

## Terms of Reference

# Proportionality and Coordination Committee

1. ESMA's mission is to enhance investor protection, promote orderly financial markets and safeguard financial stability, by (i) assessing risks to investors, markets and financial stability, (ii) completing a single rulebook for EU financial markets, (iii) promoting supervisory convergence and (iv) supervising specific financial entities.
2. In order to fulfil its mission the ESMA Strategy 2023-2028<sup>1</sup> sets out three strategic priorities: (i) fostering effective markets and financial stability, (ii) strengthening supervision of EU financial markets, and (iii) enhancing protection of retail investors and two thematic drivers: (i) enhancing sustainable finance, and (ii) facilitating technological innovation and effective use of data.
3. ESMA shall act within the powers conferred by its establishing Regulation (ESMA Regulation or ESMAR)<sup>2</sup> and among others within the scope of Articles 1(5)(c), 1(5) fourth and fifth subparagraphs, 1(6), 8(1) (b) and 33(6) of ESMAR.
4. In order to fulfil ESMA's mission the Board of Supervisors (BoS) has established the Proportionality and Coordination Committee, thereafter PCC, pursuant to Article 41 of ESMAR as a permanent internal committee. These Terms of Reference specify its tasks, responsibilities, functioning and governance.

### Tasks and responsibilities

5. The PCC contributes to ESMA's mission mainly by (i) strengthening international coordination and supporting a united, common, consistent and effective representation of the Union's interests in international fora; (ii) advising ESMA on application of proportionality to its actions and measures (such as regulatory technical standards and other L2/L3 measures) and (iii) fostering supervisory independence of National Competent Authorities (NCAs).
6. In addition, the PCC may take on other topics, subject to the approval of the BoS, which are horizontal in nature and which do not fit into the remit of any other ESMA group. One of such topics relates currently to the framework for the development of the 3ESAs system for the exchange of fitness and propriety information across competent authorities (Article 31a of ESMAR).
7. Through its activities in these areas and related deliverables PCC contributes to all ESMA strategic priorities stated in the ESMA Strategy 2023-2028, but particular the Fostering Effective Markets and Financial Stability and Strengthening Supervision of EU Financial Markets. In particular, the PCC contributes to the following ESMA tasks:

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/esma\\_strategy\\_2023-2028.pdf](https://www.esma.europa.eu/sites/default/files/library/esma_strategy_2023-2028.pdf)

<sup>2</sup> ESMA Regulation No 1095/2010 of the European Parliament and of the Council

- International Coordination
  - The PCC serves as an exchange platform for NCAs and ESMA regarding international regulatory and supervisory developments, and engagements in different international fora. In line with Article 33(6) of ESMAR, where appropriate, ESMA may coordinate common and consistent positions within the PCC, with a view to contributing to the united, common, consistent and effective representation of the Union's interests in international fora, in close coordination with other ESMA groups.
  - The PCC contributes to ESMA's work on equivalence, on both its regular equivalence monitoring activity and when requested by the European Commission to assist in the preparation of equivalence decisions. For ESMA's equivalence monitoring task, the PCC should engage on the planning and prioritisation of this work each year and discuss the findings of the monitoring activity.
- Proportionality
  - In order for ESMA to meet its obligation to act in a proportionate manner, on the basis of a methodology, the PCC advises ESMA as to how, in full compliance with applicable rules, its actions and measures should take account of specific application differences prevailing in the sector, pertaining to the nature, scale and complexity of activities, financial institutions and markets as well as to business models and business practices, to the extent that such factors are relevant under the rules considered.
  - In particular, the PCC assesses priority topics from the ESMA Annual Work Programme and, for a selected number of measures, provides high level ex-ante advice on how to take into account specific application differences regarding size and complexity of activities, entities and markets prevailing in the sector, so that the proportionality criterion is met, without undermining the relevant underlying policy objectives. The PCC advice on proportionality will be provided to the BoS as well as to ESMA group(s) in charge of the relevant measures.
  - Where relevant, PCC can provide an ex-post advice on proportionality of existing ESMA action or measure.
- Supervisory independence
  - To foster supervisory independence, the PCC contributes to the definition and monitoring of independence criteria for NCAs in consideration of international sectoral standards.

## Coordination

8. The work of the PCC is not expected to duplicate or overlap with the functions of the other ESMA's Standing Committees or other ESMA groups that will remain responsible for addressing matters in the respective areas that fall within their respective remits. The PCC should liaise and coordinate, primarily through its Chair and/or Rapporteur, with other relevant ESMA groups where its activities touch on the responsibilities of

those groups. The PCC can call for advice from these groups where appropriate within the areas of its responsibilities and in particular with regards to proportionality, equivalence and supervisory independence. Where appropriate, other ESMA groups can also call for advice from the PCC.

9. The PCC should ensure appropriate coordination with EBA and EIOPA on issues of common interest, where needed, e.g. related to NCAs' independence and fitness and propriety exchange system. The form of the coordination can have different forms: ranging from coordination through the Chair and/or Rapporteur, ad-hoc common discussions or joint drafting/project teams on specific deliverables. In particular, the PCC should ensure close coordination with the Advisory Committees on Proportionality of the EBA and EIOPA in order to achieve an outcome that is sufficiently aligned with that of the other ESAs.

## Composition

10. The PCC shall be composed of one person per Board of Supervisors member as principal member and one person as an alternate, each representing that Board member. In addition, a maximum of three persons or a functional email address can be added to the e-mail distribution list. Participants to a PCC meeting from the same NCA shall coordinate their positions in advance of the PCC meeting.
11. Members of the PCC shall also coordinate their positions with those held by persons from the same NCA, who serve as members / alternates of other relevant Standing Committees.
12. Furthermore, representatives of the European Commission shall be appointed as observers to the PCC. Representatives of the EBA and EIOPA can be invited to the meeting of PCC as observers on an ad-hoc basis.
13. Members of the PCC shall have an adequate level of knowledge and skill and the mandate to be able to take a position on the matters discussed.
14. A member of the PCC may, when a topic for discussion in the PCC so requires, be accompanied by an expert from its Competent Authority for that part of the PCC meeting. The PCC member shall announce this intent to the Rapporteur in advance of the meeting.

## Structure and governance

15. The responsibilities of the Chair, rapporteur and members of the PCC are as set out in the Procedure for ESMA groups, (ESMA/2011/BS/236rev2), which also set out the rules concerning ESMA Group's structure, governance and working methods.
16. The PCC may set up permanent working groups or temporary task forces or project team/drafting teams reporting to the PCC if required by the work and in line with the Procedures for ESMA groups.
17. The PCC will meet on a regular basis as required in order to deliver its tasks under ESMA's (multi-)annual work programme.

### **Working methods**

18. The working methods will follow the Procedures for ESMA groups as described in paragraphs 31 and following.

### **Confidentiality**

19. All members of PCC are under the obligation to respect confidentiality as per paragraph 30 of the Procedure for ESMA Groups.

### **Review**

20. The Terms of Reference will be reviewed at least every two years by the Board of Supervisors.