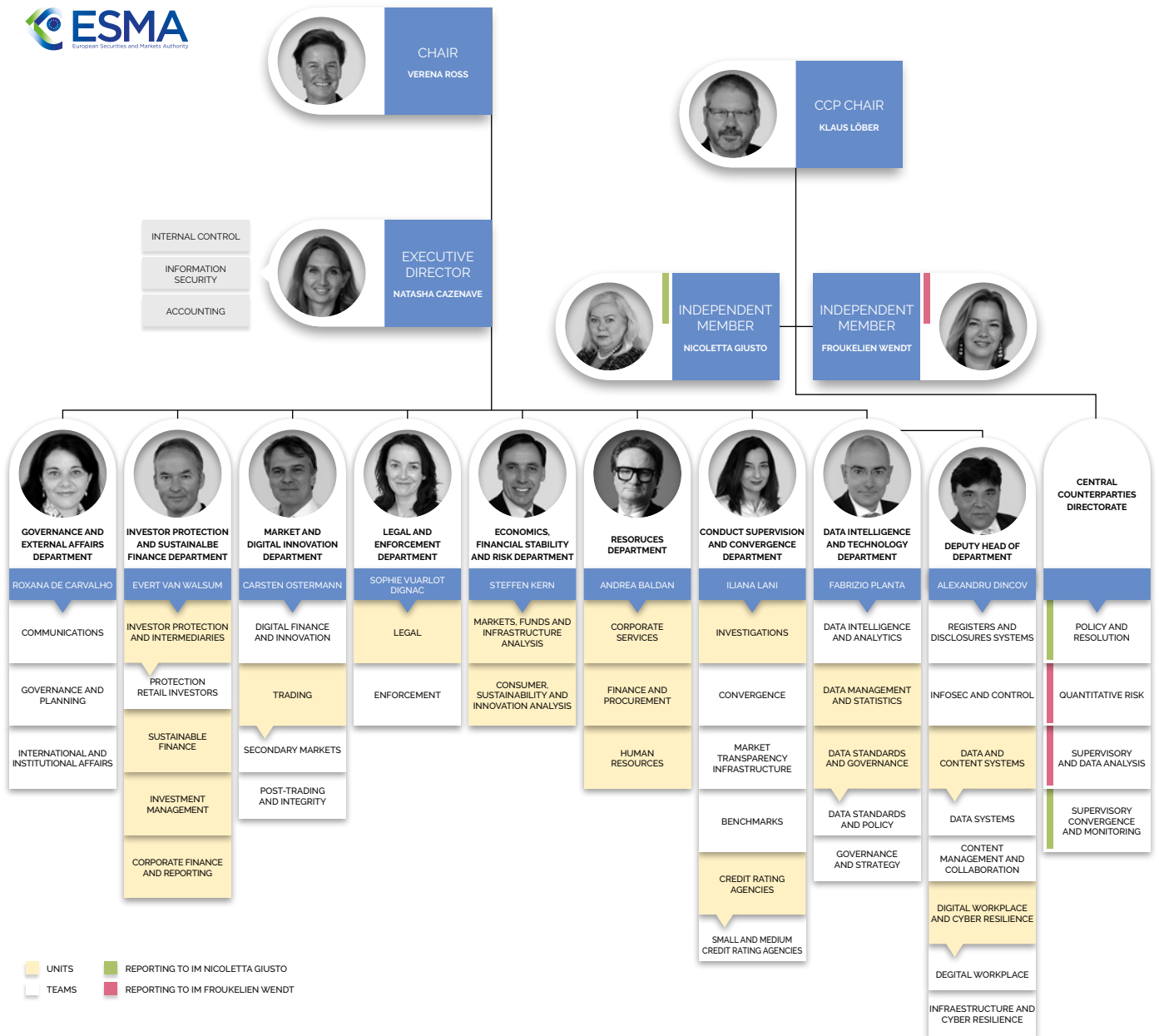
At the end of 2023, ESMA had in place the following service-level agreements with other EU institutions.

	Entity	Topic	Duration
1	European Commission	Medical services	2011 – automatically renewed
2	CERT-EU	IT security support	2014 – automatically renewed
3	DIGIT	DIGIT services	2019 – automatically renewed
4	Directorate-General for Human Resources and Security	HR services	2018 – automatically renewed
5	EPSO-EUSA	EPSO – Assistance with a view to the selection of officials EUSA – Training	2019 – automatically renewed
6	Directorate-General for Budget	Use of ABAC and ABAC-DWH data extraction	2020 – automatically renewed
7	EBA	Provision of accounting services	2021 – automatically renewed
8	PMO	Conditions under which the PMO provides services, goods or works to the client	2021 – automatically renewed
9	EBA – EIOPA	Services in the context of the Article 31a of the ESAs regulation	2022–indefinite (until all services are provided)
10	DG Structural Reform Support	EU Supervisory Digital Finance Academy: Strengthening Supervisory Capacity in Innovative Digital Finance	2022–2025
11	Università Cattolica del Sacro Cuore	Consumer testing on financial product disclosure under the SFDR	2023–end of 2023
12	EBA	Learning Management System 'EBA Learning Hub'	2023–2025
13	DG Structural Reform Support	REFORM/SLA2023/001 – ESMA – Flagship: ESG Risk Management Framework for the Financial Sector	2023–2025
14	EBA – ECHA – EIOPA	Common data protection impact assessment, data protection, record of processing activities and privacy statement for Microsoft Azure	2023–indefinite (until all services are provided)

NB: ABAC, accrual-based accounting; CERT-EU, Computer Emergency Response Team for the EU institutions, bodies and agencies; EBA, European Banking Authority; ECHA, European Chemicals Agency; EIOPA, European Insurance and Occupational Pensions Authority; EPSO, European Personnel Selection Office; EUSA, European School of Administration; PMO, Office for the Administration and Payment of Individual Entitlements.

The above service-level agreements allow ESMA to access high-quality and specialised services and – at the same time – benefit from economies of scale, good prices and efficiency gains. Overall, the financial impact is positive.

Annex V – Organisational chart as of 1 January 2024



Annex VI – ESMA's boards and standing committees

The ultimate decision-making body of ESMA is the Board of Supervisors, whereas the Management Board ensures that the authority carries out its mission and performs the tasks assigned to it.

ESMA's boards and their composition

Members of the Management Board as of 1 January 2024

Member	Authority	Country
Verena Ross	ESMA (Chair)	–
Eduard Müller	Finanzmarktaufsicht	Austria
Thorsten Pötzsch	German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht)	Germany
Armi Taipale	Finanssivalvonta	Finland
Vasiliki Lazarakou	Hellenic Capital Market Commission	Greece
Jos Heuvelman	Autoriteit Financiële Markten	Netherlands
Rodrigo Buenaventura	Spanish National Securities Market Commission (Comisión Nacional del Mercado de Valores)	Spain
Ugo Bassi	European Commission (non-voting member)	–
Natasha Cazenave	ESMA Executive Director (non-voting member)	–
Vojtěch Belling	ESMA Vice-Chair (observer)	–

Members of the Board of Supervisors as of 1 January 2024

Member	Authority	Country
Verena Ross	ESMA (Chair)	–
Jean-Paul Servais	Financial Services and Markets Authority	Belgium
Mariya Filipova	Комисията за финансов надзор	Bulgaria
Vojtěch Belling	Czech National Bank	Czechia
Karen Dorte Abelskov	Finanstilsynet	Denmark
Thorsten Pötzsch	German Federal Financial Supervisory Authority	Germany
Andre Nõmm	Finantsinspektsioon	Estonia
Derville Rowland	Central Bank of Ireland	Ireland
Vasiliki Lazarakou	Hellenic Capital Market Commission	Greece
Rodrigo Buenaventura	Spanish National Securities Market Commission	Spain
Marie-Anne Barbat-Layani	Autorité des marchés financiers	France
Ante Žigman	Hrvatska agencija za nadzor financijskih usluga	Croatia
Carlo Comporti	Commissione Nazionale per le Società e la Borsa	Italy
George Theocharides	Cyprus Securities and Exchange Commission (Επιτροπή Κεφαλαιαγοράς Κύπρου)	Cyprus

Member	Authority	Country
Santa Purgaile	Latvijas Banka	Latvia
Vaidas Cibas	Lietuvos Bankas	Lithuania
Claude Marx	Commission de Surveillance du Secteur Financier	Luxembourg
Gergő Szeniczey	Magyar Nemzeti Bank	Hungary
Christopher Buttigieg	Malta Financial Services Authority	Malta
Jos Heuvelman	Autoriteit Financiële Markten	Netherlands
Eduard Müller	Finanzmarktaufsicht	Austria
Piotr Kosiński	Komisja Nadzoru Finansowego	Poland
Luís Laginha De Sousa	Comissão do Mercado de Valores Mobiliários	Portugal
Alexandru Petrescu	Autoritatea de Supraveghere Financiară	Romania
Anka Čadež	Agencija za trg vrednostnih papirjev	Slovenia
Peter Tkáč	Národná Banka Slovenska	Slovakia
Armi Taipale	Finnish Financial Supervisory Authority	Finland
Per Nordkvist	Finansinspektionen	Sweden

Non-voting members of the Board of Supervisors as of 1 January 2024

Member	Authority	Country/organisation
Björk Sigurgisladóttir	Central Bank of Iceland	Iceland
Reto Degen	Finanzmarktaufsicht	Liechtenstein
Anne Merethe Bellamy	Finanstilsynet	Norway
Ugo Bassi	European Commission	EU
François-Louis Michaud	European Banking Authority	EU
Fausto Parente	European Insurance and Occupational Pensions Authority	EU
Francesco Mazzaferro	European Systemic Risk Board	EU
Stefan Barriga	European Free Trade Association Surveillance Authority	European Free Trade Association

Central Counterparty Supervisory Committee

In line with EMIR, ESMA established a CCP Supervisory Committee. The Committee is dedicated to promoting convergence in the supervision of EU CCPs, recognising TC CCPs and supervising systemically important TC CCPs. It is composed of a permanent Chair, Klaus Löber, and two independent members, Nicoletta Giusto and Froukelien Wendt, and representatives from the NCAs supervising CCPs established in the EU and from relevant central banks of issue. A list of the current members can be found on ESMA's website ⁽²⁰⁾.

ESMA's CCP Supervisory Committee (CCP SC) strategic objectives for 2023–2025 are (i) strengthening EU CCP resilience, (ii) addressing TC CCP cross-border risks, and (iii) deepening risk-based and data-driven supervision.

These objectives will contribute to achieving ESMA's strategic priorities of strengthening supervision and ensuring fair, orderly and effective markets, while promoting sustainability and technological and data innovation.

²⁰ <https://www.esma.europa.eu/about-esma/governance-structure/ccp-supervisory-committee>.

Central Counterparty Resolution Committee

In line with the CCP RRR, ESMA established a CCP Resolution Committee (CCP ResCo) in 2023. The membership of the CCP ResCo is significantly broader than other ESMA committees in order to foster coordination of all relevant authorities involved in CCP resolution. This covers all the national resolution authorities for CCPs, as members, and all the NCAs responsible for the supervision and resolution of EU banks, along with the ECB, the Single Resolution Board, and where relevant the Council, the Commission and the EBA as observers. A list of the current members can be found on ESMA's website ⁽²¹⁾. The CCP ResCo is chaired by the Head of Legal and Enforcement Department at ESMA, Sophie Vuarlot-Dignac, to ensure structural separation.

The role of the CCP ResCo is to:

- contribute to the ESMA's work programme in the areas of the single rulebook for resolution related measures;
- prepare the resolution-related decisions entrusted to ESMA in the CCP RRR;
- assess CCP resolution arrangements across the Union in terms of their aggregate effect on Union financial stability including by taking into account stress-testing and crisis simulation exercises with respect to potential system-wide stress events; and
- promote convergence in the drawing up and coordination of resolution plans and in developing methods for the resolution of failing CCPs.

These objectives will contribute to achieving ESMA's strategic priorities of strengthening supervision and ensuring fair, orderly and effective markets.

²¹ <https://www.esma.europa.eu/about-esma/governance-structure/ccp-resolution-committee>.

Standing committees and working groups as of 1 January 2024

ESMA's work is supported by standing committees ⁽²²⁾, WG and task forces, which bring together senior experts. The different ESMA standing committees are established on a permanent basis and prepare the technical work for all areas of ESMA's activities. Each committee is chaired by a board member or senior ESMA staff and supported by ESMA staff. Many standing committees also have consultative WG made up of external stakeholder representatives.

Standing committee	Chair
CCP Supervisory Committee	Klaus Löber, ESMA
CCP Policy Committee	Klaus Löber, ESMA
CCP Resolution Committee	Sophie Vuarlot-Dignac, ESMA
Risk Standing Committee	George Theocharides, Cyprus
Senior Supervisors Forum	Jos Heuvelman, Netherlands
ESMA Supervision Policy Committee	Natasha Cazenave, ESMA
Investor Protection Standing Committee	Marie-Anne Barbat-Layani, France
Sustainability Standing Committee	Thorsten Pöttsch, Germany
Digital Finance Standing Committee	Carlo Comporti, Italy
IT Standing Committee	Alexandru Dincov, ESMA
Data Standing Committee	Armi Taipale, Finland
Issuers Standing Committee	Karen Dorteab Abelskov, Denmark
Markets Standing Committee	Rodrigo Buenaventura, Spain
Investment Management Standing Committee	Derville Rowland, Ireland
Proportionality and Coordination Committee	Christopher Buttigieg, Malta

²² <https://www.esma.europa.eu/about-esma/governance-structure/standing-committees>.

Annex VII – Overview of the activities of the Securities and Markets Stakeholder Group

The SMSG was established under the ESMA regulation to facilitate consultation with stakeholders in areas relevant to ESMA's tasks. In 2023, the SMSG held seven meetings, two of which were held together with ESMA's Board of Supervisors.

The rules of procedure of the SMSG⁽²³⁾ stipulate that ESMA includes in its annual report an overview of the activities of the group, including a summary of any reports and other advice it has formulated throughout the year. In 2023, the SMSG produced the following advice and reports. These were either in response to a consultation launched by ESMA or a result of the group's own initiative. All these documents are available on ESMA's website⁽²⁴⁾.

- SMSG advice to ESMA on the SMSG's role in the breach of EU law procedure (12 January 2023).
- SMSG advice to ESMA on its call for evidence on greenwashing (19 January 2023).
- SMSG advice to ESMA on potential practical challenges regarding the implementation of DORA (14 February 2023).
- SMSG advice to ESMA on its consultation on guidelines on funds' names using ESG or sustainability-related terms (21 February 2023).
- SMSG advice to ESMA on additional questions relating to greenwashing (16 March 2023).
- SMSG advice to the ESAs on their joint consultation on the review of the SFDR delegated regulation regarding PAI and financial product disclosures (12 July 2023).
- Joint stakeholder group advice⁽²⁵⁾ to the ESAs on their consultation on DORA regulatory and implementing technical standards (20 September 2023).
- SMSG advice to ESMA on its first consultation package on MiCA (11 October 2023).
- SMSG advice to ESMA on its second consultation package on MiCA (12 December 2023).

SMSG meetings typically start with discussions on recent market developments. Such discussions allow the SMSG to highlight to ESMA, and the group to exchange views on, topics of general interest in the securities markets and related areas. In 2023, the presentations given at these meetings were on topics such as:

- the bankruptcy of Silicon Valley Bank, the take-over of Credit Suisse and the potential consequences for EU financial markets;
- sustainable finance:
 - transition investing,
 - the impact of climate change on pensions and long-term savings,
 - the EFRAG ESRS,
 - the results of consumer testing of SFDR templates;
- digital finance:
 - the implications of the demise of crypto exchange FTX for the EU context,
 - the use of crypto currencies to elude financial sanctions,
 - the role of social media platforms in facilitating misleading promotion of crypto assets,
 - the role of AI in finance and possible ways to regulate it;
- the results of studies and surveys on:

²³ https://www.esma.europa.eu/sites/default/files/2023-05/ESMA22-106-4162_SMSG_Rules_of_Procedure_2023.pdf.

²⁴ https://www.esma.europa.eu/databases-library/esma-library?f_%5B0%20%5D=im_esma_sections%20%3A9&f_%5B0%5D=basic_%3A364.

²⁵ This advice was produced with the EBA's Banking Stakeholder Group and EIOPA's Insurance and Reinsurance Stakeholder Group.

- the financial literacy of Italian households,
- retail attitudes to sustainability,
- the sustainability preferences under MiFID of German retail investors,
- shareholder general meetings,
- French employee savings schemes, and
- the French responsible investment market.

Annex VIII – Provisional annual accounts for 2023

The 2023 annual accounts of ESMA are produced in accordance with its financial regulation; they are adopted by ESMA's Management Board and Board of Supervisors and are published on ESMA's website.

Disclaimer: please note that the annual accounts are provisional and at the publishing date of the annual report are awaiting observations of the external auditor of ESMA.

Statement of financial position

	Note	2023	2022
Assets			
Non-current assets			
Intangible fixed assets	II.1.a		
Computer software		4 554 269	4 941 570
Tangible fixed assets	II.1.b		
Plant and equipment		-	17
Computer hardware		91 455	206 063
Furniture		261 444	314 883
Other fixtures and fittings		3 389 314	3 998 132
Total		8 296 483	9 460 666
Current assets			
	II.2		
Current receivables	II.2.a	1 459 098	662 091
Sundry receivables	II.2.b	6 946 861	6 079 370
Deferred charges and accrued income	II.2.c	4 391 928	2 231 443
Cash and cash equivalents	II.2.d	1 935	737 030
Total		12 799 822	9 709 934
Total assets		21 096 305	19 170 599
Liabilities			
Non-current liabilities			
Deferred revenue	II.4	3 116 131	3 889 911
Total		3 116 131	3 889 911
Current liabilities			
Current payables	II.5.a	4 592 576	3 237 727
Payables towards consolidated entities	II.5.c	755 303	511 498
Deferred revenue	II.4	1 275 770	1 084 555
Total		6 623 649	4 833 781
Total liabilities		9 739 780	8 723 692
Total net assets		11 356 525	10 446 907

Statement of financial performance

	Note	2023	2022
Operating result			
Operating revenue	III.1		
Subsidy from the Member States		28 810 689	27 030 086
Subsidy from EFTA countries		891 971	836 845
EU balancing subsidy		18 222 451	17 065 748
Fees from supervised entities		23 062 056	22 228 234
NCAs' contribution to IT delegated projects		396 732	249 178
Foreign currency conversion gains		3 684	5 458
Other miscellaneous revenue		385 496	177 107
Total		71 773 079	67 592 657
Operating expenses	III.2		
Staff expenses	III.2.a	46 098 575	42 707 228
Building and related expenses	III.2.b	6 254 355	5 549 180
Other expenses	III.2.c	16 275 328	16 411 812
Depreciation and amortisation	III.2.d	2 240 600	2 040 562
Foreign currency conversion losses		4 564	9 041
Total		70 873 423	66 717 824
Operating result		899 656	874 833
Non-operating result			
	III.3		
Financial revenue		10 527	16 436
Financial expenses		565	2 873
Non-operating result		9 962	13 563
Result from ordinary activities		909 618	888 396
Result from extraordinary items		—	—
Economic result for the year		909 618	888 396

Cashflow statement

	2023	2022
Surplus/deficit from ordinary activities	909 618	888 396
Cash flow from ordinary activities		
Depreciation and amortisation	2 240 600	2 040 562
Increase/decrease in provisions	—	—
Increase/decrease in receivables	(3 825 040)	(5 768 404)
Increase/decrease in accounts payable	1 354 848	(449 582)
Increase/decrease in liabilities to consolidated entities	243 804	(330 747)
Increase/decrease in deferred income	(582 565)	(978 441)
Net cash flow from operating activities	(568 352)	(5 486 613)
Cash flow from investing activities		
Increase/decrease in fixed assets	(1 076 417)	(1 228 357)
Net cash flow from investing activities	(1 076 417)	(1 228 357)
Other	57	—
Net increase/decrease in cash	(735 094)	(5 826 575)
Cash at the beginning of the period	737 030	6 563 604
Cash at the end of the period	1 935	737 030

Statement of changes in net assets

Capital	Reserves		Accumulated equity	Economic result of the year	Total net assets
	Fair value	Other			
Balance as at 31 December 2022	—	—	9 558 511	888 396	10 446 907
Changes in accounting policies	—	—	—	—	—
Balance as of 1 January 2023 (if restated)	—	—	9 558 511	888 396	10 446 907
Allocation of the result for 2021	—	—	888 396	(888 396)	—
Economic result for the year	—	—	—	909 618	909 618
Balance as of 31 December 2023	—	—	10 446 907	909 618	11 356 525

Annex IX – Abbreviations

ACER	Agency for the Cooperation of Energy Regulators
AI	artificial intelligence
AIF	alternative investment fund
AIFMD	alternative investment fund managers directive
ARM	approved reporting mechanisms
APA	approved publication arrangements
AWP	annual work programme
BMR	benchmarks regulation
CA	contract agent
CCP	central counterparty
COI	conflict of interest
COSO	Committee of Sponsoring Organizations of the Treadway Commission
CRA	credit-rating agency
CSA	common supervisory action
CSD	central securities depository
CSDR	central securities depositories regulation
DLT	distributed ledger technology
DORA	Digital Operational Resilience Act
DRSP	data reporting service provider
DTO	derivatives trading obligation
EBA	European Banking Authority
ECA	European Court of Auditors
EEA	European Economic Area
EFIF	European Forum for Innovation Facilitators
EIOPA	European Insurance and Occupational Pensions Authority
ELTIF	European long-term investment funds
EMAS	European eco-management and audit scheme
EMS	Environmental Management System
EMIR	European market infrastructure regulation
ESAP	European Single Access Point
ESAs	European supervisory authorities
ESEF	European single electronic format
ESG	environmental, social and governance
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ESRS	European Sustainability Reporting Standards
ETFs	exchange-traded funds
FSB	Financial Stability Board
HR	human resources

IAS	Internal Audit Service
IASB	International Accounting Standards Board
ICT	information and communications technology
IFRS	International Financial Reporting Standard
IOSCO	International Organization of Securities Commissions
IT	information technology
ITS	implementing technical standard
JC	Joint Committee
JCSC	Joint Committee Securitisation Committee
KPI	key performance indicators
LEI	Legal Entity Identifier
MCM	Market Correction Mechanism
MiCA	markets in crypto-assets regulation
MiFID	markets in financial instruments directive
MiFID II	revised markets in financial instruments directive
MiFIR	markets in financial instruments regulation
MMF	money market fund
MOU	memorandum of understanding
NCA	national competent authority
OTC	over the counter
PAI	principal adverse impact
PRIIP	packaged retail and insurance-based investment product
PTC	pre-trade controls
Q & As	questions and answers
RRR	recovery and resolution regulation
RTS	regulatory technical standards
SECR	securitisation regulation
SFDR	sustainable finance disclosure regulation
SFTR	securities financing transactions regulation
SMSG	Securities and Markets Stakeholder Group
SNE	seconded national expert
SR	securitisation repository
SREP	supervisory review and evaluation process
STS	simple, transparent and standardised
TA	temporary agent
TC	third country (i.e. non-EU)
TR	trade repository
TRV	trends, risks and vulnerabilities
UCITS	undertakings for collective investment in transferable securities
USSP	Union strategic supervisory priority
WG	working group

