European Securities and Markets Authority

Annual Report 2018

14 June 2019

ESMA20-95-1136

European Securities and Markets Authority

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Printed by Bietlot in Belgium
Photo credits: © ESMA: cover page, page 6, 10, 14, 17, 43, 55, 73
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Manuscript completed in June 2019

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Luxembourg: Publications Office of the European Union, 2019

Print	ISBN 978-92-95202-22-1	doi:10.2856/047803	ISSN 2443-6739	EK-AA-19-001-EN-C
PDF	ISBN 978-92-95202-21-4	doi:10.2856/31853	ISSN 2443-6747	EK-AA-19-001-EN-N

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Steven Maijoor

CHAIR

EUROPEAN SECURITIES AND MARKETS AUTHORITY

Chair's foreword

2018 in many ways reshaped capital markets in the EU. In a year often defined by two contrasting dynamics — the implementation of the greatest change to EU capital markets in a decade with the Markets in Financial Instruments Directive (MiFID II) and preparations for the departure of the largest EU capital market with Brexit — ESMA can reflect with pride that it has delivered in advancing its core missions of enhancing investor protection and promoting stable and orderly financial markets.

At the beginning of this year on 3 January, Europe's financial markets finally crossed the threshold from preparing for MiFID II to its implementation, a significant chapter in an unparalleled project. Bearing in mind the scale and complexity of the undertaking, from the number of institutions involved to the complexity of its component projects it is impossible to judge its success from just one perspective. However, MiFID II has had a much smoother start than many feared, but on a project this complex, there remain issues that need to be addressed and improved.

ESMA has reacted to the challenges posed by MiFID II in its first year by issuing Q&As regarding transparency, market structures and commodity derivatives issues, providing additional guidance and clarifications on topics such as the scope of the trading obligation for derivatives, the Systematic Internalisers Regime, the definition of trading systems, direct electronic access, market data issues and the application of position limits and position reporting.

MiFID II has unquestionably had an impact on trading via the Double Volume Cap (DVC) mechanism which aims to limit the execution of transactions in dark pools and preserve the quality of the price determination process on lit venues. Within the first 6 months, the DVC resulted in the suspension of dark trading of over 1200 instruments.

Looking back, we can say that a lot has been achieved under MiFID II in a very short time frame. However, work remains to be done, with much more to come in 2019 as we evaluate its impact and continue to adjust where necessary. The impact of the DVC and the increasing use of periodic auctions is one such area where further work is done.

This new project for EU capital markets occurred in parallel with preparations for the departure of a key capital market. The United Kingdom's withdrawal from the EU generated a lot of preparatory work, especially in the areas of supervisory convergence, direct supervision and risk assessment.

One of the main challenges for ESMA was in preparing an orderly process for a possibly disorderly exit of the United Kingdom from the EU. To achieve this ESMA focused on ensuring proper preparations and providing timely information to market participants in relation to a potential no-deal on 29 March 2019.

ESMA monitored National Competent Authorities' (NCAs) authorisation activities in relation to business relocation to the EU-27 by discussing over 80 relocation cases in meetings of the Supervisory Convergence Network. ESMA facilitated supervisory coordination and mutual understanding between the EU-27 NCAs through information exchange, sharing of good practices and in-depth discussion of key issues arising from Brexit. ESMA also coordinated the preparation of memoranda of understanding (MoUs) among EU and United Kingdom NCAs to allow for essential supervisory cooperation, also in the case of a no-deal Brexit, especially in the areas of clearing and settlement, and delegation in case of investment firms and investment funds.

Throughout the year ESMA continued to monitor Brexit-associated risks and, when needed, identify possible mitigating actions while considering that all actors must step up preparations for all scenarios and take responsibility for their specific situation.

While the political decisions are taken elsewhere, ESMA has worked diligently to ensure that it is ready for any final decisions on Brexit.

Other political discussions have also dominated 2018, including those which will have a direct impact on ESMA. We closely monitored the legislative developments on the European Supervisory Authorities (ESAs) review, European markets infrastructure regulation (EMIR) 2.2, EMIR Refit, Investment Firm Review and Cross-border fund distribution, and stood ready to provide support regarding the impact of certain policy choices considered by co-legislators. Many of these legislative files have made significant progress in 2018 and they will be finalised in 2019.

A core driver of ESMA's work is ensuring the protection of investors across the EU. While some of the changes under the MiFID II package will take time to be fully felt, one area where MiFID II has had an instant impact is ESMA's new pan-EU product intervention powers. This was an important development for retail investors in the EU, who have been put at risk for years by Binary Options and Contracts for Differences (CFDs). Equipped with these new powers, ESMA adopted, in spring 2018, measures banning Binary Options and restricting the sales, marketing and distribution of CFDs in the EU, and so directly improved retail investor protection across the Union.

ESMA also reiterated its concerns about retail investors investing in speculative and risky products, such as virtual currencies (VCs) and Initial Coin Offerings (ICOs).

At the end of the year, ESMA adopted its first annual report on costs and returns of Undertakings for Collective Investment in Transferrable Securities (UCITS), Alternative Investment Funds (AIFs) and structured retail products, alerting investors to the significant impact of costs on the final returns they make on their investments. Ensuring investors are well informed also drove our work on PRIIPs.

2018 marked another productive year for the Joint Committee of the ESAs, this year under ESMA's chairmanship. While Brexit preparation also represented a significant proportion of its work, the Joint Committee made further progress on enhancing consumer protection, monitoring financial innovation and combatting money laundering and terrorist financing. The annual Consumer Protection Day in Lisbon offered a unique opportunity to engage with consumers' representatives from across the EU.

ESMA's work also has a strong international dimension, notably through our active participation in the International Organisation of Securities Commissions (IOSCO) Board and its policy committees, the Financial Stability Board (FSB) and contribution to the EU's regulatory dialogues with key third-country jurisdictions.

Working jointly, ESMA and IOSCO finalised an administrative arrangement (AA) for the transfer of personal data between EU securities markets regulators and third-country regulators in response to the EU adopting the General Data Protection Regulation (GDPR). This arrangement will allow the continued international exchange of information between securities regulators while respecting data privacy requirements.

I want to express my thanks and appreciation for my colleagues from the EU national authorities in the Board of Supervisors (BoS).

Delivering on our objectives in an exceptional year has been built on the direction, cooperation and coordination provided by the Board. The invaluable role my fellow Board members play will remain crucial as we go forward.

I also want to acknowledge the excellent cooperation we have with our fellow authorities in the Joint Committee, and with the European Institutions — Commission, Parliament and Council — and the valuable contributions made by all our stakeholders.

In a year often defined by new dynamics and challenges, the one constant has been the commitment and dedication of ESMA's staff to deliver on the mission and aims of this organisation. As this annual report demonstrates, this has been a year of remarkable achievement and delivery for ESMA and we look forward to building on this again in 2019.

Steven Maijoor

Chair
European Securities and Markets Authority

Verena Ross

EXECUTIVE DIRECTOR
EUROPEAN SECURITIES AND MARKETS AUTHORITY

Executive Director's foreword

ESMA, for 8 years and counting, has been constantly evolving — and 2018 was no exception. On the contrary, the year proved to be one of substantial change which also brought a number of uncertainties: first and foremost, these were related to the terms, timing and impact of the United Kingdom leaving the European Union (EU). The biggest capital market leaving the EU will change financial markets for years to come and we need to be well prepared for such a momentous development.

There were also uncertainties regarding ESMA's future role and responsibilities included in different legislative proposals, particularly the ESAs review and EMIR 2.2. This uncertain environment meant planning and preparing with moving targets and a lack of clarity about future budget and staff numbers.

The Authority has, however, skilfully navigated through this evolving environment and delivered tangible outcomes in 2018. We continued to execute our ambitious work programme successfully. The focus on supervisory convergence has grown and will grow further in importance also against the backdrop of Brexit.

While delivering against our mandate, ESMA continued to use its resources effectively based on thorough planning and effective and efficient execution. In terms of resources management, ESMA ran its operations in a sound, compliant and transparent way: the Authority's operating budget for 2018 was EUR 44 million and by the close of the financial year, ESMA had achieved budget execution for commitments and appropriations of 100 %.

Looking at the key deliverables under the 2018 work programme, the implementation of MiFID II was the biggest project that ESMA has delivered over the last few years. It raised the bar of change management — both for market participants and regulators, including ESMA itself. Implementing such an ambitious piece of legislation brought unprecedented change to Europe's capital markets, which will continue throughout 2019 and beyond, with increased transparency and investor protection.

The effective implementation of MiFID II in 2018 was a result of tremendous preparation by ESMA. This included the creation and delivery of the necessary IT infrastructure and tools to enable data reporting, exchange of information and transparency calculations for millions of financial instruments. During the year, a lot of effort went into stabilising the operation of the new MiFID II framework. As new rules seldom come without teething problems, ESMA tackled reporting and data quality issues that needed to be addressed and improved. Overall though MiFID II has had a much smoother start than many predicted.

Brexit too generated a lot of work across the organisation. One of the main challenges and deliverables for ESMA was the preparation for an orderly process to manage a possible no-deal exit of the United Kingdom from the EU. The resources we have devoted to this are, and will continue to be, considerable — especially in the areas of supervisory convergence, direct supervision and risk assessment and last but not least in IT. Disentangling and rearranging some of the close links between the biggest EU capital market, London, and the rest of the EU's markets, investors and supervisors is a complex task.

Facing the possibility of substantial growth in size, and the expiry of ESMA's current 9-year lease on 31 December 2019, meant that in 2018 ESMA started to consider different options to equip the Authority with the necessary office space for the years to come. Following a thorough procurement process, ESMA decided to move premises to the right bank of Paris, to the new iBox building next to the Gare de Lyon train station, which offers excellent access by public transportation from the airports and train stations used by the thousands of external visitors ESMA receives every year.

Alongside the successful procurement of future premises, ESMA also prepared for a data service provider change in 2019, which will help to reinforce ESMA's IT infrastructure and support our growing focus on data. With unprecedented amounts of data reported to regulators under EMIR, MIFID II, the Securities Financing Transactions Regulation (SFTR) and other pieces of legislation, ESMA is becoming a core data service provider for the markets and for the supervisors and regulators of these markets. Data completeness, data standardisation and data quality, which are essential for the regulatory use of this data for, amongst others, risk assessment and market abuse purposes, remain a key focus for ESMA.

It is a pleasure to see ESMA continue its development as a key pan-European regulator. I want to thank all

ESMA colleagues who have worked so hard in 2018, and continue to do so, to deliver on the broad range of tasks that allow us to achieve our objectives and without whom none of this would have been possible. I also want to express my thanks and appreciation to my colleagues from the EU national authorities, the BoS and the Management Board for their continued support.

Verena Ross

Executive Director
European Securities and Markets Authority

1 ESMA's mission and objectives

The European Securities and Markets Authority (ESMA) is an independent EU authority established under the ESMA Regulation (1) and charged with enhancing the protection of investors and promoting stable and orderly financial markets. As an independent authority, ESMA achieves these aims by assessing risks to investors, markets and financial stability; completing a Single Rulebook for EU financial markets; promoting supervisory convergence; and directly supervising specific financial entities.

ESMA forms part of the European System of Financial Supervision (ESFS), a multi-layered system of micro- and macro-prudential authorities established by the European Institutions to ensure consistent and coherent financial supervision in the EU. This system consists of the three European Supervisory Authorities (ESAs): ESMA, the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), along with the National Competent Authorities (NCAs) of the Member States. ESMA, together with the EBA and EIOPA, forms part of the Joint Committee of the ESAs (2) (hereinafter 'Joint Committee') which works to ensure cross-sector consistency and joint positions in the area of consumer protection and other cross-sector issues. The European Systemic Risk Board (ESRB) complements the ESFS.

ESMA is accountable to the European Parliament and the European Council and works in close liaison with the European Commission (hereinafter 'the Commission').

1.1. Mission, objectives and activities

ESMA's mission, based on its regulation, is to enhance the protection of investors and promote stable and orderly markets in the European Union.

Sound and effective regulation of securities markets is key to the integrity, efficiency and growth of the EU's financial markets and economy, and effective regulation and supervision is a vital factor in securing and maintaining confidence amongst investors and market participants. In order to foster these conditions, ESMA works to improve harmonisation in both regulation and supervisory practices.

(1) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, pp. 84-119) (the ESMA Regulation).

(2) Joint Committee of the European Supervisory Authorities.

In order to achieve harmonised rule implementation throughout the EU, ESMA serves as the standard setter in relation to securities markets and provides technical advice to the Commission. It also has an important role in directly supervising financial players with a pan-European profile, currently credit rating agencies (CRAs) and trade repositories (TRs). ESMA also participates in the supervision of central counterparties (CCPs) through supervisory colleges.

This annual report is an important accountability tool describing ESMA's delivery against its objectives and Annual Work Programme (3).

ESMA's role can be better understood through its three objectives.

- **Investor protection:** to have the needs of financial consumers better served and to reinforce their rights as investors while acknowledging their responsibilities.
- **Orderly markets:** to promote the integrity, transparency, efficiency and well-functioning of financial markets and robust market infrastructures.
- **Financial stability:** to strengthen the financial system in order to be capable of withstanding shocks and the unravelling of financial imbalances while fostering economic growth.

The three objectives are interlinked: for example, investor protection and orderly markets feed into overall financial stability. At the same time, increased financial stability supports orderly markets and investor protection.

ESMA achieves its mission within the ESFS through active cooperation with NCAs as well as with the EBA and EIOPA, both individually and through the Joint Committee. ESMA has a unique position within the ESFS, focusing on the securities and financial markets dimension and the overarching European aspects of these objectives.

There are four activities through which ESMA achieves its mission and objectives.

- **Single Rulebook**: the purpose of completing a Single Rulebook for EU financial markets is to enhance the EU single market by creating a level playing field for all market participants across the EU. ESMA contributes by developing technical standards (TSs) and by providing advice to EU institutions on legislative projects.

(3) ESMA20-95-619 2018 Work Programme.

- **Risk monitoring and analysis**: the purpose of assessing risks to investors, markets and financial stability is to spot emerging trends, risks and vulnerabilities (TRVs) and, where possible, to identify opportunities so that they can be acted upon in a timely fashion. ESMA uses its unique position to identify market developments that pose a risk to financial stability, investor protection or the orderly functioning of the European financial markets.
- **Supervisory convergence**: this is the consistent implementation and application of the same rules using similar approaches across the EU Member States. The purpose of promoting supervisory convergence is to ensure a level playing field of high-quality regulation and supervision in the European single market, without regulatory arbitrage or a race to the bottom between Member States. The consistent implementation and application of rules ensures the safety of the financial system, protects investors and ensures orderly markets.
- **Supervision**: ESMA is the direct supervisor of specific financial entities: CRAs and TRs. These entities form essential parts of the EU's financial market infrastructure. ESMA's CRA supervision ensures the quality of ratings and helps to protect investors' interests, while ESMA's TR supervision is key to ensuring data quality and providing transparency on derivatives markets.

ESMA's four activities are closely linked. Insights gained from risk assessment feed into the work on the Single Rulebook, supervisory convergence and direct supervision, and vice versa. We consider supervisory convergence to be the manifest implementation and application of the Single Rulebook. Direct supervision benefits from and also feeds into our risk assessment and the Single Rulebook activities.

1.2. ESMA's key priorities for 2018

In 2018 ESMA focused on delivering the following key priorities that had been agreed in its 2018 Annual Work Programme.

- Promoting supervisory convergence: continue to support the sound, efficient and consistent implementation of new supervisory requirements, with particular emphasis on MiFID/R; complete IT systems either required by legislation or which increase ESMA's and/or NCAs' efficiency; and develop and apply convergence tools, including Peer Reviews and Stress Tests.
- Assessing risks to investors, markets and financial stability: enhance analytical input into ESMA's operational work, including Stress Tests, impact assessments, product interventions and financial stability monitoring; and establish adequate data management and statistics capabilities.
- Completing the Single Rulebook for EU financial markets: complete TSs and technical advice related to key legislative developments, e.g. Securitisation, Prospectus, Money Market Funds (MMF), EMIR Review; and maintain the existing Single Rulebook.
- Directly supervising specific financial entities (CRAs and TRs): intensify supervision to ensure compliance with the spirit of the regulation.

At the same time, the expected departure of the United Kingdom from the EU had a significant impact on ESMA's planned work and deliverables during 2018. Brexit generated a lot of preparatory work, particularly in the areas of supervisory convergence, direct supervision and risk assessment.

1.3. Governance and organisation

Governance and management

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

Board of Supervisors

In addition to ESMA's Chair, the BoS is composed of the heads of the 28 EU Member State NCAs who are responsible for securities regulation and supervision ([4]), while the authorities from Iceland, Liechtenstein, Norway and the European Free Trade Association (EFTA) Surveillance Authority ([5]) are also members since October 2016, albeit without voting rights. In addition, an observer from the Commission and representatives from the EBA, EIOPA and the

(**4**) Where there is more than one national authority in a Member State, authorities will agree on which of their heads will represent them.

(**5**) EFTA Surveillance Authority website on 2.5.2017.

ESRB also attend. The Executive Director attends the BoS.

The BoS guides the work of the Authority and has the ultimate decision-making responsibility regarding a broad range of matters, including the adoption of ESMA TSs, Opinions and Guidelines, the issuance of Advice to the EU institutions and taking authorisation and enforcement decisions. The BoS is supported by a number of Standing Committees and working groups.

The BoS' current members and the summaries of its 2018 meetings can be found on ESMA's website ([6]).

Since 2011, ESMA's full-time Chair is Steven Maijoor and its Executive Director is Verena Ross. Both are based at ESMA's premises in Paris and commenced their second mandate of 5 years in 2016.

The Chair is responsible for preparing the work of the BoS and chairs both its meetings and those of the Management Board. He also represents the Authority externally. In January 2016, Anneli Tuominen of the Finnish Financial Supervisory Authority (FIN-FSA) was appointed Vice-Chair.

The Executive Director is responsible for the day-to-day running of the Authority, including staff matters, developing and implementing the Annual Work Programme, developing the draft budget and preparing the work of the Management Board.

Management Board

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

The main role of the Management Board is to ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with the ESMA Regulation. It focuses in particular on the management and supervisory aspects of the Authority, such as the development and implementation of a multi-Annual Work Programme as well as budget and staff resource matters.

The Management Board's current members and the summaries of its 2018 meetings are available on ESMA's website ([7]).

Day-to-day management

The Executive Director and the Heads of Department are responsible for ESMA's day-to-day management and form the management team. ESMA had eight departments in 2018 and the heads of each department are responsible for the activities in their respective business areas. Planning and monitoring of activities

(**6**) Board of Supervisors.

(**7**) Management Board.

are a crucial part of the management team's role and contribute to ESMA's internal control system.

The Chair, Executive Director and management team meet weekly to discuss the preparations of the Board meetings, preparations regarding policy and strategy matters and cross-organisational issues.

Securities and Markets Stakeholder Group

The Securities and Markets Stakeholder Group (SMSG) was established under the ESMA Regulation to facilitate consultation and interaction 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 (SMEs). ESMA consults the SMSG on all its draft TSs and Guidelines in order to ensure input from stakeholders.

The members of the SMSG, made up of 30 individuals, serve a term of 2.5 years. The group serving in 2018 began its mandate on 1 July 2016 and was chaired by Professor Rüdiger Veil, Chair for Private Law and Business Law, Munich Centre for Capital Markets Law at the Ludwig-Maximilian-Universität. He was supported by joint Vice-Chairs Christiane Hölz, representing users of financial services, and Jarkko Syyrilä, representing financial market participants ([8]). The SMSG held seven meetings in 2018, two of which were held together with the BoS.

In 2018, the Group issued advice, opinions and reports on issues such as TSs under the Prospectus Regulation, the ESA Review, Sustainable Finance, Initial Coin Offerings/Cryptos, Cost and Performance of retail investment products and the PRIIPs key information document (KID). Their reports as well as the summaries of the group's meetings can be found on ESMA's website ([9]).

(**8**) The term of this group ended at the end of 2018 and a new SMSG was selected from 1 January 2019, chaired by Professor Veerle Colaert, Chair for Financial Law at the KU Leuven University.

(**9**) Securities and Markets Stakeholder Group.

2 ESMA's achievements against its 2018 objectives

2.1. Promoting supervisory convergence

Key deliveries and successes

Brexit

In a context of continued uncertainty over the outcome of the negotiations for the United Kingdom withdrawal from the European Union, ESMA aimed at ensuring proper preparations and timely information of market participants in relation to a potential no-deal on 29 March 2019. As in the prior year, ESMA monitored NCAs' authorisation activities in relation to the relocation of business to the EU-27 by discussing over 80 relocation cases in dedicated meetings of the Supervisory Convergence Network (SCN). ESMA facilitated supervisory coordination and mutual understanding between the EU-27 NCAs through information exchange, sharing of good practices and in-depth discussion of key issues arising. Beyond fostering consistency in the decision-making of NCAs on key issues such as assessing firms' governance, minimum substance, outsourcing or delegation arrangements, ESMA also discussed different themes such as the operation of systematic internalisers by third-country branches, trading venue structures and liquidity arrangements, investment banks' operating models, small asset managers, set-ups for the sales and marketing of funds in the EU-27. ESMA coordinated this work with EBA and the Single Supervisory Mechanism (SSM) on topics of common interests, such as the supervision of non-EU branches of EU firms and back-to-back booking models.

In order to ensure adequate preparation for Brexit, ESMA has coordinated the adoption of MoUs among EU and United Kingdom NCAs, to allow for essential supervisory cooperation, also in the case of a no-deal Brexit, and thus the possibility for continuing delegation of, for example, portfolio management. In addition, ESMA has done preparatory work for the MoU between ESMA and the United Kingdom authorities in the areas under its direct supervision and for the Multilateral Memorandum of Understanding between the NCAs and United Kingdom Financial Conduct Authority (FCA) for the areas relevant for securities regulators.

Moreover, ESMA has collected data and information concerning market participants' preparation for Brexit and addressed proposals to the Commission to suggest areas for possible regulatory changes, as well as ensured constant coordination with other EU Authorities and Institutions regarding the Brexit-related risk assessment and contingency planning.

Product intervention measures

In 2018, ESMA adopted product intervention measures to tackle the significant investor protection concerns arising in recent years from the sale of CFDs and Binary Options to retail clients across the EU.

These concerns have materialised across several jurisdictions, with a majority of retail investors typically losing money when exposed to these products, with average losses of up to EUR 29 000 per investor while trading CFDs. Consistent losses on retail clients' accounts were also found for Binary Options. Furthermore, the complexity of the products combined with the lack of transparency and the aggressive marketing practices contributed to the significant concerns.

Despite some national measures taken by several NCAs the investor protection concerns persisted. Given the cross-border nature of these activities, ESMA's product intervention measures appeared as the most appropriate and efficient way to ensure a common minimum level of protection to retail clients across the EU. Measures on CFDs aimed, inter alia, at tackling risks to retail investors arising from excessive leverage. Measures on Binary Options took into account their inherent features, such as a structural expected negative return and inbuilt conflicts of interest, as well as their ability to attract compulsive gambling behaviours. An important part of the work was to carry out extensive analysis of the different options for intervention, including quantitative simulations, published on 1 June 2018.

By making use of the new product intervention powers under MiFIR, ESMA:

The measures are temporary since they have a validity of 3 months unless renewed.

- temporarily prohibited the marketing, distribution or sale of Binary Options to retail clients;
- introduced a number of temporary restrictions in relation to CFDs: calibrated leverage limits (including specific limits on CFDs on cryptocurrencies), a margin close out rule, a guaranteed limit to retail clients' losses, a restriction on

the incentives offered by firms to clients to trade CFDs and a risk warning to inform clients on the losses occurred by clients of each firm.

ESMA reviewed and renewed the initial product intervention measures, which ensured that retail investors continued to benefit from the appropriate protections across the EU.

ESMA subsequently facilitated coordination among NCAs to ensure the exchange of experiences and information on the application of the measures and the appropriate supervision across the EU.

In this context, the Joint Group set up in 2015 to analyse and solve issues emerging from Cypriot investment firms who undertake cross-border activities relating to CFDs and Binary Options was closed in 2018. The decision to close this Group was made following their overall progress in reducing cross-border detriment and in light of the adoption of ESMA's temporary product intervention measures for these products.

MiFID II/MiFIR Double Volume Cap

Under MiFID II/MiFIR ESMA is required to publish the DVC calculations aiming to limit the trading under the reference price waiver and the negotiated transaction waiver for liquid instruments in an equity instrument.

Due to data quality and completeness issues, ESMA only started to publish the DVC results in March 2018. From then on, the publication was produced on a regular basis once a month. Since early 2018, ESMA has been supporting entities in the implementation phase of the reporting from both a technical and policy perspective. In this regard, ESMA provides NCAs with a daily report with information on their completeness status.

Article 5 MiFIR provides that NCAs suspend for a period of 6 months dark trading on their trading venue(s) (TV(s)) for those equity and equity-like instruments which record a too high level of dark trading and thus breach the relevant DVC thresholds at TV level (4 %) or at EU level (8 %). In order to ensure convergence on the timing of suspensions, ESMA published every month, on a voluntary basis, an additional file providing the information on which instruments are expected to be suspended by NCAs, the level of the suspension (i.e. TV level or EU level) and the start and end date of the suspension. This file provides clarity to all market participants on the expected suspension and supported NCAs in the implementation of the DVC.

Last but not least, ESMA published every month a revised version of the previous five monthly DVC results in order to take into account corrections performed by reporting entities and to allow for the revocation of suspensions erroneously triggered due to wrong reporting.

Fund Management

The closet indexing issue, also known as index hugging, refers to the practice of fund managers claiming to manage portfolios actively, when in reality the fund stays close to a benchmark.

Index huggers are likely to be charging unduly high fees as well as failing to deliver the service to which they committed themselves in their offering documents. Since the publication of its statement in February 2016, ESMA undertook various activities aimed at tackling closet indexing. In 2018 ESMA engaged with NCAs on a bilateral basis and requested that they undertake follow-up investigations. In addition, ESMA hosted a supervisors' workshop on 27 June 2018 with the aim of enhancing supervisory convergence in the supervision of closet indexing by facilitating the exchange of insights and good practices amongst peers.

2.1.1. Corporate Finance

Objective for 2018	Achieve measurable improvements in the level of convergence regarding the application by NCAs of the EU legislation on Corporate Finance matters with a particular focus on the development and application of practices in the prospectus and transparency areas and exchange of experience in the areas of corporate governance and takeover bids.

Pursuant to a mandate under the Prospectus Regulation, ESMA developed draft Guidelines on risk factors and published a Consultation Paper seeking stakeholders' views in relation to its proposed Guidelines. The responses to the consultation were published in October 2018 ([10]).

Additionally, ESMA has embarked on the update of its Level 3 guidance in the area of prospectus with the aim of bringing it in line with the new Prospectus Regime. As a first priority, ESMA has commenced with the revision of the ESMA update of the Committee of European Securities Regulators (CESR) recommendations. The CESR recommendations will be converted into Guidelines to which the 'comply or explain' mechanism will apply.

In order to provide information about trends within the Prospectus Regime in terms of general approval and passporting activity as well as the structure of approved prospectuses and the types of securities, ESMA published the annual report on 2017 data. The report found that the number of prospectus approvals across the European Economic Area (EEA) increased by around 1.9 % from 2016 to 2017, putting an end to a decade-long decline observed since the start of the financial crisis.

(**10**) The final report was delivered in Q1 2019.

2.1.2. Corporate reporting

Objectives for 2018	Increase supervisory convergence in the area of enforcement of accounting standards and increase cooperation between accounting and auditing enforcers. Support the implementation of the requirements stemming from ESMA's draft Regulatory Technical Standards (RTS) on the European Single Electronic Format (ESEF).

In order to promote and continuously support the consistent application of the International Financial Reporting Standards (IFRS), as every year since 2013, ESMA published a Statement on the priorities that European enforcers would particularly consider when examining 2018 annual reports of listed companies. In addition, the 2018 Statement included a specific section highlighting areas of focus for the disclosure of non-financial information pursuant to the non-Financial Reporting Directive as transposed in the local jurisdictions as well as in the *ESMA guidelines on alternative performance measures*. In this respect, in 2018 ESMA also engaged in activities to foster the creation of a common supervisory culture across European enforcers, including collecting and sharing information on the supervisory set-up for non-financial reporting.

ESMA also published an extract from its confidential database of enforcement decisions on financial statements. The extract includes a selection of 10 decisions taken by national enforcers in the period from August 2016 to July 2017. In addition, ESMA published its response to the Commission consultation seeking feedback to evaluate the Fitness of the EU framework for public reporting by companies.

Finally, in order to support the implementation of the RTS on the ESEF published in December 2017, ESMA engaged in 2018 in an extensive outreach initiative to educate and inform all relevant market stakeholders on the new requirements. ESMA organised a Meet-The-Market workshop for software developers in Warsaw on 28 May and contributed to numerous events organised by NCAs and/or XBRL consortia throughout Europe to present and answer questions on the ESEF. Furthermore, ESMA launched a series of video tutorials on the ESEF, the first of which was published on ESMA's website and social media in November 2018.

In order to provide transparency and support supervisory convergence activities across Europe, ESMA compiled all information and published it in the annual report on the enforcement and regulatory activities of accounting enforcers within the EU in 2017.

2.1.3. Investment Management

Objective for 2018	Achieve measurable improvements in the level of convergence regarding the application by NCAs of the EU legislation on Investment Management through the development of guidance and the application of supervisory convergence tools.

ESMA progressed its work in light of the Recommendations issued by the ESRB to address systemic risks related to liquidity mismatches and the use of leverage in investment funds. In this context, ESMA's work focused on preparatory work related to guidance on liquidity Stress Tests for investment funds.

The 2017 FSB recommendations underline the additional focus on stress testing as a tool, both at micro (i.e. fund) and macro (i.e. across a specific sector or sub-sector) level. In particular, ESMA issued a Consultation Paper on Guidelines on Stress Tests scenarios for MMF under Article 28 of the Money Market Fund Regulation (MMFR).

The Guidelines on reporting obligations for MMFs — for which a Consultation Paper was also published in 2018 — aim to provide clarity to MMF managers on what they should report under the MMFR. This will help ensure that there is a consistent approach and that the information in ESMA's central database can be exploited fully. These Guidelines will complement the Implementing Technical Standards (ITS) on the reporting requirements submitted to the Commission in 2017.

ESMA continued to seek improvements in fostering common supervisory approaches on performance fees models. It conducted a mapping exercise in order to analyse the current practices and approaches in all EU Member States, given the lack of convergence in this field. ESMA is considering further policy work on performance fees, given the great extent to which investment funds are distributed cross-border and the need to ensure a level playing field in the EU.

ESMA also updated its Q&As on the application of UCITS and the Alternative Investment Fund Managers Directives (AIFMD) in order to promote common supervisory approaches and practices in the application of the directives and their implementation.

Through the Joint Committee, ESMA continued its supervisory convergence related activities on the appropriate and consistent application of PRIIPs throughout the EU. In that context, the ESAs have published additional Q&As in order to ease the implementation of the PRIIPs Regulation ([11]). The ESAs have also published a Consultation Paper concerning amendments to the PRIIPs KID ([12]) in view of the review of the PRIIPs Level 2 Delegated Act to be conducted in 2019. This Consultation Paper was accompanied by a supervisory statement concerning the performance scenarios in the PRIIPs KID ([13]).

In order to provide clarity to market participants and investors on the issue of the compatibility of the Reverse Distribution Mechanism (RDM), or share cancellation, ESMA asked and received a response from the Commission, confirming that the practice of share cancellation is not compatible with the MMFR. ESMA subsequently liaised with NCAs to ensure aligned application.

2.1.4. Investor Protection and Intermediaries

Objective for 2018	Promote the consistent application of MiFID II and MiFIR and coordination between NCAs in the area of investor protection and intermediaries.

In order to promote common supervisory approaches and practices in the application of MiFID II and MiFIR, ESMA continued its work on supervisory convergence tools (such as Guidelines and Q&As) and also continued facilitating the exchange of experiences and common approaches among NCAs, including through dedicated workshops and training sessions.

With regards to investor protection in the MiFID framework, ESMA published its Final Report on Guidelines on certain aspects of the MiFID II suitability requirements. By supporting a consistent and harmonised application of requirements in this area, the Guidelines will ensure that MiFID II's objectives are achieved. The Guidelines cover amongst others

(**11**) Q&As on PRIIPs KID.

(**12**) Consultation Paper concerning amendments to the PRIIPs KID.

(**13**) Supervisory statement in the PRIIPs KID.

the automated systems for the provision of investment advice or portfolio management and also take into account the outcome of studies in the area of behavioural finance.

ESMA also published an updated version of its supervisory briefing on MiFID II suitability requirements which aims at providing competent authorities with a practical tool that they can use when conducting supervisory activities and give market participants indications of compliant implementation of the MiFID II suitability provisions.

In 2018, ESMA reviewed existing Q&As on inducements and adopted new Q&As on topics related to best execution, investment advice on an independent basis, research, post-sale reporting, client categorisation, inducements, reverse solicitation and other issues. In addition to the adoption of temporary product intervention measures, ESMA also published Q&As to clarify issues on the application of its measures on the marketing, distribution or sale of CFDs and Binary Options to retail clients.

Jointly with EBA, ESMA issued Guidelines on the assessment of the suitability of members of management body and key function holders in accordance with the Capital Requirements Directive/ Capital Requirements Regulation (CRD/CRR) and MiFID II, a key topic concerning the governance of investment firms and credit institutions. ESMA and EBA have also adopted a joint statement on the treatment of retail holdings of debt financial instruments subject to the Bank Recovery and Resolution Directive (BRRD), a topic which has required increased attention due to investor protection concerns arising from the sale of these instruments to retail investors.

In the context of Brexit, ESMA published a statement on information to clients in relation to the United Kingdom's withdrawal from the EU.

2.1.5. Market Integrity and Market Data

Objectives for 2018	
	Improve the level of convergence in the application by NCAs of the Benchmarks Regulation, including operating the benchmark colleges, and safeguarding retail contracts referencing major interest rate benchmarks.
	Consistent implementation of the reporting regimes under SFTR, EMIR and MiFIR.

Benchmarks

As money market rates are undergoing substantial developments both in Europe and worldwide, ESMA, together with the ECB, the Commission and the Financial Services and Markets Authority (FSMA), established an industry working group (WG) to identify and recommend risk-free rates that could serve as a basis for an alternative to current rates used in the euro area. The first meeting of the WG took place in February 2018. In September 2018, the WG recommended that the euro short-term rate (€STR) should be used as the risk-free rate for the euro area. In December 2018 the WG published a Consultation Paper on the transition path from the Euro Overnight Index Average (EONIA) to €STR, as well as a Consultation Paper on determining an €STR-based term structure methodology as a fallback for Euro Interbank Offered Rate (Euribor) linked contracts. In its participation in the WG, ESMA focused on steering industry efforts to include fallback clauses in existing consumer contracts, as well as other types of financial instruments.

In addition, ESMA published its final report on Guidelines on non-significant benchmarks, proposing lighter requirements for non-significant benchmark administrators and their supervised contributors. ESMA updated its Q&As on the Benchmarks Regulation providing clarification on the following matters: scope, definitions, requirements for supervised contributors, requirements for users and the authorisation process.

ESMA participated in the activities of the college of supervisors of Euribor/EONIA and the London Interbank Offered Rate, with its role focused on ensuring consistent functioning of the different colleges and on providing regulatory expertise.

Market Abuse

The Market Abuse Regulation (MAR) is intended to guarantee the integrity of European financial markets and increase investor confidence. The concept of market abuse typically consists of insider dealing, unlawful disclosure of inside information and market manipulation.

ESMA updated its Q&As clarifying the scope of the trading restrictions for persons discharging managerial responsibilities.

Under the Short Selling Regulation (SSR), ESMA updated its Q&As to clarify under which regulation the identification of the relevant competent authority is made, following the entry into application of MiFID/ MiFIR.

ESMA also published its first annual report concerning administrative and criminal sanctions as well as other administrative measures issued by NCAs from 3 July 2016 (date on which MAR became applicable) to 31 December 2017.

2.1.6. Post-Trading

Objectives for 2018	
	Provide guidance to market participants and NCAs on the application of EMIR and the Central Securities Depositories Regulation (CSDR).
	Contribute to financial stability through enhanced resilience of European CCPs. Enhance the consistent application of EMIR and the convergence of supervisory practices by active participation in CCP colleges and by initiating, coordinating and conducting EU-wide Stress Tests for CCPs as well as Peer Reviews.

In order to ensure a level playing field across the EU, ESMA developed Guidelines on CCPs management of conflicts of interests, in order to clarify how CCPs should prevent or mitigate the risks of conflicts of interest and ensure consistent implementation across CCPs. Similarly, ESMA also developed Guidelines on anti-procyclicality margin measures to promote the consistent implementation of the relevant provisions in EMIR and the RTS on CCPs aimed at preventing and controlling possible procyclical effects arising from the risk management practices adopted by CCPs. ESMA published an opinion which sets out how CCPs in the EU should consider in their internal risk models the liquidity risk posed by all entities towards which the CCP has a liquidity exposure, such as liquidity providers.

The CCP Stress Test assesses the resilience and safety of the EU CCP industry and helps to identify possible vulnerabilities. ESMA published the results of the second EU-wide Stress Test, which show that overall the system of EU CCPs is resilient to multiple clearing member defaults and extreme market shocks. Subsequently, ESMA followed up with the relevant NCAs where individual CCP shortcomings had become apparent in the context of the Stress Test.

ESMA published its final Guidelines on how to report internalised settlement under the CSDR, clarifying the scope and reporting process. Guidelines on the exchange of information between ESMA and NCAs, who will receive the data from reporting entities, were also finalised. ESMA updated and issued new Q&As

regarding the implementation of the CSDR, including on settlement discipline following the publication of the related RTS.

The first ESMA annual report regarding supervisory measures carried out and penalties imposed by NCAs under EMIR, published in 2018, focuses on the supervisory actions undertaken by NCAs, their supervisory powers and the interaction between NCAs and market participants when monitoring the compliance of the EMIR requirements.

ESMA issued a statement for Pension Scheme Arrangements (PSAs), with the objective to avoid, to the extent possible, disruption to those who may face potential challenges clearing their Over-The-Counter (OTC) derivative contracts and trading them on TVs on 17 August 2018, when the current, and final, exemption from the clearing obligation under EMIR expires.

ESMA issued a statement relating to the challenges that certain groups, as well as certain non-financial counterparties above the clearing threshold (NFC+), would face on 21 December 2018 to start CCP clearing some of their OTC derivative contracts and trading them on TVs.

The calculation of positions in derivatives is crucial for the assessment of systemic risks to financial stability. ESMA has therefore harmonised position calculation for TRs by publishing Guidelines which set out a consistent approach for the calculation of derivative positions by European TRs. Currently, ESMA has registered eight TRs under EMIR. The positions calculated by TRs will give EU authorities comprehensive sight of derivatives' exposures.

2.1.7. Secondary Markets

Objective for 2018	Provide guidance and promote the consistent application of MiFID II and MiFIR by market participants and NCAs.

Following the application of MiFID II/MiFIR on 3 January 2018, ESMA's focus over the course of the last year was to ensure the sound, efficient and consistent application of the new framework. In order to achieve this objective, ESMA issued further Q&As regarding transparency, market structures and commodity derivatives issues, providing additional guidance and clarifications on important topics such as the scope of the trading obligation for derivatives, the SI regime, the definition of trading systems, direct electronic access, market data issues, the application of position limits, position reporting and the ancillary activity exemption.

ESMA, following requests for supplementary guidance, also issued an opinion providing further clarity on the treatment of packages under the trading obligation for derivatives introduced by MiFIR in 2018. Furthermore, ESMA issued additional opinions on position limits and pre-trade transparency waivers as required under MiFID II/MiFIR. During the course of 2018 ESMA also carried out assessments of third-country TVs for the purpose of post-trade transparency and position limits.

ESMA launched in 2018 an exercise to assess the underlying reasons for the growth of frequent batch auctions, which resulted in the publication of a call for evidence. Work on this topic will continue in 2019.

A second major priority in the course of 2018 was the implementation and operation of various IT systems and registers necessary for MiFID II and MiFIR. ESMA, in close cooperation with NCAs, devoted significant resources to ensure a high level of completeness and quality of data submitted. These resulted in more than 800 suspensions of trading under DVC waivers. Furthermore, ESMA published, starting in May 2018, the quarterly liquidity calculations for bonds, and, starting in August 2018, the quarterly SI calculations for equity and bond instruments.

Over the course of 2018 ESMA updated its opinion on ancillary activity calculations, providing market participants with an estimation of the market size for commodity derivatives and emission allowances for 2017. Finally, a number of MiFID II/MiFIR registers also went live in 2018 such as the register of derivatives subject to the trading obligation, which provides clarity to market participants on the application of the trading obligation for derivatives and the commodity derivatives position reporting system which shows, where applicable, the aggregate positions held by market participants in commodity derivatives, emission allowances or derivatives thereof traded on a TV.

2.1.8. Horizontal supervisory convergence work

ESMA monitored the implementation of the 2018 convergence work programme, and the impact that ESMA's work has had on national supervisory practices from a convergence perspective. As a result of that monitoring, ESMA will be looking at how to foster further supervisory discussions based on the model of the SCN.

Peer Reviews

One prominent convergence tool of ESMA are Peer Reviews, in which practices of NCAs are compared and assessed fairly and consistently among peers in order to strengthen the consistency of supervisory outcomes and to share experience between supervisors. In 2018, one Peer Review and one follow-up to a previous Peer Review were finalised and two new Peer Reviews were initiated.

ESMA finalised and published its Final Report on the Peer Review on the Guidelines on exchange-traded funds (ETFs) and other UCITS issues, focusing on Efficient Portfolio Management Techniques (EPM). The Report assesses the supervisory practices of six NCAs (Germany, Estonia, Ireland, France, Luxembourg and the United Kingdom) in relation to (i) disclosure to end-investors of UCITS; (ii) internal risk management and compliance with the investment mandate; (iii) operational aspects; and (iv) collateral management. Compliance with the requirements vary depending on the four categories and the Report identifies several concerns with individual supervisory practices and arrangements in place at certain NCAs in particular related to supervision of operational aspects of costs, fees and revenues for EPM, and collateral management issues. Additionally, the Report lists good practices that were encountered. Together this should result in further convergence on the supervision of UCITS.

On the follow-up to the Peer Review regarding oversight of the MiFID suitability requirements, the Report assesses the actions 10 NCAs have undertaken since the earlier Peer Review conducted in 2016. The Report identifies enhancements in supervising the requirements and greater deployment of enforcement action by some NCAs. These improvements should lead to an increased level of EU-wide supervisory convergence of the suitability requirements.

In addition, ESMA initiated one Peer Review on supervisory actions aimed at enhancing the quality of data reported under EMIR, and one Peer Review on the collection and use of suspicious transaction and order reports under MAR as a source of information in the context of market abuse investigations. Both Peer Reviews are scheduled to be finalised in 2019.

Enforcement Network

ESMA established the Enforcement Network in 2017, in recognition of enforcement as a key component of supervision and an important area to enhance supervisory convergence. During 2018, the network has continued to facilitate closer dialogue amongst enforcement officers from NCAs. Based on practical case experiences, network members have exchanged good practices in key areas of enforcement investigations such as case selection, evidence gathering and sanctioning criteria and processes. The network's work will continue in 2019.

Senior Supervisors Forum meeting on cybersecurity risks in asset management supervision

ESMA held its first Senior Supervisors Forum meeting, the first of a series of events with the objective to exchange views on strategic supervisory issues among senior NCA supervisors. The first Senior Supervisors Forum meeting discussed the challenges faced when monitoring and acting on cybersecurity risks in the asset management sector. Cybersecurity is a prominent priority for many NCAs and collaboration and information sharing are critical to increase preparedness against cyberthreats that know no borders.

Declared Compliance with Guidelines

ESMA published an overview table of the compliance status declared by NCAs as regards the application of ESMA Guidelines in their respective jurisdictions, available on the ESMA website [14]. By 2018, ESMA has published 33 sets of Guidelines, for which the overall level of compliance for the EU-28 is as follows: 77 % of declared compliance, 17 % of reported intention to comply and 2 % of recorded non-compliance. A significant number of non-compliance notifications (five each) is observed for the *Guidelines on the exemption for market making activities and primary market operations under Regulation (EU) 236/2012 of the European Parliament and the Council on short selling and certain aspects of Credit Default Swaps* published in 2013 (Denmark, Germany, France, Sweden and the United Kingdom) [15], and for the *ESMA Guidelines on enforcement of financial information* under the Transparency Directive published in 2014 (Bulgaria, Germany, Austria, Slovenia and Sweden) [16].

(**14**) Guidelines and TSs.

(**15**) Concerning the Guidelines on market making, the Peer Review report confirmed non-compliance reported due to different interpretations of the SSR resulting in different practices among NCAs. The report concluded that these interpretation issues should be addressed when the SSR is reviewed. No further action has therefore been proposed for these non-compliance cases.

(**16**) A Peer Review was conducted on the latter set of Guidelines in 2015 under ESMA's coordination to find out more. A follow-up to that Peer Review is envisaged to take place in 2019 to see whether progress has been made by NCAs.

In 2018, the total number of the instances of non-compliance increased by five, due to the publication of the new compliance table for the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under CRD IV and MiFID II. NCAs that have declared non-compliance status with the Guidelines include Germany, France, Latvia, Lithuania and Sweden.

Regarding the NCAs, the highest number of instances with non-compliance status was reported by Germany (for four sets of Guidelines) and Sweden (for three sets of Guidelines) ([17]).

Complaints handling and investigations

The ESMA Regulation provides for the possibility of opening an investigation where a competent authority has not applied relevant Union law or has applied it in a way that appears to be a Breach of Union Law (BUL). Should such an investigation confirm the existence of a breach, ESMA addresses a recommendation to the competent authority with the aim of correcting it. Through the assessment of complaints, ESMA and NCAs may also detect market trends and identify potential issues of investor protection across the EU.

In 2018, ESMA received 258 complaints about potential violations of EU acts. The majority of the complaints were inadmissible because they concerned the acts or omissions of private persons and they failed to refer to a national competent authority to which the alleged breach of Union law could be attributed. As regards the admissible complaints, they almost exclusively consisted of allegations of potential breaches of the MiFID II/MiFIR framework. Other issues raised concerned the procedure for the out-of-court settlement of consumer complaints concerning the activity of UCITS, the scope of certain rights and obligations under the Investor Compensation Scheme (ICS) Directive, allegations of insider dealing and market manipulation, the authorisation process under the AIFMD and the AIFMs' obligation to avoid conflict of interest.

In addition, following the receipt of a letter from the Commission confirming ESMA's understanding that the use of the RDM ([18]) is not compatible with the MMF Regulation ([19]), ESMA sent a letter to the Central Bank of Ireland (CBoI) and the Commission de Surveillance du Secteur Financier (CSSF) asking them to confirm that, under their respective jurisdictions, they intended to prohibit existing CNAV MMFs under their supervision from using RDM as of 21 January 2019 ([20]). After some exchanges between ESMA and the two NCAs, the latter decided to make a joint statement on 11 January 2019 in which they declared that RDM was not compatible with the MMF Regulation and required that existing CNAV MMFs submit an application under Article 44 of the MMF Regulation to confirm that they have ceased to use RDM ([21]).

Requests for assistance between NCAs in 2018

The Multilateral Memorandum of Understanding on Cooperation Arrangements and Exchange of Information (the MMoU) ([22]) provides NCAs with the possibility to request the assistance of another NCA. In 2018, ESMA was informed of several requests for assistance between NCAs under the MMoU. Most of these requests concerned the monitoring by NCAs of compliance with ESMA's product intervention measures on CFDs. Throughout the year, ESMA has been monitoring that these requests were duly processed.

Regulatory IT projects

As part of its supervisory convergence activity, ESMA works with the NCAs and other stakeholders to develop IT systems that are mandated by EU legislation. The following projects are at different stages of scoping, development and implementation.

(**17**) Germany: Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders; Guidelines and Recommendations on remuneration policies and practices (MiFID); Guidelines on exemption for marketing making activities and primary market (SSR); Guidelines on enforcement of financial information (transparency directive (TD)).
Sweden: Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders; Guidelines on exemption for marketing making activities and primary market (SSR); Guidelines on enforcement of financial information (TD).

(**18**) Also known as share cancellation or share destruction.

(**19**) Implementation of the MMFR.

(**20**) That they prohibited new CNAV MMFs from using RDM and that, as of 21 January 2019, they would also prohibit existing CNAV MMFs from using it.

(**21**) Joint statement of the Central Bank of Ireland and the Commission de Surveillance du Secteur Financier Luxembourg on the treatment of share cancellation under the Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on Money Market Funds; and Statement on the treatment of share cancellation under EU Regulation 2017/1131.

(**22**) Multilateral Memorandum of Understanding on Cooperation Arrangements and Exchange of Information.

Regulatory IT projects completed in 2018

Activity	Sub-activity	Project	Description
Direct Supervision	CRAs	Consolidation of CEREP and RADAR databases	The old ratings statistics database, CEREP, consolidated with the new ratings statistics database, RADAR.
Supervisory Convergence	Post-Trading	SFTR	The first phase of the project that included the development of business requirements and harmonised data reporting template for information exchange.
Supervisory Convergence	Investor Protection and Intermediaries	Upgrade the Registers of Authorised/ Registered Entities and Sanctions	Upgrade of the current Authorised Entities and Sanctions Registers with requirements stemming from different regulations, such as MiFIR, UCITS V, MAR, CSDR, EMIR.
Supervisory Convergence	Market Integrity	ESMA Register of Administrators and Benchmarks	Under the Benchmarks Regulation, ESMA is required to establish and maintain a public register of administrators and third-country benchmarks.
Supervisory Convergence	Secondary Markets	CODER (Articles 57 and 58) — Commodity derivatives — position limits and management, and the Register of Weekly Commodity Derivatives aggregate positions (MiFID Article 57)	The regulation requires NCAs to submit data of position limits and position management controls for commodity derivatives reporting. ESMA publishes and maintains on its website a database with summaries of those position limits (MiFID II Article 57). ESMA also collects and publishes the aggregate positions held in commodity derivatives, emission allowances or derivatives thereof traded on a TV (Article 58 of MiFID II). NB: it was decided in early 2019 to stop the roll-out in production environment of the Article 57 module due to the impact of Brexit (the volume of processed information was very low compared with initial estimation, making the usage of an automated system ineffective).
Delegated projects	Financial Instruments Reference Data System (FIRDS)	FIRDS extension for Tick Size and Systematic Internalisers Regime — FIRDS, Phase 4	An extension of FIRDS system to cover additional requirements for Tick Size and Systematic Internalisers Regime.

Ongoing Regulatory IT projects started before 2018 that will continue in 2019

Activity	Sub-activity	EU law	Description
Supervisory Convergence	Post-Trading	CSDR	CSDR, Article 9, covers reporting, on a quarterly basis, by Settlement Internalisers to the NCAs regarding data on internalised settlements.

Activity	Sub-activity	EU law	Description
Supervisory Convergence	Investor Protection and Intermediaries	Registration and publication of third-country firms (MiFIR, Article 46)	Registration and publication of third-country firms allowed to provide investments services and activities in the EU. NB: The roll-out of the system in production environment has been delayed due to the delays in establishing the equivalence agreements with third-country jurisdictions.

New Regulatory IT projects initiated in 2018 that will continue in 2019

Activity	Sub-activity	Project	Description
Supervisory Convergence	Horizontal Services	Brexit	Analysis and impact assessment of Brexit on ESMA IT systems and data. In 2019, the implementation of necessary changes in the ESMA IT systems and updates of United Kingdom data will be performed.
Supervisory Convergence	Corporate Finance	Securitisation Regulation	The regulation requires the following different IT deliverables. • ESMA must maintain on its website a public register of all securitisations fulfilling the simple, transparent and standardised (STS) criteria, including a notification template that explains how each criterion is met. These notifications should be transmitted to ESMA directly by securitisation originators/sponsors/issuers. • ESMA is mandated to develop the details related to the disclosure templates to be used by entities reporting to securitisation repositories. • ESMA must maintain a securitisation sanctions register.
Supervisory Convergence	Corporate Finance	Expansion of the Prospectus Register (Prospectus III Regulation)	Update of the Prospectus Regulation (including passporting). It will extend the current prospectus register portal with collection of more metadata on EU prospectuses, central publication of all collected prospectuses and exchange of information necessary for prospectus passporting between the NCAs.
Supervisory Convergence	Investment Management	MMFR	MMFR, Article 37. A central database with aggregated reports collected from the MMF Managers (like the AIFMD reporting).
Direct Supervision	Direct Supervision	Risk assessment framework tool	Further development and enhancement of the supervisory risk assessment framework tool based on data collected from supervised entities (CRAs and TRs).
Delegated Projects	Single Interface to TRs	TRACE extension — TRACE, Phase 3	An extension of the TRACE system to cover additional reports provided by the TRs to the NCAs and central banks under EMIR (revised RTS) and SFTR, including new functionalities related to data access under SFTR.

Data Reporting

Closely linked to the work on regulatory IT projects, ESMA aims to harmonise and standardise data and technical reporting requirements across the different fields of activities, as well as to promote the use of financial markets data standards.

One such data standard is the global Legal Entity Identifier (LEI). ESMA updated its Q&As on practical questions regarding EMIR, amending the processes TRs should follow with regards to changes to LEIs, and amending the process of the identification of counterparties to a derivative. Furthermore, to support the smooth introduction of the LEI requirements under MiFIR reporting requirements, a temporary period of 6 months starting in January 2018 was introduced to allow investment firms and TVs to support their clients in obtaining the necessary LEI codes. Upon expiration of the temporary 6-month period, ESMA facilitated the agreement on a common supervisory approach to LEI under MiFIR among all competent authorities.

In order to ensure consistent and ongoing monitoring of the data quality coming from the FIRDS and Transaction Reporting Exchange Mechanism (TREM) systems, ESMA developed sets of respective procedures, known as Data Quality Methodologies, to verify and communicate to the relevant parties data quality issues pertaining to the information reported to the abovementioned systems. These procedures outline the process to share the relevant information and agree on best practices that ensure the overall quality of reference data reported under Article 27 and transaction reports reported under Article 26 of MiFIR.

Furthermore, in order to ensure the development of aligned, consistent and coherent regulatory reporting requirements under the respective sectoral legislation as well as consistently address issues related to enhancing the quality of the regulatory and market data reported to EU national authorities, key data infrastructures and the market, ESMA established the Data Standing Committee (DSC) in 2018.

ESMA updated its Q&As regarding data reporting under MiFIR, including the FX Swaps reporting and the Interest Rate Swaps reporting. In addition, ESMA updated its Q&As regarding the implementation of MAR, seeking to enhance the integrity of European financial markets and increase investor confidence.

Finally, ESMA published guidelines on how TRs should calculate derivative positions under EMIR. The Guidelines set out a consistent approach for the calculation of derivative positions by European TRs. The calculation of positions in derivatives is crucial for the assessment of systemic risks to financial stability. The positions calculated by TRs give EU authorities comprehensive sight of derivatives' exposures. TRs follow the guidelines to ensure that they produce consistent and harmonised position calculations for public authorities, such as conduct regulators, central banks, prudential and resolution authorities.

2.2. Assessing risks to investors, markets and financial stability

Assessing risks to investors, markets and financial stability is a central task at ESMA. The risk monitoring and analyses contribute to core ESMA activities, including regulatory impact assessments and topical studies for single-rulebook measures, stress testing methods and analyses as well as risk metrics for supervisory convergence work and the regular EU-level monitoring of TRVs. Our analysis covers all risk types across the markets in ESMA's remit, with specific attention to financial innovation and retail investor concerns. Importantly, ESMA's risk assessment draws on data and statistics sourced and managed through an integrated approach, ensuring high-quality, efficient management and an effective use, especially of the proprietary data ESMA collects. In our analytical work, we cooperate closely with and contribute to the work at the EU institutions, NCAs, the other ESAs and the ESRB. By publishing important parts of our monitoring and analytical findings and by providing public access to relevant databases and registers we promote transparency and investor awareness.

Key deliveries and successes

MiFID II/MiFIR data management

The entry into force of MiFID II and MiFIR at the beginning of 2018 introduced a data driven regulatory landscape for TVs, market participants and retail investors. For its correct and efficient application, ESMA data activities and publications act as a keystone by receiving billions of data points from more than 600 reporting entities and publishing key results through the FIRDS, the Financial Instruments Transparency System and the Double Volume Cap Mechanism (DVCAP). The novelty and the ambition of the Regulation imposed challenges to all stakeholders that required significant work to resolve data completeness and quality issues during 2018. The majority of issues were resolved, with successful publication of key calculations and data required under MiFID II/MiFIR. However, in the area of derivatives the data completeness and quality did not improve sufficiently, which required ESMA to delay transparency calculations for derivatives.

ESMA Annual Statistical Report on EU derivatives markets

In 2018, we issued the first edition of an annual publication series using and analysing data submitted under EMIR. It provides the first comprehensive market-level view of the EU's EUR 660 trillion gross notional and 74 million transactions outstanding derivatives markets. This publication contributes to ESMA's and other EU authorities' risk assessment, facilitates entity oversight by national supervisory authorities and enhances supervisory convergence.

ESMA Annual Statistical Report on performance and costs of EU retail investment products

At the end of the year, ESMA adopted and subsequently published its first annual report on costs and returns of UCITS, alternative and structured retail products, alerting investors to the significant impact of costs on the final returns they make on their investments. The charges for UCITS funds reduce their gross returns by one quarter on average.

Advice to the European Institutions on Initial Coin Offerings and Crypto-Assets

The ESMA advice clarifies the existing EU rules applicable to Crypto-Assets that qualify as financial instruments and provides ESMA's position on any gaps and issues in the current EU financial regulatory framework for consideration by EU policymakers. That was preceded by a pan-EU warning to consumers regarding the risks of buying VCs, which was issued together with EBA and EIOPA.

2.2.1. Data Management and Statistics

Objective for 2018	Ensure the quality, integration, usability and transparency of the data that ESMA collects.

As a result of its 2018-2022 Data Strategy and the new mandates (acquired either by the Regulation or Delegation), ESMA enlarged the scope of its data management and statistical activities.

The governance of the data activities and the coordination with NCAs is a necessary condition to achieve the objectives mentioned above. This was enhanced through the creation of the DSC which contributes to developing aligned regulatory reporting requirements under the respective sectoral legislation, addressing issues related to enhancing the quality of the regulatory and market data reported to NCAs, key data infrastructures and the market, ensuring consistency and coherence between various reporting regimes.

ESMA's strategic view foresees that all its activities shall be evidence-driven whenever possible. Therefore, all the data available to ESMA is used consistently, effectively and in an integrated way to support both the Authority and NCA's activities whenever this is technically feasible, respecting at all times relevant confidentiality and contractual restrictions.

To achieve these objectives, several hurdles have been tackled within ESMA and through the interaction with its stakeholders. Starting from the need to have consistent and aligned reporting standards that allow combinations of the data. Following from the need to receive high-quality data and supporting a consistent interpretation of the information to be reported and ensuring the adequate IT infrastructure for data operations. Finally, by ensuring that the adequate quality processes are in place and coordinating the activities among different areas of expertise within ESMA staff, NCAs and other stakeholders.

As this is a horizontal function, most of the deliverables are represented in other sections of this document, but among them it is important to highlight the following ones.

Support of Single Rulebook, supervisory convergence and direct supervision

Data management activities supported several single-rulebook activities including, among others, the development of standards for EMIR reporting, contributions to the definition of new data sets such as the future reporting on prospectus and MMFs as well as other analysis supporting policy developments.

All actions to improve the quality of the data need and support the supervisory convergence in EU. Most of data management resources were focused on these activities including the quality analyses and remedial actions for the MIFID II/MiFIR system, AIFMD data and EMIR data reported to TRs. Moreover, ESMA conducted operations conducive to the publication of data and statistics supporting the consistent application of the regulation (e.g. transparency calculations, DVCAP, reference data, ancillary activities, registers). Other activities in this area were the contributions to the design of the IT data systems and, mainly in the last quarter, the preparations in case of a no-deal Brexit regarding possible modifications in data processes and publications.

The direct supervision activity was supported by the production of in-depth and efficient analysis, allowing continuously updated access to key metrics to analyse the activities of these supervised entities. Additionally, the risk assessment activities on EMIR data offered as a by-product an additional contribution to ESMA's direct supervision of TRs.

A key objective of ESMA's data activities is to reinforce the quality of the data submitted to NCAs and the quality of the key data published on ESMA's website. This data, supported by ESMA's IT systems, provides daily information from EEA supervisors, market participants and investors. It supports all three ESMA objectives of investor protection, orderly markets and financial stability, and importantly enables the NCAs to use and exchange data to fulfil their market surveillance and monitoring activities.

Risk assessment

The data and statistical activities also closely support the risk assessment function of the Authority, which is described in detail in Sections 2.2.2 and 2.2.3 of this document.

As part of the strategic view on regulatory data, ESMA has increased the depth and sophistication of several analyses on reported data that resulted in the publication of Annual Statistical Reports for Derivatives (using EMIR data) and for AIFMD, as well as the incorporation of new indicators to regular reports such as the TRV and the Risk Dashboard.

ESMA continued its efforts to increase the efficiency of its data processing by implementing internal procedures for data handling and rationalising expenditure dedicated to the purchase of external data. The resources applied to this external data (i.e. public data and data provided by vendors) continued to be reduced in both absolute and relative terms because of enhanced efficiency and the more demanding activities regarding data reported under various regulations.

2.2.2. Market and Infrastructure Risk Analysis

Objective for 2018	Identify financial market risks and report on these risks to the relevant institutions and conduct impact assessments of regulations.

European securities markets and investors

ESMA's TRV Report contributes to promoting financial stability and enhancing consumer protection by regularly looking into cross-border and cross-sector TRVs, both at the wholesale and retail level.

In the first TRV of 2018, ESMA pointed to the high risks in European securities markets, infrastructures and to investors, with political and event risks such as Brexit as well as the prolonged ultra-low interest rate environment as key drivers of risk. ESMA reiterated its concerns about retail investors investing in speculative and risky products, such as VCs and ICOs.

In the September edition of the TRV, ESMA renewed its concern regarding political and event-driven risks and noted the return of market volatility as a sign of growing sensitivities in the markets. Overall, the report found that risk levels for the EU's securities markets remained stable but at high levels for most risk categories.

Equity and bond volatility spikes in February and May reflected the growing sensitivities. ESMA also saw a deterioration in outstanding corporate debt ratings and in corporate and sovereign bond liquidity.

EU alternative fund industry

In the March 2018 TRV, ESMA provided first-time EU-wide evidence on the AIF market, based on end-2016 data collected under the AIFMD. AIFs include hedge funds, real estate funds, funds-of-funds and private equity funds. ESMA have found that the vast majority of European AIFs are managed cross-border using passporting rights and that the EU AIF industry is highly concentrated around a few large participants and asset classes.

EU market for Exchange-Traded-Derivatives

In the same TRV report, ESMA provided analysis showing that the EU market for Exchange-Traded-Derivatives (ETDs) is worth approximately EUR 200 trillion — with an average daily turnover of EUR 1 trillion. According to MiFID, ETDs cover asset classes such as equity, credit, interest rate and commodity derivatives. The ESMA study is a first analysis of the ETD market based on data used for the MiFID II/MiFIR Transitional Transparency Calculations.

The public disclosure of net short positions

As part of the latest Review of the EU SSR, ESMA conducted an analysis of net short positions in EU shares and the impact of public disclosure on investor behaviour. Short-selling activities in EU equities are highly concentrated, with short sellers (excluding market makers and primary dealers) mainly located in the United States and the United Kingdom, and with a few investors active on a large number of EU shares. The public disclosure threshold influences the market outcome of net short positions, which seems driven by investors seeking to avoid crossing the threshold in order to keep their strategy secret. The March TRV article also investigated herd behaviour in the context of public disclosure.

Operational risk assessment — the ESMA approach

Also in the first 2018 TRV, ESMA presented details on its approach to analysing operational risks. Operational challenges for financial market participants have intensified in recent years. Consequently, regulatory and supervisory attention on operational risk monitoring has increased. ESMA's article introduced a new systematic, comprehensive and analytical approach to operational risk monitoring in EU markets. Going forward, in line with our general risk assessment methodology, ESMA will take a wide range of quantitative indicators into consideration, complemented by in-depth market intelligence. In doing so, ESMA focuses on three priority risk areas of specific relevance to ESMA and the markets in our remit: market misconduct, infrastructure disruptions and cyberattacks.

Monitoring volatility in financial markets

The potential of market volatility to undermine financial stability, as well as to impose unexpected losses on investors, is a subject of concern for securities market regulators and is a key element of ESMA's market monitoring. The details of ESMA's analysis of volatility in financial markets were published in an article in September 2018. ESMA finds that the main drivers of the long period of low volatility between February 2016 and January 2018 are related to lower equity returns correlation, search-for-yield strategies and stable macroeconomic and corporate performances. A prolonged period of low volatility may lead to a more fragile financial system, promoting increased risk-taking by market participants.

While the assets under management may still be considered rather small, the number of products following volatility targeting strategies is sufficiently broad to become a key factor driving volatility spikes like those that occurred in the first week of February 2018. ESMA will continue to monitor the development of market volatility and include regular updates in the TRV and Risk Dashboards, on a quarterly basis.

Liquidity in EU fixed income markets

In September 2018 ESMA published a working paper examining liquidity in EU fixed income markets, providing a broad overview of market liquidity in EU sovereign bond and corporate bond markets. The study shows that the situation differs significantly between sovereign and corporate bonds. ESMA has found that sovereign bond market liquidity has increased recently, potentially due to the effects of supportive monetary policy. However, in parallel, it has seen evidence of several episodes of deteriorating secondary market liquidity for corporate bonds, especially between 2014 and 2016. For both sovereign and corporate bonds, ESMA sees a correlation between increased stress in financial markets and a deterioration in market liquidity.

Structured retail products — the EU market

Structured products sold to retail investors in the EU are a significant vehicle for household savings. Certain features of the products — notably their complexity and net performance — warrant a closer examination of the market from the perspective of investor protection. Breaking down the EU market geographically into national retail markets reveals a very high degree of heterogeneity in the types of product sold, though among the vast array of different structured products available to retail investors each market is concentrated around a small number of common types. Changes in typical product characteristics are not uniform across national markets. Analysis both at an EU-wide level and in the German, French, and Italian retail markets suggests, however, that the search for yield has been a common driver of several changes in the distribution of product types, as reported in an article in the September TRV.

Drivers of Credit Default Swaps usage by EU investment funds

This September TRV article investigates the use of Credit Default Swaps (CDS) by UCITS funds. We find that funds forming part of a large group are more likely to use CDS. Fixed income funds that invest in less liquid markets, and alternative funds that implement hedge-fund-like strategies, are particularly likely to rely on CDS. Fund size is the main driver of net CDS exposures when these exposures become particularly large

2.2.3. Financial Innovation and Product Risk Analysis

Objectives for 2018	Achieve a coordinated approach to the regulation and supervisory treatment of new or innovative financial activities and provide advice to present to the EU institutions, market participants or consumers. Maintain and further develop the framework for the use of the product intervention powers provided by MiFIR.

Actions under the Commission FinTech Action Plan

On 8 March 2018 the Commission launched the FinTech Action Plan on how to harness the opportunities presented by technology-enabled innovation in financial services. It contains several requests of work from ESMA in relation to Crypto-Assets and ICOs, cyber resilience, innovation facilitators, licencing requirements for FinTech firms and Cloud computing.

Crypto-Assets and Initial Coin Offerings

In February 2018, the three ESAs issued a pan-EU warning to consumers regarding the risks of buying VCs reflecting the concerns that an increasing number of consumers were buying VCs unaware of the risks involved. Additionally, VCs and exchanges where consumers can trade are not regulated under EU law, which means that consumers buying VCs do not benefit from any protection associated with regulated financial services. Some VC exchanges have been subject to severe operational problems in the past. During these disruptions, consumers have been unable to buy and sell VCs when they wanted to and have suffered losses due to price fluctuations during the period of disruption.

At the end of 2018, ESMA released an Advice clarifying the existing EU rules applicable to Crypto-Assets that qualify as financial instruments and providing ESMA's position on any gaps and issues in the current EU financial regulatory framework for consideration by EU policymakers. ESMA has been working with NCAs on analysing the status and risks of Crypto-Assets and how they fit within the existing regulatory framework. Based on this work, the Crypto-Assets can qualify, or not, as financial instruments under MiFID. At a minimum, ESMA believes that Anti Money Laundering (AML) requirements should apply to all Crypto-Assets and activities involving Crypto-Assets. There should also be appropriate risk disclosure in place, so that consumers can be made aware of the potential risks prior to committing funds to Crypto-Assets.

Cyber resilience

The FinTech Action Plan asked ESMA to conduct a mapping exercise across financial sectors under its remit of supervisory practices in relation to information security and governance arrangements. The main results from the mapping are that most jurisdictions have cybersecurity strategy, frameworks or regulations, including mandatory requirements. Many NCAs have internal frameworks for cybersecurity supervision and most of them apply the same cybersecurity supervisory practices across different financial sectors. In terms of entities, investment firms are covered by most NCAs while Data Reporting Service Providers are the least covered. With reference to supervision, most NCAs focus on risk monitoring and risk assessment while risk mitigation measures are rarely used, and incident reporting is fragmented and inconsistent across NCAs and sectors.

Licencing requirements for FinTech firms

The FinTech Action Plan asks ESMA to map current authorising and licensing approaches for innovative FinTech business models and to explore how proportionality and flexibility in the financial services legislation are applied by national authorities.

ESMA conducted two different surveys in 2018: the first aimed to identify potential gaps and issues in the existing EU regulatory framework, e.g. gaps that would leave certain risks unaddressed or issues that would prevent innovations to reach their full potential; the second survey, launched at the end of 2018, focused on how proportionality and flexibility are applied by NCAs and how licensing requirements that affect FinTech firms diverge across Member States.

Enhanced financial innovation trend and risk monitoring in TRV

In the second 2018 TRV ESMA introduced for the first time a sole standing chapter exclusively dedicated to ESMA's on-going monitoring of financial innovation and product trends. FinTech continues to drive innovation in financial services, with potentially far-reaching consequences for both end users and service providers. Crypto-Assets and ICOs have been the focal point of attention in 2018 because of the cash inflows that they have attracted. Yet other applications of the Distributed Ledger Technology (DLT) and RegTech are also witnessing interesting developments. The new section in TRV outlines how these innovations, and various others such as crowdfunding and VIX Exchange-Traded Notes, score on ESMA's innovation scoreboard, and discusses the main recent market and regulatory developments around them.

2.3. Completing a Single Rulebook for EU financial markets

Key deliveries and successes

Securitisation

The Securitisation Regulation entered into application on 1 January 2019 and during 2018 ESMA has finalised a number of draft regulatory and implementing standards (RTS/ITS) under its mandates. All these RTS/ITS aim to implement the new European regulatory framework for securitisations and help promote STS securitisations. ESMA's role is to contribute to the improvement and implementation of the right regulatory framework to ensure sustainable development of the EU securitisation markets.

A first set of TS contains detailed arrangements to implement the new European regulatory framework for securitisations, which is intended to promote STS securitisations. ESMA's draft TS specify the information and format that the originators and sponsors of securitisation products are required to notify to ESMA should a securitisation transaction meet the STS requirements. The STS notification is a necessary step in order to apply for STS preferential capital treatment. Another draft RTS published by ESMA specifies the information to be provided to the competent authorities in the application for the authorisation of a third party assessing the compliance of securitisations with the STS criteria.

ESMA also issued a set of draft RTS/ITS which concern the details of a securitisation to be made available by the originator, sponsor and Special Purpose Entities, as well as the format and templates for doing so. These TS contain detailed arrangements to implement the new European regulatory framework for securitisations.

Moreover, in November 2018 ESMA issued draft RTS/ITS on the information and templates to be provided as part of an application by a firm to register as a securitisation repository with ESMA, as well as the operational standards and access conditions for information collected and maintained by securitisation repositories. ESMA has also published its Final Technical Advice to the Commission on fees to be charged by ESMA for registering and supervising securitisation repositories.

At the time of writing this report, with the exception of the RTS on third parties verifying STS compliance, ESMA's draft RTS/ITS under the Securitisation Regulation are pending adoption by the Commission.

Post-Trading

ESMA developed draft TSs on the clearing obligation, which, jointly with the ESAs draft TSs on bilateral margining, aim to ensure a level playing field between covered bonds and securitisation with regards to these obligations, and thus support the objectives of the Securitisation Regulation.

ESMA developed draft TSs on the clearing obligation, which, jointly with the ESAs draft TSs on bilateral margining, aim to ensure a level playing field between counterparties in the EU with regards to their legacy derivatives contracts following the notification from the United Kingdom to leave the EU, Hence, the draft TSs facilitate novations to support counterparties' preparations for a no-deal scenario.

ESMA developed draft TSs on the clearing obligation with regards to intragroup transactions with third-country group entities, proposing to prolong the temporary exemption by 2 years to facilitate the continuation of groups' risk management processes while further equivalence decisions are to be decided upon by the Commission.

Interactive Single Rulebook

In 2017 ESMA launched its Interactive Single Rulebook (ISRB), which is a new service for market participants and other interested stakeholders across the EU. The new online tool ([23]) provides, for Directives or Regulations in ESMA's remit, a comprehensive overview of all implementing or delegated acts, guidelines, opinions and Q&As. The ISRB aims to facilitate the consistent application of the EU Single Rulebook for the securities markets area. ESMA published in 2018 two ISRB projects, including the Level 1 texts of the UCITS Directive and of the CRA Regulation, with links to all relevant Level 2 implementing and delegated acts, as well as Level 3 measures already available elsewhere on ESMA's website. ESMA's objective is to provide incrementally an interactive version for each key level 1 text under ESMA's remit, with MiFID II/MiFIR having gone live in early 2019.

Prospectus Regulation

In response to a mandate from the Commission, ESMA has submitted the first part of its Technical Advice (TA) under the Prospectus Regulation. It covers the format and content of prospectuses, the new EU growth prospectus and the scrutiny and approval of prospectuses. With this technical advice, ESMA proposed a large number of simplifications and adaptations of the Prospectus Regime, aimed at maintaining a strong level of investor protection while also opening up new possibilities for companies to diversify their financing.

Based on a consultation launched in December 2017, ESMA has delivered six draft RTS under the new Prospectus Regulation. Among other things, the draft RTS specify new elements of the Prospectus Regime relating to key financial information in the summary and the metadata which ESMA will publish on its website to classify prospectuses.

In addition, following a request from the Commission for technical advice, ESMA launched a public consultation on the minimum information requirements for documents that should be made available to the public where securities are offered/admitted in connection with takeovers, mergers or divisions.

(**23**) Interactive Single Rulebook (ISRB).

2.3.1. Corporate Finance

Objectives for 2018	Contribute to the development of Level 2 measures in relation to the revised Prospectus Regime. ESMA will be preparing to deliver the relevant Level 2 work under the Securitisation Regulation that is currently being negotiated

Securitisation Regulation

In addition to the key deliveries mentioned at the beginning of this section, ESMA has also finalised a RTS/ITS on cooperation arrangements across NCAs involved in supervising compliance of various provisions of the Securitisation Regulation and a RTS on the application requirements for firms seeking to register with ESMA as securitisation repositories.

ESMA moreover began developing its operational arrangements for receiving and publishing the notifications for STS securitisations. As a result, in time for the entry into application on 1 January 2019, ESMA stood ready to handle these documents, in line with the requirements of the Securitisation Regulation.

Prospectus

In addition to the work mentioned in the key deliveries, following a request from the Commission for technical advice, ESMA launched a public consultation on the minimum information requirements for documents that should be made available to the public where securities are offered/admitted in connection with takeovers, mergers or divisions. This piece of work will be finalised in 2019, thus bringing forward the full package for the implementation by the issuers.

2.3.2. Corporate Reporting

Objectives for 2018	Contribute to the set-up of high-quality accounting standards through providing enforcers' views on new pronouncements. Provide views on relevant International Standards on Auditing by coordinating the work in relation to the recognition of equivalence and adequacy decision for third countries and by participating in the new European Committee of Audit Oversight Bodies, as required by the new Audit Regulation.

In 2018 ESMA contributed actively to the accounting standard-setting and endorsement in the EU of the IFRS through its observer role at the European Financial Reporting Advisory Group where ESMA presented its views on enforceability of proposed standards. In addition, ESMA contributed to the International Accounting Standards Board (IASB) in charge of developing those global standards. ESMA continued to provide comment letters throughout 2018 on a variety of issues relating to enforceability of the IFRS.

In 2018, ESMA continued to actively participate as a member, without voting rights, in the Committee of the European Audit Oversight Bodies (CEAOB), contributing by providing the securities regulator perspective. ESMA has contributed to the running of the CEAOB subgroups and in particular the one chaired by ESMA on equivalence assessments of public oversight systems of third countries and facilitating the international cooperation between Member States and third countries in this area. In 2018, this subgroup focused on the dialogue with the audit oversight authorities of third countries for the equivalence and adequacy assessment. Such work is expected to progress further in 2019. For more Information, please refer to the CEAOB annual report.

2.3.3. Investment Management

Objective for 2018	Regulatory/implementing TSs and technical advice delivered to the Commission within the deadline.

Following the publication of the Commission's action plan on financing sustainable growth and the mandate to provide technical advice to the Commission with a view to integrating sustainability risks and factors, ESMA published a Consultation Paper on the draft technical advice proposing amendments to the organisational requirements, operating conditions and risk management rules set out in the UCITS and AIFMD frameworks.

2.3.4. Investor Protection and Intermediaries

Objective for 2018	Contribute to the development of a Single Rulebook in the area related to the provision of investment services and setting up a third-country firm regime.

Under the action plan on Green and Sustainable Finance, ESMA also received a mandate to provide technical advice on potential amendments to the MiFID II delegated acts with regard to the integration of sustainability risks and sustainability factors. In light of the mandate received, ESMA published a Consultation Paper with draft technical advice on the MiFID II requirements on organisational requirements, risk management and product governance.

On the third-country regime, ESMA addressed suggestions to the Commission aimed at strengthening the MiFIR regime for the provision of services by third-country firms in the EU.

2.3.5. Market Integrity and Market Data

Objectives for 2018	Contribute to consistent international standards on data reporting through working with international bodies. Provide advice and any necessary Level 2 work on short selling, market abuse and data reporting.

Market Abuse Regulation

As markets' integration is increasing further, smooth cooperation between authorities, entities and public bodies is paramount in order to track down abusive behaviour. Therefore, ESMA has issued a Final Report on ITS regarding the application of MAR which clarifies how national NCAs and ESMA should cooperate with each other as well as with other EU authorities, entities and public bodies in the field of market abuse. ESMA's ITS set out procedures and forms for NCAs and ESMA to facilitate those exchanges of information and assistance.

Benchmarks Regulation

ESMA has actively contributed to the Technical Expert Group on Sustainable Finance set up by the Commission, and, in particular, to the subgroup on benchmarks mandated to deliver technical advice to the Commission which will be used as a basis for the delegated acts to complement the Benchmarks Regulation. The subgroup is working on the minimum requirements of the methodology and disclosure for ESG benchmarks.

Securities Financial Transactions Regulations

In response to the Commission's proposed amendments of the draft TSs on reporting under SFTR, ESMA issued an Opinion explaining why it declined to amend the draft TSs as proposed by the Commission. Proposed revisions pertained to the endorsement of global standards on LEIs for branches and unique transaction identifiers for reporting to TRs.

2.3.6. Post-Trading

Objective for 2018	Contribute to more orderly markets and financial stability through the maintenance of a single EU rulebook in the area of Post-Trading.

Update of validation rules

ESMA has updated its validation rules regarding EMIR with regards to the revised TSs on reporting under Article 9 of EMIR. The purpose of the update is to allow for the reporting of exchange-traded derivatives in products for which the effective date may be earlier than the date of execution; and to clarify how the identification of the product should be validated in the reports submitted on or after 3 January 2018. Further updates concern: reporting timestamp, reporting counterparty identification, identification of the other counterparty, underlying identification and confirmation means.

As mentioned in the key deliverables, ESMA delivered key RTS under EMIR.

2.3.7. Secondary Markets

Objective for 2018	Contribute to more orderly markets and financial stability through the maintenance and further development of a single EU rulebook in the area of secondary markets.

Amendments of RTS

ESMA has published its Final Report proposing amendments to Commission Delegated Regulation (EU) 2017/587 (RTS 1). ESMA initially proposed to apply the Tick Size regime to SI quotes in shares, depositary receipts and ETFs. However, considering the need to address the application of tick sizes to SI quotes in a timely fashion, ESMA has agreed to limit the application of tick sizes to quotes of SIs in shares and depositary receipts as proposed by the Commission.

ESMA has published its Final Report amending the Tick Size regime (Commission Delegated Regulation (EU) 2017/588 (RTS 11)). The proposed draft amendments to RTS 11 introduce an ad hoc regime for third-country shares and allow NCAs of EU TVs, where those shares are traded, to decide on an adjusted average daily number of transactions on a case-by-case basis in order to take into account the liquidity available on third-country venues in the calibration of tick sizes.

2.3.8. Credit Rating Agency Policy

Objective for 2018	Continue to contribute to the establishment of a robust regulatory framework for CRA in smooth cooperation with the supervisory activities of ESMA.

Endorsement regime for third-country CRAs

ESMA has published supplementary guidance on the application of the endorsement regime for non-EU credit ratings under the Credit Rating Agencies Regulation (CRAR). In order to ensure that third-country credit ratings, which are endorsed for use by EU investors, meet requirements which are at least as stringent as those set out in CRAR, ESMA added a new section to its recently updated Guidelines on Endorsement which were published in November 2017.

On 1 June 2018, the 2013 amendments to CRAR (also known as CRA 3) entered into force for the purposes of endorsement and equivalence. In light of those new requirements, ESMA performed an assessment of the legal and supervisory frameworks for CRAs of Canada and South Africa concluding that these two jurisdictions continue to meet the conditions for endorsement under CRAR. This supplemented the third-country assessments which ESMA carried in 2017 as a part of its Technical Advice to the Commission on CRA Regulatory Equivalence — CRA 3 update.

Q&A update

ESMA has updated the Q&As related to the immediate notification of errors, in rating methodologies or in their application, to ESMA and all affected rated entities. The purpose of this is to provide a greater transparency to entities directly supervised by ESMA on the expectations related to notification of rating errors.

Revision of CRAs' Guidelines on periodic reporting

ESMA revised its Guidelines on the periodic information to be submitted to ESMA by CRAs. The purpose of this revision was to ensure that the information received under these Guidelines remained capable of supporting ESMA's supervisory processes in an efficient and effective manner. The main features of the revised Guidelines include: differentiated reporting calendars for entities depending on the required level of supervisory engagement, individual reporting instructions for each reporting item and standardised reporting templates for specific reporting items. The Consultation Paper was published on 19 July 2018, with the Final Report published on 5 February 2019.

Disclosure Requirements Applicable to Credit Ratings

In December 2018, ESMA launched a public consultation on Guidelines on disclosure requirements applicable to credit ratings. These Guidelines are composed of two chapters, one which addresses disclosure requirements applicable to specific credit rating actions and a second which proposes measures to increase the transparency of the consideration of ESG factors.

The purpose of these Guidelines is to improve the consistency of the information that CRAs are required to disclose as part of certain rating actions and also to address issues relating to access, specifically access to CRA's methodologies and models.

2.4. Directly supervising specific financial entities

Key deliveries and successes

Brexit

During 2018, in a context of continued uncertainty as to whether an orderly withdrawal of the United Kingdom could be achieved, ESMA made clear to the directly supervised entities the need to consider the scenario of a no-deal Brexit taking place on 29 March 2019. This was particularly relevant for TRs considering that derivatives subject to the reporting obligation under EMIR must be reported to an EU-based registered TR or a third-country TR recognised by ESMA. Similarly, it was important to ensure that CRAs have a legal entity registered in the EU and supervised by ESMA, in order for their ratings to be used for regulatory purposes in the EU. In a no-deal Brexit scenario, United Kingdom-based TRs and CRAs would lose their EU registration as of the United Kingdom's withdrawal date.

The majority of the United Kingdom CRAs and TRs expressed their intention to continue providing their services in the EU-27 after Brexit and implemented actions in 2018 such as applying to register a new legal entity in the EU-27 or notifying ESMA of material changes concerning the organisation of the entities already registered in the EU-27 (e.g. strengthening the presence of staff in the EU-27). In light of Brexit, two CRAs and two TRs — part of groups with only United Kingdom presence — have each registered an EU-27 firm with ESMA. ESMA has made sure that newly registered TRs and CRAs in the EU-27 comply with minimum substance requirements and relevant outsourcing conditions to ensure that the post-Brexit set-up in the EU-27 is as strong as the pre-Brexit set-up in the EU.

In the area of clearing and settlement, in 2018, ESMA began engaging with the Commission, the Bank of England, as the competent authority for the United Kingdom CCPs and Central Securities Depository (CSD), and the United Kingdom CCPs and CSD to carry out preparatory work for the recognition process that would ensure that EU Clearing Members and TVs can continue to access United Kingdom CCPs, and that the United Kingdom CSD can continue to serve Irish securities, as of 30 March 2019. In particular, the Commission presented the adoption of time-limited and strictly conditional equivalence decisions, which would allow for a temporary recognition by ESMA, in order to ensure that there will be no disruption to central clearing, and to avoid any negative impact on the Irish securities market, following the United Kingdom's exit from the EU. Consequently, ESMA issued two communications, one after each of the Commission communications, on 23 November ([24]) and 19 December ([25]).

Fines for breaches of the CRA Regulation

On 23 July 2018, ESMA fined Danske Bank ([26]), Nordea Bank ([27]), SEB ([28]), Svenska Handelsbanken ([29]) and Swedbank ([30]) EUR 495 000 each and issued five public notices ([31]) for negligently breaching the CRAR. ESMA found that the five banks infringed the CRAR by issuing credit ratings without being authorised by ESMA to do so.

Between June 2011 and August 2016, the five banks issued credit research to their clients — and SEB continued to do so until May 2018. The credit research included the issuance of what the banks described as 'shadow ratings'. These related to different entities and underlying financial instruments and these reports included opinions, which ESMA found met the definition of a credit rating provided for by the CRAR. However, none of the banks had acquired the necessary ESMA authorisation to issue ratings and such conduct infringes the CRAR which requires prior authorisation.

On 27 February 2019 the Board of Appeal upheld the decision of ESMA's BoS that the banks' credit research reports fell within CRAR but held that the banks had not acted negligently.

(**24**) Managing risks of a no-deal Brexit in the area of central clearing.

(**25**) ESMA is ready to review United Kingdom CCPs' and CSDs' recognition applications for a no-deal Brexit scenario.

(**26**) Danske Bank decision.

(**27**) Nordea Bank decision.

(**28**) SEB decision.

(**29**) Svenska Handelsbanken decision.

(**30**) Swedbank decision.

(**31**) Five public notices.

2.4.1. Credit Rating Agencies

Objective for 2018	Enhance effectiveness and lasting impact of supervisory activities at individual CRA level.

Supervision of Credit Rating Agencies

At the end of 2018, ESMA was supervising 27 registered and four certified CRAs. During 2018, ESMA registered two new CRAs and withdrew one registration, increasing the number of CRAs supervised by ESMA by one. However, industry dynamics remained largely the same over the course of 2018 as the CRA industry remains concentrated around three large CRAs. As a result of the United Kingdom's decision to withdraw from the EU, United Kingdom-based CRAs needed to establish CRAs based in the EU-27 if they want to continue to serve the EU market, which led to the registration of two new EU-27 legal entities. All registered Standard & Poor's legal entities merged into one single entity during the course of 2018.

Rating methodologies and rating process

In 2018, one of the main priorities for ESMA related to the improvement of the quality of the rating process. ESMA used a number of supervisory tools in this area, including dedicated investigations, remedial action plans and thematic work streams. During 2018, ESMA also further engaged with CRAs regarding the follow-ups in the context of the Validation Guidelines on Methodologies, leading to significant progress as a number of CRAs now align their validation measures to include the techniques outlined in these Guidelines. Furthermore, ESMA sent a letter to each CRA's independent members of the Board of Directors regarding their engagement in the validation and review of credit rating methodologies.

In addition, ESMA also conducted dedicated investigations into the rating methodology framework of CRAs and into the development, approval and validation of a specific model and the related rating methodology of a CRA.

Cloud Computing

ESMA has been exploring the compliance risk of the use of cloud computing services for CRAs and TRs, with a view to formulating a clearer supervisory response and strategy. ESMA found that, prior to their move to the cloud, some of these firms had not engaged much with ESMA. In both industries, there are firms that have opted to fully outsource their EU-regulated processes and data into Cloud Service Providers (CSPs). There are also a few firms that have opted for a phased approach, moving supporting services into the cloud, while they are still considering further outsourcing for the rest of their EU-regulated business activities.

ESMA will be requiring firms to notify the use of cloud computing services for their EU-regulated processes and data. To this effect, ESMA has already included this in its new Periodic Information Guidelines on CRAs together with a notification template ([32]).

Risk assessment and supervisory tools

In 2018, ESMA selected a risk management tool to establish an integrated platform which will further support the supervisory processes and their effectiveness. The tool will be implemented and customised to follow the current supervision risk-based approach. This will enrich the current approach with additional functionality for collecting and linking different data and information, incident reporting and issue management, a more streamlined workflow capability and a wide variety of reporting features and visualisations. Furthermore, it will facilitate the allocation and prioritisation of tasks among supervisors as well as introducing more clarity and structure when linking risks with the relevant supervisory strategies and actions.

2.4.2. Trade Repositories

Objective for 2018	Enhance effectiveness and lasting impact of supervisory activities at individual TR level.

Supervision of TRs

At the end of 2018, there were eight TRs registered by ESMA. By November 2018, the TRs operating in the EU had collected approximately 80 billion reports in total. The reports include not only new trades, but also modifications and other lifecycle events relating to open trades. During 2018, the level of reporting activity has stabilised at an average of approximately 390 million report submissions per week.

In 2018, two firms applied for registration in the EU-27 in response to the United Kingdom's decision to withdraw from the EU.

Data quality and data access

TRs play an integral role in enhancing the transparency of derivatives markets and reducing risks to financial stability by providing data to regulators and researchers. Authorities rely on TRs to provide them with access and to ensure that the quality of the data is in accordance with the regulatory requirements so that authorities can monitor the transparency of the derivatives markets and any build-ups of vulnerabilities potentially endangering the stability of the financial system, and take appropriate actions, if necessary.

TR data quality is affected by both counterparties and TRs. Counterparties report to TRs data, which they then validate, store, process and make available to authorities. Given EMIR's dual supervisory framework, whereby ESMA supervises TRs and NCAs supervise the firms who report to TRs, a joint effort is necessary to ensure that data is of high quality. Against this background, in September 2014, ESMA and NCAs jointly launched the Data Quality Action Plan (DQAP) which aims at improving the quality and usability of data that is reported to and by TRs. The areas of focus in 2018 to improve data quality were TRACE-SFTP ([33]) ([34]) assessments, engagement with authorities, data validation, inter-TR reconciliation, data access and portability.

Moreover, as mentioned above TRs supervision covered also cloud computing and will be supported by the new risk management tool.

2.4.3. Third-country CCP and CSD recognition

Objective for 2018	Recognition of third-country CCPs providing clearing services in the Union and of third-country CSDs.

Recognition

In 2018, on the one hand, ESMA has continued its work related to the recognition of third-country CCPs, and on the other hand, ESMA has also prepared and communicated on the recognition process of United Kingdom CCPs and the United Kingdom CSD in the context of Brexit in the event of a no-deal scenario (please refer to key deliveries in this section).

(**32**) Guidelines on the submission of periodic information to ESMA by Credit Rating Agencies — 2nd edition.

(**33**) ESMA in collaboration with NCAs developed TRACE, an IT system, which allows NCAs to have a single point of access to the data stored by TRs under EMIR. This project assists authorities in using TR data more actively.

(**34**) SFTP is the pre-existing channel through which regulatory reports were provided to authorities.

Third-Countries CCP recognition

Under EMIR, CCPs established in third countries (TC-CCPs) can only provide clearing services to European clearing members if they are recognised by ESMA. In addition, EU credit institutions, investment firms and their third-country subsidiaries may only benefit from advantageous capital treatment with respect to cleared derivatives transactions, when the CCP they are facing is recognised by ESMA. In order for a TC-CCP to be recognised by ESMA, the Commission must first adopt an equivalence decision. Another condition that needs to be respected is for ESMA to conclude cooperation arrangements with the relevant third-country authorities.

During 2018, no new equivalence decision regarding CCPs was adopted by the Commission with the exception for the one published in respect of the United Kingdom on 19 December 2018 in the context of Brexit and no new TC-CCP was recognised by ESMA. Nonetheless, four new applications of TC-CCPs to be recognised in order to offer services and activities in the Union were received by ESMA.

Third-Countries CSD recognition

Under CSDR ([35]), ESMA recognises third countries CSDs (TC-CSDs) that provide notary or central maintenance services in relation to financial instruments constituted under the law of a Member State or that set up a branch in a Member State. A prerequisite for recognition is the adoption of an equivalence decision by the Commission in respect of the jurisdiction of the TC-CSD. So far, there have been no equivalence decisions published by the Commission, with the exception of the conditional and temporary one published in respect of the United Kingdom on 19 December 2018.

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

Monitoring

Whilst ESMA does not have, as such, direct supervision powers over TC-CCPs, ESMA has to monitor TC-CCP activity as stated in the ESMA Regulation ([36]) and in the context of EMIR ([37]) to ensure EU financial stability. In addition, ESMA should assess whether the classes of OTC derivatives cleared by recognised TC-CCPs should be subject to the clearing obligation. To perform those monitoring tasks ESMA has decided to focus on the risks that are more likely to materialise and negatively impact the EU financial stability or orderly markets or cause harm to investors. For recognised TC-CCPs, ESMA has gathered information on interlinkages and exposures of EU entities with the TC-CCP.

2.5. Joint Committee

In 2018, under the chairmanship of ESMA, the Joint Committee continued in its role as a central point for coordination and exchange of information between the ESAs, along with the Commission and the ESRB. The focus of the committee on Brexit-related issues increased, as the ESAs continued their preparation for the withdrawal of the United Kingdom from the EU. At the same time, progress continued on work in other important cross-sectoral fields such as enhancing consumer protection, monitoring financial innovation and combatting money laundering and terrorist financing.

2.5.1. Overseeing market developments and cross-sectoral risks

The Joint Committee continued as an important forum for discussions on market developments and in-depth analyses of emerging risks, helping to identify the main areas of supervisory concern across the EU. As uncertainties regarding the United Kingdom's withdrawal from the EU grew, the impact of a potential

(**36**) Recital 43 of Regulation (EU) No 1095/2010 provides that: 'In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. [ESMA] should monitor and assess such developments in the area of its competence and, where necessary, inform the EP, the Council, the [EC], the other [ESAs] and the ESRB on a regular and, as necessary, on an ad hoc basis.'

(**37**) See, for example, recital 19 of the EC implementing act for Japan which also states that 'The [EC], informed by ESMA, should continue monitoring the evolution of the Japanese legal and supervisory framework for CCPs and the fulfilment of the conditions [laid down in Article 25(6) of EMIR] on the basis of which [the] decision has been taken.'

cliff-edge scenario, ongoing supervisory matters, as well as future cooperation with United Kingdom authorities became focal points for the Joint Committee. These escalating uncertainties were reflected in the Joint Committee's biannual Risk Reports, published in spring (JC 2018 07) and autumn (JC 2018 27), which also addressed other necessary measures to ensure consistent EU supervisory oversight in light of Brexit, including on possible relocations, as well as highlighting the need for appropriate contingency planning by financial institutions.

Aside from Brexit issues, both Joint Committee Risk Reports also covered risks associated with repricing of risk premia, increases in yields and interest rates, as well as operational, cyber and sustainability risk developments. The reports correspondingly conveyed suggested actions to address these rising challenges.

2.5.2. Safeguarding consumer protection across financial services and examining FinTech developments

Consumer protection and financial innovation once again figured prominently on the Joint Committee's agenda. With the PRIIPs Regulation applying as of 2018, the ESAs focused on ensuring the smooth implementation of the new rules. To this end, additional Q&As (JC 2018 22) were published to clarify the application of the rules and to promote common supervisory approaches and practices. The ESAs also analysed issues raised by NCAs and stakeholders in order to aid with the coherent functioning of the rules. In July the Joint Committee called upon the Commission to provide detailed public guidance on the types of products, and in particular bonds, which fall within the scope of the Regulation (JC 2018 21).

In October 2018, the Joint Committee launched a Consultation Paper (JC 2018 60) on targeted amendments to the Delegated Regulation covering the rules for the PRIIPs KID. That consultation addressed issues that had arisen since the introduction of the new rules, as well as the application of the KID for UCITS funds taking into account that the exemption for UCITS funds was, at that stage, due to expire at the end of 2019.

In August 2018, the scope of application of the current ESMA-EBA Guidelines on Complaints Handling (JC 2018 35) was extended to authorities supervising the new institutions established under the revised Payment

Service Directive and the Mortgage Credit Directive, thus ensuring that an identical set of requirements for complaints-handling and level of protection for consumers applies to all financial institutions across the banking, investment and insurance sectors.

In the field of financial innovation, the Joint Committee published a Report on the use of Big Data (JC 2018 04), presenting the benefits and risks of allowing the development of products tailored to consumers' needs using big data analytics and processes. The final Report encouraged the adoption of good practices by financial institutions, and an accompanying consumer information sheet (JC 2018 05) provided a concise overview for consumers about the use of big data in financial services.

The Joint Committee also conducted a monitoring exercise on the evolution of automation in financial advice. The resulting Report (JC 2018 29) illustrated that while the phenomenon seems to be slowly growing, the overall number of firms and customers involved is still quite limited.

The ESAs also began working on several joint actions under the FinTech Action Plan. The first joint deliverable from this Action Plan was the Joint Report on Regulatory Sandboxes and Innovation Hubs (JC 2018 74), which set out a comparative analysis of the innovation facilitators established to date within the EU and outlined observed practices for the design and operation of innovation facilitators.

The Joint ESAs 2018 Consumer Protection Day, which took place in Lisbon, Portugal, facilitated the ESAs to engage with key — and new — stakeholders, especially representatives of consumers, on important issues faced by consumers and investors across the EU. One of the topics covered that day was the extensive work done by the ESAs on bringing greater transparency to the costs and performance of retail investment products, which will help consumers make better informed decisions and to compare products efficiently.

2.5.3. Stepping up the fight against money laundering and terrorist financing

In a year that presented a number of high-profile cases involving several EU banks, which had failed to implement robust systems and control frameworks to prevent financial crime, the ESAs enhanced their focus on ensuring consistent application of anti-money laundering and countering the financing of terrorism (AML/CFT) rules across the EU and improving standards of AML/CFT supervision.

As part of this, the ESAs organised three workshops on the risk-based approach to AML/CFT, on money laundering and terrorist financing (ML/TF) risks and e-money and ML/TF risks and money remittance, that brought together representatives from NCAs, the Commission, law enforcement, the Financial Action Task Force Secretariat and the private sector. Their aim was to consolidate supervisors' understanding of both, the ML/TF risk associated with different sectors and business models and the AML/CFT systems and controls firms put in place to mitigate those risks; and to explore different approaches to the AML/CFT supervision of firms. These workshops were attended by over 300 AML/CFT supervisors from all Member States.

At the start of 2018, the ESAs focus was on FinTech and how various innovative solutions are used by firms to meet their AML/CFT obligations. Under EU law, credit and financial institutions are required to assess ML/TF risks associated with their business and put in place effective policies and procedures to mitigate these risks. Customer Due Diligence (CDD) measures are central to these policies and procedures. However, EU law is technology-neutral and does not set out in detail how these CDD measures should be applied, giving an opportunity to financial and non-financial firms to explore new ways of meeting institutions' CDD obligations. While these innovations can potentially improve the effectiveness and efficiency of AML/CFT controls, they can also present various risks and potentially weaken ML/TF safeguards, if applied unthinkingly. These risks were addressed by the Joint Committee in its Opinion on the use of innovative solutions (JC 2017 81), which was published on 23 January 2018.

Another area of focus was on addressing shortcomings with respect to cooperation and information sharing, both at domestic level between different authorities and across borders in other EU Member States. Cooperation and exchange of information between competent authorities responsible for overseeing AML/CFT compliance of credit and other financial institutions is an essential part of an effective AML/CFT regime. EU AML/CFT legislation establishes an obligation for competent authorities to cooperate and exchange information, but it does not set out in detail how this should be achieved. Therefore, in November 2018, a consultation was launched on draft joint guidelines on the supervisory cooperation and information exchange (JC 2018 59). The guidelines envisage that supervisory practices for cooperation and information exchange could be improved through the creation of AML/CFT colleges of supervisors and set out conditions for the establishment of these colleges. In addition, these guidelines also set out the ESAs expectations for bilateral communications between the competent authorities.

2.5.4. Managing the Single Rulebook and ensuring a level playing field

In December 2018, the ESAs published two joint draft RTS to amend the RTS on the clearing obligation (JC 2018 76) and risk mitigation techniques for non-cleared OTC derivatives (JC 2018 77). These standards extend the special treatment currently associated with covered bonds to STS securitisations, to ensure a level playing field with covered bonds.

The ESAs published a statement on disclosure requirements for EU securitisations and the consolidated application of securitisation rules for EU credit institutions (JC 2018 70), in response to industry concerns relating to severe operational challenges in meeting the transitional provisions of the Securitisation Regulation disclosure requirements. The ESAs emphasised that competent authorities should apply a proportionate approach to examining reporting entities' compliance with the rules in the short term.

Since the adoption of two Implementing Regulations on credit assessments by External Credit Assessment Institutions (ECAIs) based on the draft ITS submitted by the Joint Committee in 2016, and subsequent amendments in 2017, the ESAs launched a consultation on further amendments to the Implementing Regulations (JC 2018 40 and JC 2018 41) to reflect the outcome of a monitoring exercise on the adequacy of the mappings, based on a quantitative and qualitative assessment. In particular, the ESAs proposed to change the mapping for two ECAIs, together with the introduction of new credit rating scales for 10 ECAIs.

2.5.5. Monitoring of Financial Conglomerates

In 2018, the Joint Committee published its annual list of Financial Conglomerates (JC 2018 68) showing the location of 78 Financial Conglomerates with the head of group in the EU/EEA area, one Financial Conglomerate with the head of group in Switzerland, one in Bermuda and one in the United States. In addition, the Joint Committee continued to work on reporting templates in this field.

2.5.6. Board of Appeal

The ESAs continued to provide operational and secretarial support to the Board of Appeal. In 2018, there were two appeal cases brought against ESMA. In the first case, the Board of Appeal unanimously decided that the appeal should be dismissed (BoA 2018 01), as no ESMA decision could be identified as grounds for appeal and the appellant could not be contacted. In the second case, against a decision of ESMA not to open a formal investigation of the Cyprus Securities and Exchange Commission (CySEC) in relation to certain dealings in Binary Options and CFDs, the Board of Appeal unanimously held that it had no jurisdiction to hear the appeal (BoA 2018 02).

2.6. ESMA as an organisation

2.6.1. Corporate Affairs

Objective for 2018	Provide support to ESMA in the areas of stakeholder relations and communications; governance, strategic planning and reporting; and assurance and accountability.

European Union Institutions

2018 was a very intense year for the European Institutions. In view of the end of the legislative cycle in the second quarter of 2019 and the prioritisation of the Capital Markets Union project within the Commission, European Parliament and the Council, a number of legislative and non-legislative acts have progressed during this year. ESMA has closely monitored the legislative developments in particular regarding the ESAs review, EMIR 2.2, EMIR Refit, Investment Firm Review and Cross-border fund distribution, and stood ready to provide views regarding the impact of certain policy choices made by co-legislators.

ESMA has ensured its full accountability towards the European Institutions in the process of developing Level 2 measures under Securitisation Regulation, Prospectus Regulation and Benchmarks Regulation, including participating in relevant scrutiny sessions in the European Parliament (Committee on Economic and

Monetary Affairs (ECON)) and the Council (Financial Services Committee) ([38]). In addition, ESMA's Chair conducted the annual hearing by the ECON Committee and reported on ESMA's activities in the previous year.

International organisations and non-EU regulators

In several important areas related to, inter alia, financial stability, shadow banking, credit rating policy and the regulation of financial benchmarks, ESMA has continuously contributed to the international dialogue at the IOSCO and FSB level. ESMA also contributed to the regulatory dialogues the EU has established with key third-country jurisdictions. Furthermore, ESMA has played a critical role in assessing the equivalence of third-country supervisory regimes on a range of topics within its area of competence.

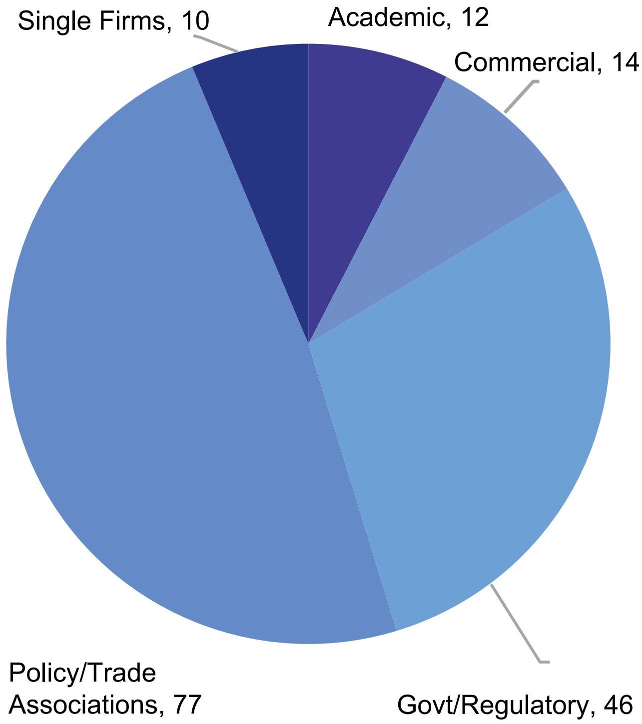
ESMA and IOSCO continued to work jointly throughout 2018 in order to put in place appropriate safeguards to allow for a continuation of exchanges of information, including of personal data, under the upcoming EU General Data Protection Regulation. As a result of this work, ESMA and IOSCO finalised a draft administrative arrangement for the transfer of personal data between EU securities markets regulators and third-country regulators ([39]).

Engagement with stakeholders

The external communications work, largely dominated by MiFID implementation, Brexit and the ESAs Review, focused on promoting ESMA's work to its stakeholders through its news publications, interaction with the media, provision of information on its website and the use of new media channels such as social media, infographics and audiovisual material.

A key part of ESMA's stakeholder outreach involves speaking on policy issues at events across the EU and beyond. In 2018 ESMA appeared at 159 such events, prioritising those organised by governmental, institutional and regulatory authorities and EU-focused trade associations, which provide opportunities to reach the broadest possible stakeholder audience.

Accepted Conference Organiser TYPE



In 2018 ESMA held over 330 meetings with non-institutional stakeholders, divided between 103 meetings of senior management and 230 meetings of ESMA staff. To this should be added a large number of meetings held with institutional stakeholders, such as other Regulators, Supervisors and European Institutions. The meetings related to a multitude of different topics under ESMA's remit, with a high proportion concentrated on Brexit-related matters as well as various aspects of MiFID II, EMIR 2.2 and AIFMD in particular.

ESMA held an open hearing in 2018, which related to Securitisation Regulation implementation and also arranged seminars and workshops in relation to FinTech, on Liquidity stress testing and a cross-sector ESA seminar on Artificial Intelligence, (apart from seminars directed to NCAs).

Internal Communications

The internal communication work supported the further growth of the organisation's culture by promoting, and embedding, the values of being European, Effective, Cooperative and Transparent. This was achieved by facilitating the provision of timely information to staff on internal and external developments affecting their working lives, from changes in procedures to the latest on the ESAs Review and Brexit.

(**38**) See for more details: Securitisation ECON opening statement 29 August; BMR ECON opening statement 11 July; Opening statement for ECON Hearing 8 October.

(**39**) The draft administrative arrangement ultimately received a positive Opinion from the European Data Protection Board (EDPB) in February 2019 and will be subsequently signed by ESMA and other EU and non-EU securities markets regulators.

2.6.2. Legal

Objectives for 2018	Enhance the legal drafting and soundness of legal acts adopted by ESMA; minimise the risk of legal challenge for ESMA and proactively handle complaints/appeals/actions against ESMA. Provide clarity on our legal toolbox and easy access to all applicable acts elaborated by ESMA (for our own track record and as part of stakeholder management). Develop expertise on key transversal legal functions of any EU agency (Intellectual property rights, Access to Documents, Staff Regulations and CEOS, procurement,.) to better assist ESMA's BoS and Management Board, senior management and all Departments and prevent legal (and reputational) risks from arising.

In 2018 ESMA focused efforts in ensuring the legal soundness of TSs as well as other legal acts adopted by ESMA, such as product intervention measures and opinions under MiFID II/MIFIR.

In addition, legal support was provided to the BoS, the Management Board, senior management and all ESMA Departments on various matters, including Brexit-related issues, supervisory and enforcement activities or internal matters related to access to documents, staff and ethics matters.

2.6.3. Facility Management

Objectives for 2018	Provide proactive support to ESMA by ensuring the smooth running of the facilities of the Authority 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.

In 2018, ESMA organised 750 meetings and workshops within ESMA premises or + 2 % more than in 2017 and received 8 400 external participants at these meetings or + 4 % more than the year before. During the year, ESMA staff undertook 800 business trips, a decrease of 5 % compared to 2017. The reduction in travel and associated costs is part of a general trend — since 2015 business travel per staff member has reduced by 38 % — as this was compensated by the increased use of audio and videoconferencing.

Recycling

In 2018, ESMA continued to benefit from its efforts in terms of recycling. In 2016, ESMA decided to launch a challenging project for the Eco-Management and

Audit Scheme (EMAS) certification aiming to evaluate, report and improve environmental performance, while involving staff members and stakeholders.

The objective is to evaluate how ESMA makes use of environmental systems and to assess the situation of the EMAS implementation in its premises and aiming at a reduction of direct environmental impact of ESMA's activities in two fields:

- core activity of ESMA (e.g. policymaking and development of IT databases); and
- day-to-day activities of ESMA: energy, mobility, waste, natural resources (paper, water) and public procurement.

In 2018, ESMA recycled 20 tonnes of paper (+ 14 % from 2017), which represented the saving of 350 trees, 165 000 litres of water and 3.5 tonnes of carbon dioxide.

ESMA's new premises

In 2017, ESMA launched a multi-annual project to ensure that the Authority would have suitable, cost-efficient and duly-approved premises from the beginning of 2020. This project was driven by two main elements:

- the expiry of ESMA's current 9-year lease contract on 31 December 2019; and
- the need to prepare for the potential future growth of the Authority, in particular for new tasks stemming from upcoming legislations.

In 2018, ESMA advanced considerably on this project: first a market prospection was conducted, followed by a procurement procedure. Following this procedure, the EU institutions and ESMA's BoS approved the final selected building in October 2018.

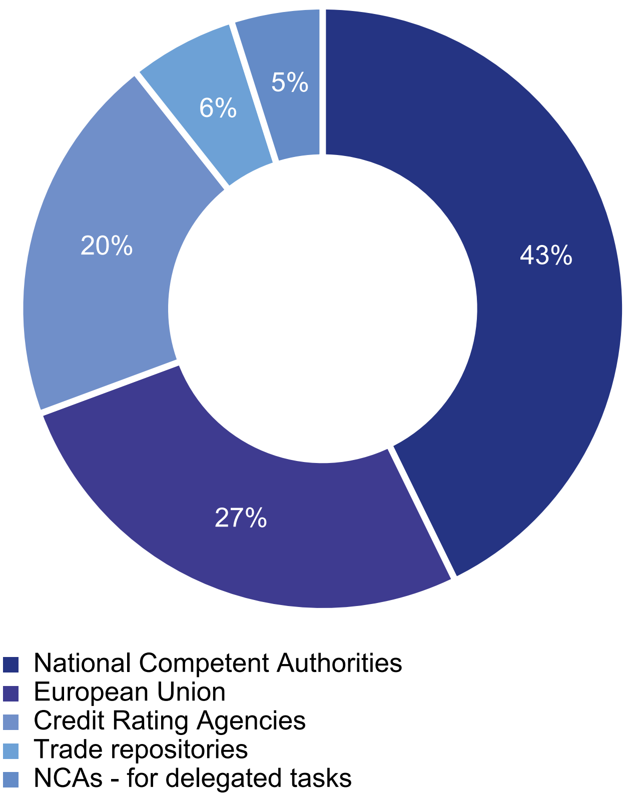
These future premises will be in a building called iBox centrally located in Paris next to the Gare de Lyon train station, offering excellent access by public transportation from the airports and the other train stations used by the thousands of external visitors ESMA receives every year.

2.6.4. Finance and Procurement

Objective for 2018	Further aligning the financial and procurement function to the ESMA strategy by continuing to enhance the efficiency of financial and procurement processes.

ESMA's 2018 core budget was EUR 41.9 million (EUR 40.4 million in 2017). ESMA is financed by five main separate streams of income:

2018 revenues by source



For 3 years in a row, a growing ESMA budget and workload has been managed with fewer overall financial transactions. In 2018, the full digitalisation of the financial and procurement circuits, achieved in 2017, was fully consolidated, with several upgrades to the digital workflows system.

In 2018, 14 procurement procedures were managed, out of them 10 were completely finalised. Amongst these, two are of significant relevance: the selection of ESMA's future premises and the multi-annual framework contract for ICT consultancy services.

In 2018, ESMA also introduced internal *ex post* checks for its financial processes to support continuous improvements of those processes.

2.6.5. Human Resources

Objective for 2018	Deliver human resources services, enabling ESMA to attract, deploy and retain the talents required to achieve its objectives, and ensuring efficient human resources administration while at the same time fulfilling the regulatory requirements of an EU authority.

Overview of staff data in 2018

ESMA employs different categories of staff:

- Temporary Agents (TAs) ([40]),
- Contract Agents (CAs) and
- Seconded National Experts (SNEs).

At the end of 2018, a total of 231 staff (TAs/CAs/SNEs) was employed. On 31 December 2018, ESMA employed 217 statutory staff members (TAs/CAs): 149 TAs and 68 CAs. This is 16 more statutory staff members than 1 year before, or a + 8 % increase.

In addition, at the same time, 14 SNEs were also working at ESMA (versus 23, 1 year before), bringing the total number of ESMA staff (TAs/CAs/SNEs) to 231, versus 224 1 year before, or a + 3 % increase.

The staff turnover rate was of 6.9 % (ESMA aims to have a turnover of less than 10 %).

Staff by nationality

At the end of 2018, ESMA staff (TAs/CAs/SNEs) included 23 different EU nationalities, and 1 national from the EEA (Norway).

The following chart shows by decreasing order the distribution of nationalities for ESMA staff (TAs/CAs/SNEs) as of the end of 2018:

Staff by gender

The global gender balance amongst ESMA staff (TAs/CAs/SNEs) was 52 % (male) — 48 % (female) in 2018, a slight increase of the female proportion compared to 2016/2017.

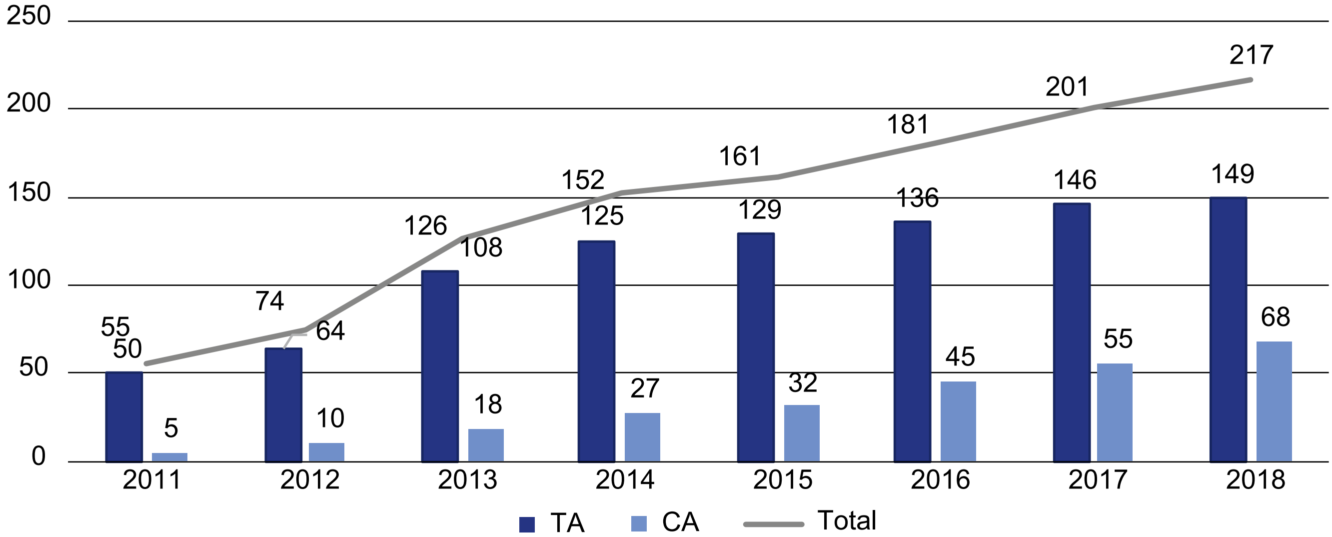
The evolution of the gender balance (in all staff groups) over the last 7 years indicates that the proportion of female staff members has progressively increased from 37 % in 2012 to 48 % in 2018.

Digitalisation of the human resources processes and implementation of an e-recruitment tool

The Resources Department as a whole continued to progress in terms of digitalisation of ESMA's processes in 2018: 12 additional processes were digitalised during the year in the department, with the human resources team being the main beneficiary, bringing the total number of processes run by electronic workflows to 42.

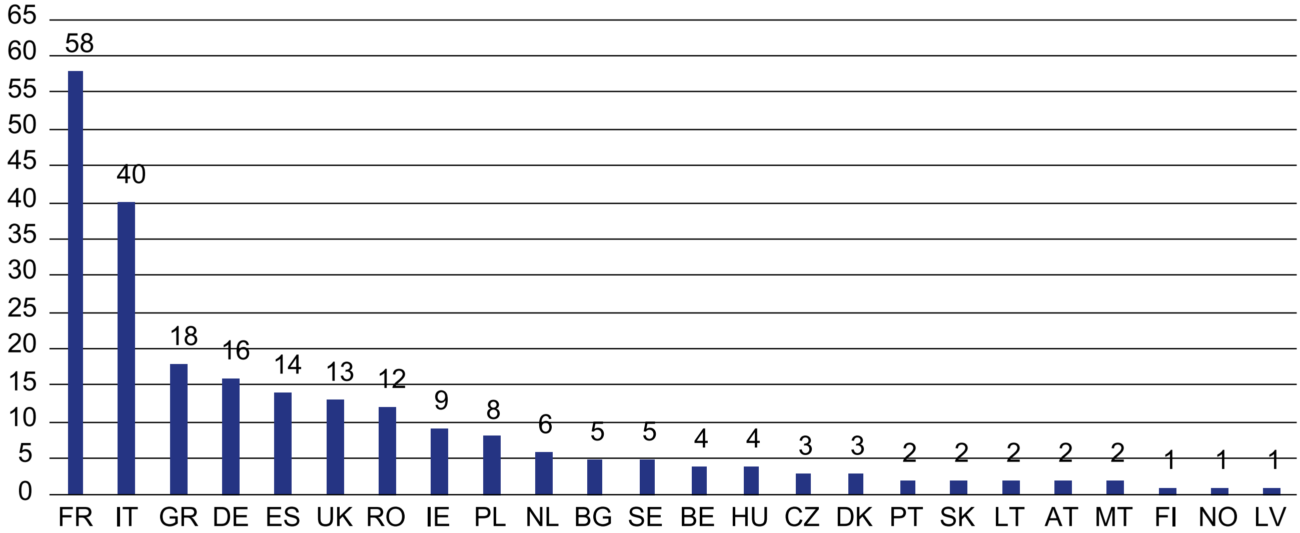
At the end of 2018, all human resources, finance and procurement processes at ESMA were fully electronic/

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

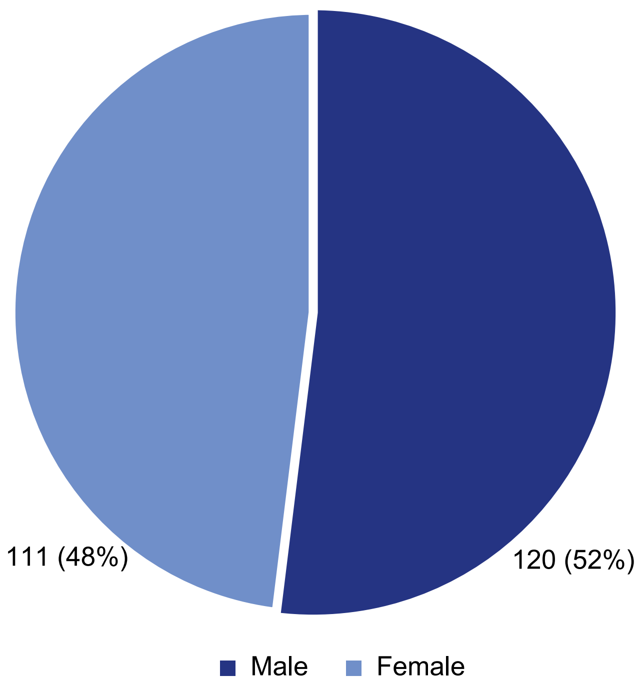


([40]) Posts for Temporary Agents are listed in the establishment plan of ESMA, and in the EU budget.

ESMA nationalities



Gender distribution at ESMA



paperless. This has led to a general improvement of these activities, notably in terms of speed and reliability, while also reinforcing traceability and, last but not least, contributing to a greener environment by reducing paper consumption.

ESMA implemented in 2018 an e-recruitment tool enabling the organisation to be able to face a higher hiring volume in the future and facilitating interactions with the candidates and within the organisation, with a focus notably on user-friendliness, reactivity and efficiency. Such a tool also minimises hiring costs and helps shorten the hiring process. Lastly, with its dynamic content, it reinforces the image of ESMA as an attractive organisation using leading-edge tools, therefore building up its employer branding in a successful way to attract top talent and to boost the corporate culture.

Staff survey

A staff satisfaction survey was executed at the end of the year, like every 2 years, with a final satisfaction rate of 67 % (a good satisfaction rate is considered to be above 60 %).

This exercise, conducted independently by an external company having high expertise in this field, is important as it allows ESMA to monitor over time and across the organisation (by departments) the engagement and the level of satisfaction of its staff members over a wide variety of dimensions and topics. It allows the identification of the areas where satisfaction is the highest but also the areas where improvement remains possible.

The results of this survey are discussed by the management team and lead to a detailed action plan. They are also shared at an ESMA-wide level with the entire staff.

2.6.6. Information and Communication Technologies

Objective for 2018	Provide effective and proactive support to ESMA staff, manage resources in a flexible and efficient way.

IT projects

ESMA's ICT activity represents two main categories:

- support to ESMA as an organisation; and
- EU IT projects aiming to support ESMA's core activities of supervisory convergence, risk analysis and exchange of financial data amongst NCAs and between NCAs, ESMA and the public.

The majority of the IT resources (75 %) were used for the support of the core ESMA activities, such as, for example, to support the databases for MiFIR. In addition, ESMA conducted preparatory IT work for the systems to be able to organise the United Kingdom's withdrawal from the European Union. The rest of the resources — for example the helpdesk — provide support for both ESMA staff and external users such as users of ESMA's systems in the NCAs.

Information technology

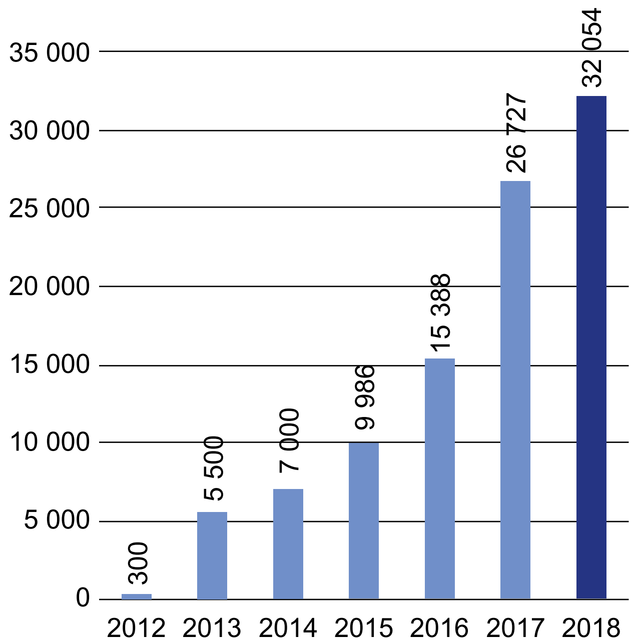
ESMA continued to upgrade its workplace tools, notably with the finalisation of the deployment of the collaboration tool Skype for telephony and videoconferencing. In 2018, ESMA also continued to study the migration of its messaging and SharePoint services to Office 365 and the migration to a Public Cloud Infrastructure which is planned for 2019.

Support to ESMA as an organisation

At the end of 2018 ESMA was managing 40 applications and 279 virtual servers serving a total of 1 570 users, with a large majority of them coming from NCAs, TVs, CRAs and TRs.

ESMA's helpdesk managed 32 000 requests for support in 2018, a significant 20 % increase compared to 2017, but less than the increases in prior years, pointing towards an eventual stabilisation of applications. The annual evolution of the total number of tickets managed by ESMA since 2012 can be seen in the following chart.

IT helpdesk
Number of requests for support



Cybersecurity

2018 was also marked by increased actions in the field of cybersecurity surveillance and intelligence for ESMA as an organisation.

New internal procedures on this topic were drafted. Moreover, a continuous 24 hours a day, 7 days a week analysis of cyber-incidents and security response was launched with the specialised services of a leading expert external company providing notably a Security Operations Centre (SoC). A SoC monitors and analyses an organisation's security posture on an ongoing basis. The SoC team's goal is to detect, analyse and respond to cybersecurity incidents using a combination of technology solutions and a strong set of processes. A SoC is responsible for ensuring that potential security incidents are correctly identified, analysed, defended, investigated and reported.

An in-depth cybersecurity attack was executed by a trusted third-party provider. This kind of exercise serves to proactively test information security defences in the same manner as a real attacker would do (e.g. a hacker) having taken control of the computer of an employee. Its results have been used to enhance the overall security of ESMA.

Still in the field of security, ESMA tested again in 2018 its Business Continuity Plan (completed in 2017) with a real-life exercise. This plan is aimed at allowing the organisation to continue working at acceptable predefined levels following a disruptive accident. This will continue to be updated and tested as necessary in the future.

2.7. Audit

2.7.1. Assessment of the audit results during the reporting year

European Court of Auditors

ESMA is audited every year by the European Court of Auditors (ECA). The audit provides a Statement of Assurance as to the reliability of the accounts of the Agency and the legality and regularity of the transactions underlying them.

The Statement of Assurance 2017 indicated that the accounts of the Authority for the year ended 31 December 2017 present fairly, in all material respects, the financial position of the Authority at 31 December 2017, the results of its operations, its cash flows, and the changes in net assets for the year then ended, in accordance with its Financial Regulation and with accounting rules adopted by the Commission's accounting officer. It also stated that the revenue underlying the annual accounts for the year ended 31 December 2017 are legal and regular in all material respects and the payments underlying the annual accounts for the year ended 31 December 2017 are legal and regular in all material respects.

The 2017 Statement of Assurance did not contain any finding but included an observation on the risk of Brexit on ESMA's budget and a recommendation to publish all ESMA vacancies on the website of the European Personnel Selection Office (EPSO).

The ECA audit of the 2018 annual accounts is ongoing. The draft report will be available by mid-2019.

Internal Audit Service

ESMA is also audited by the Internal Audit Service (IAS) of the Commission. In 2018 the IAS finalised an audit on Revenues and Activity based Management. The IAS concluded that ESMA's management and control systems put in place for the activity-based management and fees collection are adequately designed and effectively implemented. They support ESMA in achieving its strategic objectives and constitute a good starting basis for scaling up the model in order to meet the needs of the expanding business processes. The system in place is capable of ensuring that the fees for direct supervision are calculated on the basis of the

application of an adequate Activity Based Model and that the collection of the fees is accurate and complete.

The IAS made five recommendations for the improvement of the process, though none of them is critical or very important. One of them has already been implemented and there are action plans for the other four that are under implementation.

2.7.2. Follow-up of recommendations and action plans for audits

ESMA follows up and reports to the Management Board on all audit findings and recommendations on a quarterly basis.

Internal Audit Service

Neither critical nor very important recommendations were open as of 31 December 2018.

2.7.3. Follow-up of observations from the Discharge Authority

On 18 April 2018, the European Parliament voted positively on the discharge of ESMA's 2016 accounts. This is the final approval of the budget implementation for 2016, and the decision is based on a review of the annual accounts and the ECA annual report.

2.8. Assessment of the effectiveness of the Internal Control Systems

2.8.1. Risk management

ESMA operates in an environment of growing uncertainty. ESMA has developed an annual process of identification and assessment of risks in order to assist in mitigating those risks that could threaten the delivery of its mission. The annual organisational risk assessment is performed as a combination of a bottom-up and top-down approach: bottom up — identification of risks at department level; top down — management assessment and evaluation of strategic risks considering the input from departments. Significant risks are then reviewed by the ESMA Management Board, which endorses the risks and action plans.

The top risks identified during the assessment are summarised and included in the ESMA Single

Programming Document. The top risks identified in 2018 in relation to the 2019 work programme were:

- potential negative consequences of Brexit on EU securities markets and on ESMA as an organisation;
- uncertainties deriving from EU legislative proposals that would have a major impact on ESMA's mandate and organisation (ESA Review and EMIR 2.2);
- data availability and quality at ESMA, NCAs, supervised entities and/or other stakeholders, including the necessary availability, resilience and scalability of ESMA IT systems.

None of the risks identified were considered critical.

2.8.2. Internal Control Framework

In November 2018, the Management Board adopted ESMA's new Internal Control Framework, replacing the existing Internal Control Standards that were adopted on 5 December 2012. The Internal Control Framework supplements the Financial Regulation and other applicable rules and regulations with a view to aligning ESMA standards to the highest international standards set by the Committee of Sponsoring Organisations of the Treadway Commission (COSO) framework ([41]).

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 adaptation to specific characteristics and circumstances in different businesses. In order to keep up with these recent changes in international best practice, it was appropriate to update ESMA's internal control framework accordingly.

ESMA's new Internal Control Framework consists of five internal control components which are built on 17 principles, based on the COSO 2013 Internal Control-Integrated Framework, and further supported by a number of characteristics. ESMA will perform the first annual assessment of the implementation of the internal control principles according to the new framework in 2019.

Anti-fraud measures

ESMA adopted in 2011 a code of good administrative behaviour including general rules when dealing with the public and a decision on professional secrecy. Their accessibility to all staff, together with the Staff Regulations, assures the availability of a practical guide on ethical conduct and reporting of irregularities.

ESMA adopted its first Anti-Fraud Strategy in 2015, following the guidelines provided by the European Anti-Fraud Office (OLAF) to the Agencies at the beginning of 2014. In September 2018, EMSA's Management Board adopted the 2018-2021 Anti-Fraud Strategy, with three main objectives:

- enhance an anti-fraud culture underpinned by high levels of awareness, integrity, impartiality and transparency at all levels of ESMA;
- strengthen measures for detection of suspicious behaviours and deterrence;
- maintain an efficient system for internal reporting of suspected fraud or irregularities.

In order to promote and strengthen the principles and practice of ethics and organisational values among its staff, ESMA has appointed three staff members as Ethics Officer and deputies, respectively. This allows for the development of strong in-house expertise and a prompt response and reaction to ethics issues. The IAS of the Commission labelled this organisation as a best practice.

Management of conflict of interests

Since 2015, ESMA has a policy in place on conflict of interest for non-staff, covering the members of the BoS, Management Board and the Board of Appeal. The curriculum vitae and declarations of interest of all board members and senior management of ESMA are published on ESMA's website.

ESMA's policy on conflict of interest for staff was adapted from the existing Ethics Guide in 2015 and provides clear guidance on conflict of interest and on contact with stakeholders, among others. As required, in 2018 all staff members filled in an annual declaration regarding potential conflicts of interest and are, where needed, required clearance for dealing in financial instruments.

Specific measures for avoiding conflicts of interest are taken during recruitment procedures and procurement selection panels.

Concerning the collaboration with OLAF, and as required by the ESMA Regulation, since 2011 ESMA has a decision concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Union's interest. ESMA is also part of the

(**41**) COSO 2013 Internal Control-Integrated Framework.

Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF.

ESMA has developed a whistleblowing procedure for the internal reporting of cases of fraud or serious misconduct as well as rules on conducting administrative enquiries and disciplinary procedures and has also set up a disciplinary board.

2.9. Management assurance

2.9.1. Review of the elements supporting assurance

The reasonable assurance is the personal judgement of the Executive Director and the Authorising Officer by Delegation (AOD), 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 declarations of assurance made by the AOD to the Executive Director;
- the result of the assessment of the internal control standards;
- the *ex ante* and *ex post* controls;
- the validation of the accounting systems;
- the analysis of the list of recorded exceptions;
- the summary of OLAF activities relevant for 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 related to defined areas of revenue and expenditure — and that the resources assigned have been used for their intended purpose and in accordance with the principle of sound financial management.

The AODs confirmed their reasonable assurance that, overall, suitable controls are in place and working as intended, and identified risks are being appropriately monitored and mitigated. Given the control system in place, the information attained from the building blocks above and the lack of critical findings from the Court of Auditors 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 no reason that would justify or require a reservation.

Materiality criteria used

In line with the suggestion of the guidelines on the preparation of the annual activity report, ESMA used the qualitative and quantitative materiality criteria described below to assess if the issues identified merit a reservation.

Qualitative criteria used

ESMA would consider significant the weaknesses in the internal control system that fall under the following qualitative criteria:

- significant errors detected during the control exercises;
- a significant weakness in the control system;
- situations where ESMA does not have sufficient evidence from internal control systems or audit coverage to be confident in providing the necessary assurance;
- situations where a major issue has been outlined 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 where the materiality threshold is exceeded;
- situations revealed through own control work or audits where significant risks remain unmitigated;
- a significant reputational risk.

Quantitative criterion used

According to the Commission guidelines on the preparation of annual activity reports, the Court of Auditors 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, risks are being appropriately monitored and mitigated, and necessary improvements and reinforcements are being implemented.

Based on all the facts presented in the report and in light of the opinions expressed by the Court of Auditors 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.

2018 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.

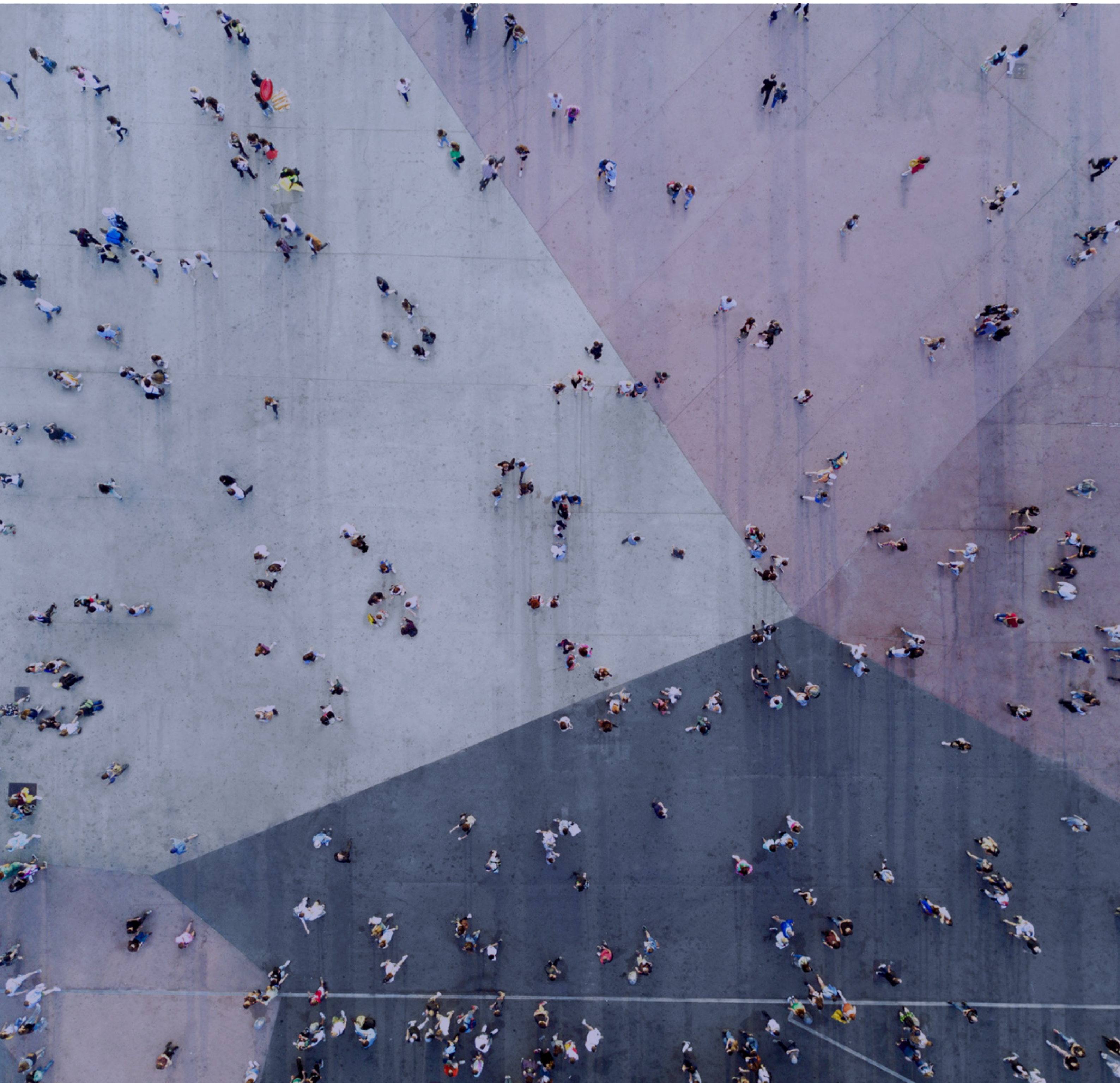
Confirm that I am not aware of anything not reported which could harm the interests of the European Securities and Markets Authority.

Paris, 28 May 2019

[Signed]

Verena Ross
Executive Director
European Securities and Markets Authority

Annexes



ANNEX I — Access to documents requests in 2018

ESMA, under Article 17(1) of Regulation (EC) No 1049/2001 (Access to Documents Regulation), must include a report detailing: (a) the number of access cases in which ESMA refused to grant access to documents; (b) the reasons for such refusals; and (c) the number of sensitive documents recorded in the register.

In 2018, ESMA received 12 requests for access to documents pursuant to the Access to Documents Regulation. These requests concerned a variety of topics, such as: travel expenses of ESMA's Executive Director; written (letter and email) communication of all members of the ESMA staff who participated in WGs relating to MiFID II/MiFIR; documents in the context of SFTR; all emails, letters and related documents sent by a member of the European Parliament to ESMA staff referring to MiFID II, MiFIR and PRIIPs and the relative responses to those; answers of the various stakeholders to certain earlier consultations of CESR/ESMA; documents related to a complaint filed against ESMA before the European Ombudsman; documents regarding ESMA's measure restricting the marketing, sale or distribution of CFDs to retail investors in the EU; documents relating to an internal administrative enquiry; and ESMA staff stakeholder contacts.

All the requests were processed in due time as required by the Access to Documents Regulation and for half of them access was granted. Furthermore, in two cases brought before the European Ombudsman, it was confirmed that no maladministration was shown by ESMA in refusing to grant access to certain information, therefore confirming ESMA's original position in this respect.

As regards the requests received, in five different cases ESMA provided full access to the requested documents, although in one of the requests, parts containing personal data were removed in line with the exemption relating to the protection of personal data and privacy. In one case ESMA did not possess the requested document. In the remaining six cases ESMA decided not to grant access to the documents as the disclosure of certain documents would have been in breach of specific provisions of the Staff Regulations or would have seriously undermined ESMA's decision-making process or the purpose of an investigation.

ANNEX II — Reporting on key performance indicators

ESMA has defined a list of key performance indicators that are regularly reported to the Management Board. ESMA's 2018 work programme was measured against these indicators.

Activity	Key performance indicator	Target (where applicable)	Results
Assessing risks to investors, markets and financial stability	Number of risk topics analysed		10
	Trends, Risks and Vulnerabilities and Joint Committee (of the ESAs) risk reports delivered against work plan		8
	Data and Statistics: Coverage of ESMA databases under central data management		95 %
Completing a Single Rulebook for EU financial markets	Number of adopted TSs and Technical Advice approved by ESMA's BoS		22
Promoting supervisory convergence	Non-compliance with guidelines and recommendations		21
	Percentage of IT systems delivered compared to planned	95 %	90 % (42)
	Percentage of budget execution of IT Work Programme	95 %	99.93 %
	Number of Peer Reviews conducted		1
	Number of opinions issued		117 (43)
	Number of Q&As issued		44
Direct supervision of specific financial entities	Number of thematic and number of individual investigations (opened in the year according to annual plan or individual strategies)		Two thematic and one individual investigations (into four firms)
	Number of applications for registration not assessed within the time limits		0

(**42**) Most of the planned work delivered, nevertheless delays in some regulatory projects such as the new Prospectus or Securitisation, due to the prioritisation of the whole operational setup for MiFID II package, as well as new work streams not initially planned (such as Brexit).

(**43**) The majority is related to 'MiFID opinions re waivers/position limits'.

Activity	Key performance indicator	Target (where applicable)	Results
Organisational implications	Rate of implementation of commitment appropriations	> 95 %	100 %
	Rate of cancellation of payment appropriations	< 5 %	6.84 %
	Rate of budget outturn	> 84 %	88.89 %
	Rate of payments executed within legal/contractual deadlines	> 95 %	98.32 %
	Average vacancy rate	< 10 %	7.8 %
	Staff turnover rate	< 10 %	6.9 %
	Staff satisfaction survey	> 60 %	67 %
	Percentage of completion of the activities of the Annual Work Programme		90 %
	Rate of external and accepted internal audit recommendations		100 %

ANNEX III — ESMA's Boards and Standing Committees

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

ESMA's Boards and their 2018 composition

Members of the Management Board as at 31 December 2018

Member	Authority	Country
Steven Maijoor	ESMA (Chair)	
Elisabeth Roegele	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany
Sebastian Albella Amigo	Comisión Nacional del Mercado de Valores (CNMV)	Spain
Derville Rowland	Central Bank of Ireland (CBoI)	Ireland
Robert Ophèle	Autorité des Marchés Financiers (AMF)	France
Erik Thedéen	Finansinspektionen (FI)	Sweden
Gabriela Figueiredo Dias	Comissão do Mercado de Valores Mobiliários (CMVM)	Portugal
Anneli Tuominen	ESMA Vice-Chair (observer)	
Ugo Bassi	Commission (non-voting Member)	EU
Verena Ross	ESMA Executive Director (non-voting Member)	

Members of the BoS as at 31 December 2018

Member	Authority	Country
Jean-Paul Servais	Financial Services and Markets Authority (FSMA)	Belgium
Karina Karaivanova	Комисията за финансов надзор (FSC)	Bulgaria
Vojtěch Belling	Česká národní banka (CNB)	Czechia
Karen Dortea Abeslkov	Finanstilsynet (FSA)	Denmark
Elisabeth Roegele	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany
Andre Nõmm	Finantsinspektsioon (FSA)	Estonia
Derville Rowland	Central Bank of Ireland (CBoI)	Ireland
Charalampos Gotsis	Ελληνική Επιτροπή Κεφαλαιαγοράς (HCMC)	Greece
Sebastian Albella Amigo	Comisión Nacional del Mercado de Valores (CNMV)	Spain
Robert Ophèle	Autorité des Marchés Financiers (AMF)	France
Ante Žigman	Hrvatska agencija za nadzor financijskih usluga (HANFA)	Croatia
Anna Genovese	Commissione Nazionale per le Società e la Borsa (CONSOB)	Italy
Demetra Kalogerou	Επιτροπή Κεφαλαιαγοράς Κύπρου (CySEC)	Cyprus
Gunta Razāne	Finanšu un kapitāla tirgus komisija (FKTK)	Latvia
Mindaugas Šalčius	Lietuvos Bankas (LB)	Lithuania
Claude Marx	Commission de Surveillance du Secteur Financier (CSSF)	Luxembourg
Gergő Szeniczey	Magyar Nemzeti Bank (MNB)	Hungary
Marianne Scicluna	Malta Financial Services Authority (MFSA)	Malta
Merel van Vroonhoven	Autoriteit Financiële Markten (AFM)	Netherlands
Klaus Kumpfmüller	Finanzmarktaufsicht (FMA)	Austria
Marcin Pachuki	Komisja Nadzoru Finansowego (KNF)	Poland
Gabriela Figueiredo Dias	Comissão do Mercado de Valores Mobiliários (CMVM)	Portugal
Leonardo Badea	Autoritatea de Supraveghere Financiară (ASF)	Romania
Miloš Čas	Agencija za trg vrednostnih papirjev (ATVP)	Slovenia

Member	Authority	Country
Vladimír Dvořáček	Národná Banka Slovenska (NBS)	Slovakia
Anneli Tuominen	Finanssivalvonta (FSA)	Finland
Erik Thedéen	Finansinspektionen (FI)	Sweden
Andrew Bailey	Financial Conduct Authority (FCA)	United Kingdom

Non-voting members of the BoS as at 31 December 2018

Name	Authority	Country
Steven Maijoor	ESMA	EU
Unnur Gunnarsdóttir	Fjármálaeftirlitið (FME)	Iceland
Marcel Lötscher	Finanzmarktaufsicht (FMA)	Liechtenstein
Anne Merethe Bellamy	Finanstilsynet	Norway
Adam Farkas	European Banking Authority (EBA)	EU
Fausto Parente	European Insurance and Occupational Pensions Authority (EIOPA)	EU
Francesco Mazzaferro	European Systemic Risk Board (ESRB)	EU
Ugo Bassi	European Commission	EU
Frank Buchel	European Free Trade Association (EFTA) Surveillance Authority	EFTA

Standing Committees and Working Groups

Much of ESMA's work is supported by Standing Committees (SCs), working groups (WGs) and task forces, which draw together senior experts from NCAs. The different ESMA SCs are established on a permanent basis. Each committee is chaired by a Board member and supported by ESMA staff as rapporteur. Many SCs also have consultative WGs made up of external stakeholder representatives.

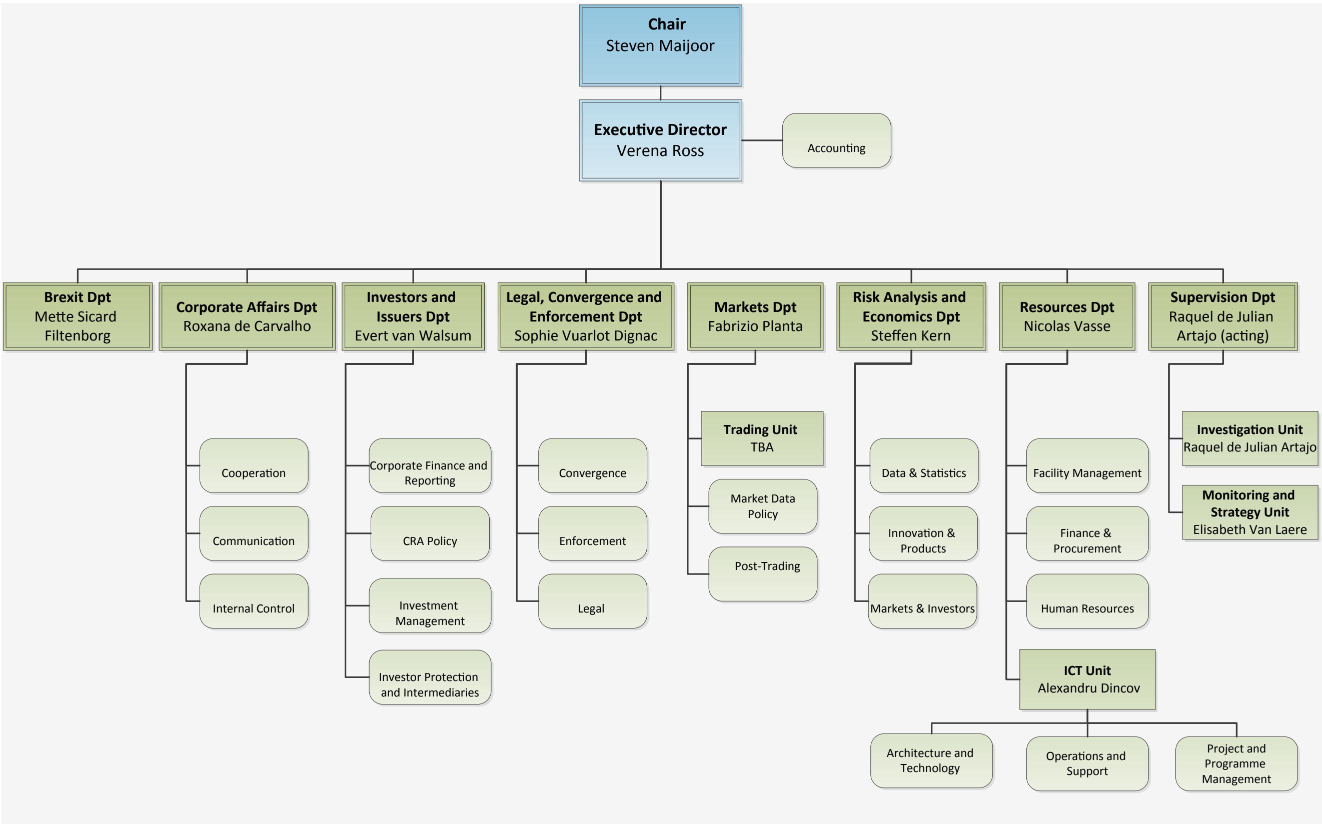
ESMA's SCs prepare the technical work on all areas of ESMA's activities. However, the ultimate decision-making body of ESMA is the BoS, whereas the Management Board ensures that the Authority carries out its mission and performs the tasks assigned to it.

The following table sets out ESMA's SCs and their respective chairs as of 31 December 2018; more details can be found at www.esma.europa.eu, including the mandates of each SC.

Name of Standing Committee	Chair
Committee of Economic and Markets' Analysis	Carmine Di Noia, CONSOB, Italy
Commodity Derivatives Task Force	Edwin Schooling-Latter, FCA, United Kingdom
Corporate Finance Standing Committee	Benoit de Juvigny, AMF, France
Corporate Reporting Standing Committee	Ana María Martínez-Pina García, CNMV, Spain
Credit Rating Agencies Technical Committee	Verena Ross, ESMA
Financial Innovation Standing Committee	Jean-Paul Servais, FSMA, Belgium
Investment Management Standing Committee	Vacant ([44])
Investor Protection and Intermediaries Standing Committee	Merel van Vroonhoven, AFM, Netherlands
IT Governance and Management Group	Nicolas Vasse, ESMA
Data Standing Committee	Christopher Buttigieg, MFSA, Malta
Market Integrity Standing Committee	Nicoletta Giusto, CONSOB, Italy
Post-Trading Standing Committee	Robert Ophèle, France
Secondary Markets Standing Committee	Elisabeth Roegele, BaFin, Germany
Supervisory Convergence Standing Committee	João Sousa Gião, CMVM, Portugal

(**44**) As of 30 January 2019, the BoS of ESMA appointed as chair of the Investment Management Standing Committee, Gabriela Figueiredo Dias, Chair of the CMVM of Portugal

ANNEX IV — 2018 organisational chart as at 31 December 2018



ANNEX V — Establishment plan and benchmarking exercise

ESMA's staff population 2018 (all categories of staff)

Staff population		Headcount as of 31.12.2017	Authorised under EU budget 2018	Headcount as of 31.12.2018
Officials	AD			
	AST			
	AST/SC			
TA	AD	134	144	138
	AST	12	12	11
	AST/SC			
Total		146	156	149
CA GFIV		31	35	43
CA GFIII		24	25	25
CA GFII				
CA GFI				
Total CA		55	60	68
SNE		23	24	14
TOTAL		224	240	231

ESMA's establishment plan 2018 (Temporary Agents)

Category and grade	Establishment plan in EU budget 2018	Filled as of 31.12.2018
AD16	1	1
AD15	1	1
AD14		
AD13	2	
AD12	6	4
AD11	9	1
AD10	14	9
AD9	28	24
AD8	28	36
AD7	26	26
AD6	14	12
AD5	15	24
Total AD	**144**	**138**
AST11		
AST10		
AST9		
AST8	2	
AST7	2	
AST6	3	
AST5	4	4
AST4	1	4
AST3		1
AST2		2
AST1		
Total AST	**12**	**11**

Category and grade	Establishment plan in EU budget 2018	Filled as of 31.12.2018
AST/SC6		
AST/SC5		
AST/SC4		
AST/SC3		
AST/SC2		
AST/SC1		
Total AST/SC		
TOTAL	**156**	**149**

Benchmarking against previous year results ([45])

The following table outlines the results of the fourth 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 (DG Budget, DG Human Resources and Security and SG). It was generated as an adaptation, refinement and clarification of the Commission job-screening methodology, which the Commission had been implementing for several years.

Job type (sub)category	Year 2017 (%)	Year 2018 ([46]) (%)
Administrative support and coordination	**13.1 %**	**15.6 %**
Administrative support	9.1 %	11.3 %
Coordination	4.0 %	4.3 %
Operational	**83.2 %**	**80.6 %**
General operational activities	7.7 %	9.5 %
Programme management and implementation	69.8 %	65.3 %

(**45**) Reference date: 31.12.2017.

(**46**) Reference date: 31.12.2018.

Top operational coordination	1.7 %	1.7 %
Evaluation and impact assessment	4.0 %	4.0 %
Neutral	**3.7 %**	3.8 %
Accounting, finance, non-operational procurement, contract management and quality management, internal audit and control	3.7 %	3.8 %
Linguistic activities	0.0 %	0.0 %

ANNEX VI — 2018 Annual Accounts and Work Programmes

2018 Annual Accounts

The 2018 annual accounts of ESMA are produced in accordance with its Financial Regulation, the accounting rules adopted by the Commission's Accounting officer and the accounting principles and methods adopted by ESMA's Accounting Officer. They are adopted by ESMA's Management Board and are published on ESMA's website.

2018 Work Programmes

As required by its new Financial Regulation, ESMA produced a programming document covering the period of 2018 to 2020; it set out a 3-year work programme, a detailed Annual Work Programme for 2018 and a budget and resourcing plan.

An Annual Work Programme is adopted yearly in September for the following year by the BoS. The Annual Work Programme provides a breakdown of the overall activities into various sub-activities and also includes an estimation of human (full-time equivalents) and financial (budgetary expenditure) resources per area of activity as well as key performance indicators.

In addition to the Annual Work Programme, ESMA also publishes various specific work programmes providing more detail about its activities.

ESMA published five work programmes in 2018 which set out the work it intended to carry out as an organisation in general but also in specific areas. The work programmes that were published on ESMA's website in 2018 were:

- Annual Work Programme 2019
- risk assessment work programme
- regulatory work programme
- supervisory work programme
- supervisory convergence work programme.

The delivery against the work programmes is monitored on an ongoing basis, with progress on its implementation reported to the Management Board on a quarterly basis. A comprehensive set of reports on key administrative activities such as recruitment and budget execution is provided monthly to the Executive Director and quarterly to the Management Board.

ANNEX VII — List of Acronyms

€STR	Euro short-term rate
AIF	Alternative Investment Fund
AIFMD	Alternative Investment Fund Managers Directives
AML	Anti-Money Laundering
AOD	Authorising Officer by Delegation
BoA	Board of Appeal
BoS	Board of Supervisors
BRRD	Bank Recovery and Resolution Directive
BUL	Breach of Union Law
CCP	Central counterparty
CDD	Customer Due Diligence
CDS	Credit Default Swap
CEAOB	Committee of the European Audit Oversight Bodies
CEREP	Central Repository of credit rating data
CESR	Committee of European Securities Regulators
CFD	Contract for Differences
CFT	Countering the financing of terrorism
CODER	Commodity Derivatives Reporting
COSO	Committee of Sponsoring Organisations of the Treadway Commission
CRA	Credit Rating Agency
CRAR	Credit Rating Agencies Regulation
CRD/CRR	Capital Requirements Directive/Capital Requirements Regulation
CSD	Central Securities Depositories
CSDR	Central Securities Depositories Regulation
CSP	Cloud Service Provider
CSSF	Commission de Surveillance du Secteur Financier
CySEC	Cyprus Securities and Exchange Commission
DG	Directorate General
DLT	Distributed Ledger Technology
DQAP	Data Quality Action Plan
DVC	Double Volume Cap

DVCAP	Double Volume Cap Mechanism
EBA	European Banking Authority
ECA	European Court of Auditors
ECAI	External Credit Assessment Institution
ECB	European Central Bank
ECON	Committee on Economic and Monetary Affairs
EEA	European Economic Area
EFTA	European Free Trade Association
EIOPA	European Insurance and Occupational Pensions Authority
EMIR	European market infrastructure regulation
EONIA	Euro Overnight Index Average
EPM	Efficient Portfolio Management
EPSO	European Personnel Selection Office
ERM	Enterprise Risk Management
ESA	European Supervisory Authority
ESEF	European Single Electronic Format
ESFS	European System of Financial Supervision
ESG	Environmental, Social and Governance
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETD	Exchange traded derivative
ETF	Exchange traded fund
EU	European Union
EURIBOR	Euro Interbank Offered Rate
FATF	Financial Action Task Force
FCA	UK Financial Conduct Authority
FIN-FSA	Finnish Financial Supervisory Authority
FIRDS	Financial Instruments Reference Data System
FITRS	Financial Instruments Transparency System
FSB	Financial Stability Board
FSMA	Financial Services and Markets Authority
FX	Foreign Exchange
GDPR	General Data Protection Regulation

IAS	Internal Audit Service
IASB	International Accounting Standards Board
ICO	Initial Coin Offering
ICS	Investor Compensation Scheme
IFRS	International Financial Reporting Standards
IOSCO	International Organization of Securities Commissions
IRS	Interest Rate Swap
ISRB	Interactive Single Rulebook
IT	Information Technology
ITS	Implementing Technical Standards
JC	Joint Committee
KID	Key information document
LEI	Legal Entity Identifier
LIBOR	London Interbank Offered Rate
MAR	Market Abuse Regulation
MB	Management Board
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
MMF	Money Market Funds
MMFR	Money Market Fund Regulation
MMoU	Multilateral Memorandum of Understanding
MoU	Memorandum of Understanding
NCA	National Competent Authority
NFC	Non-financial counterparties
OLAF	European Anti-Fraud Office
OTC	Over-the-counter
PRIIP	Packaged Retail and Insurance-based Investment Product
PSA	Pension Scheme Arrangement
Q&A	Questions and answers
RADAR	ESMA's credit Ratings Data Reporting tool
RDM	Reverse Distribution Mechanism
RTS	Regulatory Technical Standard
SCN	Supervisory Convergence Network

SFTR	Securities Financing Transactions Regulation
SFT TR	Securities Financing Transactions Trade Repository
SME	Small and medium-sized enterprise
SMSG	Securities and Markets Stakeholder Group
SoC	Security Operations Centre
SSM	Single Supervisory Mechanism
SSR	Short Selling Regulation
STS	Simple, transparent and standardised
TA	Technical Advice
TC-CCP	Third-Country (non-European) Central Counterparty
TR	Trade Repository
TRACE	ESMA's Trade Repository Data Reporting tool
TREM	Transaction Reporting Exchange Mechanism
TRVs	Trends, risks and vulnerabilities
TS	Technical Standards
TV	Trading Venue
UCITS	Undertakings for Collective Investment in Transferrable Securities
VC	Virtual currency
VIX	Volatility Index
WG	Working group

esma European Securities and Markets Authority

Publications Office of the European Union