

ESMA – driving forward high-quality supervision and transparency in a single EU capital market

ECMI/CEPS Webinar 20 April 2022

Verena Ross

Chair

European Securities and Markets Authority

Good morning, Ladies and Gentlemen,

Introduction

I am very pleased to take part in this webinar and would like to thank the European Capital Markets Institute (ECMI) and the Centre for European Policy Studies (CEPS) for inviting me to discuss the European Securities and Markets Authority's (ESMA) contribution to further integrating Europe's financial markets.

First things first, let me start with a brief introduction to ESMA. ESMA is an independent European Union (EU) Authority that contributes to the EU's single capital market by enhancing the protection of investors and promoting stable and orderly financial markets.

ESMA started its journey in 2011. Since its establishment, ESMA has been entrusted with ever-growing roles and responsibilities. To meet its objectives, ESMA (1) assesses risks to investors, markets and financial stability, (2) completes the EU Single Rulebook for EU financial markets, (3) promotes supervisory convergence across EU, and (4) directly supervises specific financial entities.

In today's Webinar I would like to reflect on two topics: Firstly, ESMA's Direct Supervision role, what it consists of, how it has evolved over time, what are its key principles, and key challenges

for the future. Secondly, I would like to cover ESMA's role in further driving forward the integration and transparency of the EU financial markets, focusing particularly on the most recent proposals by the Commission on the European Single Access Point (ESAP) and the consolidated tape.

ESMA's direct supervision mandate

ESMA's first supervision mandate was that regarding credit rating agencies (CRAs). In July 2011 ESMA was appointed as the sole supervisor in the EU for CRAs. ESMA was given the power to register CRAs, monitor their activities and make supervisory decisions. As of today, there are 29 CRAs in the EU registered with ESMA located in 13 different member states.¹

Since 2011, ESMA has expanded its supervisory mandate. The European Market Infrastructure Regulation (2012) and the Securities Financing Transaction Regulation (2015) gave ESMA direct responsibilities regarding the registration and supervision of EU-based trade repositories (TRs) as well as the recognition of third country-based TRs. In 2017, the Securitisation Regulation added the mandate of securitisation repositories (SRs), which play a central role in enhancing the transparency of securitisation markets. More recently, data reporting services providers (DRSPs), administrators of EU critical benchmarks, and third country central counterparties (CCPs) were added to ESMA's supervisory mandate.

The entities supervised by ESMA play a fundamental role in the EU's financial markets infrastructure, guaranteeing the transparency and integrity of the EU's financial system. By definition, ESMA's direct supervisory role also enhances the integration of the EU's capital markets, a key objective of the EU.

The growth in ESMA's supervision role is reflected in the number of its supervisory staff that has increased from 18 people in 2012 to 75 staff in 2022, all of them excellent professionals, dedicated to supervision and with deep understanding of their respective sectors and entities and a truly European mindset.

¹ For an overview of CRAs' competitive landscape see ESMA's [Report on CRA market share calculation](#) (2021)



ESMA's supervisory lifecycle and toolbox

Registration phase

Before ESMA's supervision starts, in the so-called pre-application phase, supervisors maintain an active and informal engagement with firms that wish to be registered with ESMA to provide regulated services. Once an application has been submitted, the registration process starts, which ensures that entities operating in the EU meet the minimum standards of the relevant regulatory framework.

At the end of the registration process, the decision on whether the applicant is given registered status is made by ESMA's Board of Supervisors, which is ESMA's top governance body and consists of the heads of the National Competent Authorities (NCAs) from each EU member state.

Ongoing monitoring activities

Upon registration of an entity, ESMA starts monitoring its activities with the intent to ensure that it continues to meet the initial conditions of registration. Monitoring activities cover the assessment of all information provided to ESMA by supervised entities and other stakeholders. ESMA has a structured way to assess the available information, identify supervisory risks, and set priorities in line with its risk-based, data-driven and outcome focused supervisory approach. I will cover the key principles of this approach later in this webinar.

Supervisory and Enforcement Toolbox

Once a risk has been identified, the most effective tool to deal with the matter is selected. ESMA does not use a one-size-fits-all approach, but rather tailors its tool selection to the type of risk at stake, considering the urgency, size and complexity as well as the track record of the supervised entity. Our toolkit includes, like for other supervisors at EU/national level, for example regular information flow and meetings, investigations and on-site inspections, as well as enforcement.

In some instances, ESMA adopts a thematic approach, which creates an opportunity to look at certain issues across entities at an industry-wide level and allows for peer comparisons. In

other cases, where issues seem to be relevant only to one entity, ESMA takes more focused action.

Where ESMA finds serious indications of the possible existence of facts liable to constitute an infringement, the case is referred to an IIO.

ESMA prioritises referrals of cases to an IIO using a risk-based approach. For us, taking enforcement action is not a goal in itself. In practice, we look for example at the impact, seriousness and duration of the alleged infringement; and whether the entity has already put an end to the alleged infringement, among others to prioritise enforcement action.

ESMA's overarching principles towards supervision

Let me now provide a brief overview of the principles underpinning ESMA's direct supervision framework. As mentioned above, we take a risk-based, data-driven and outcome-focused approach to our supervision.

Risk-based supervision

ESMA has developed a risk-based approach, which is in place since the early days of its supervisory role and has been constantly evolving. This framework recognises that trying to achieve full compliance with the entire applicable regulatory framework is not always efficient or effective. Instead, a framework that considers the differences in the relevance of certain regulatory provisions or the differences in the level of risks associated with the activities of supervised entities can be more appropriate.

A key element of the framework is its forward-looking nature, which aims to mitigate risks before they materialise, for example, by trying to proactively change the behaviour of supervised entities.

It is worth noting that the risk-based dimension allows ESMA to constantly assess the impact and effectiveness of its supervisory strategy, and adapt its approach to the evolving nature of the financial market industry.

Data-driven supervision

Let me turn to the second principle underpinning ESMA's supervision approach that is the data-driven supervision.

Data-driven supervision complements risk-based supervision. The systematic use of data in supervision can help to more quickly process and analyse available information, leading to a more efficient and effective identification of risks. Moreover, it allows to quantify any identified risks, measure their impact, and prioritise their monitoring and mitigation.

At this point I would like to share with you some recent successful examples of ESMA's data-driven supervision approach.

In 2021, ESMA conducted an assessment on the way CRAs disclose Environmental, Social, and Governance (ESG) factors in their press releases. The objective of the assessment was to review industry practices concerning ESG disclosures and identify areas for further improvement. To conduct its assessment, ESMA developed a data tool based on natural language processing (NLP) techniques, which allowed the automated and accurate processing of over 64,000 press releases. The use of this data-driven approach unveiled interesting insights, for example, divergences across CRAs disclosure practices and triggered certain supervisory actions.² In the context of today's webinar, it also showed that such automated data tools can facilitate supervisory work and add value to risk-based supervision.

Another example worth mentioning– the development of a new Big Data IT platform to support the new supervisory tasks related to DRSPs. It facilitates processing, storage and supervisory analysis of large volumes of transaction level data and significantly enhances ESMA's supervisory capabilities.

Outcome focused supervision

With this I will now turn to the last principle that characterises ESMA's supervision.

ESMA has adopted an outcome focused supervisory culture. Our risk assessment process works on the basis of realistic and measurable supervisory outcomes. We try to continuously evaluate our supervisory activities. We are constantly asking ourselves whether the selected

² The analysis can be found in ESMA's TRV Article "[Text mining ESG disclosures in rating agency press releases](#)" (2022).

supervisory actions and supervisory tools caused the expected mitigation of supervisory risks or behavioural changes in supervised entities.

ESMA's supervision: successes and challenges

Now let me conclude on the supervision subject by providing some examples that illustrate how ESMA plays its role as a confident and effective supervisor of certain EU firms and infrastructures, as well as highlight some remaining challenges.

Success stories

At ESMA, we are convinced that a lot has been achieved since the early days, when our authority was the first one to be appointed for a supervisory role across the EU. We have put in place a “supervisory framework” that is able to address very diversified risks and that can function across the board within the EU. In our day-to-day activities, we look at supervised market participants as entities operating across EU. Our supervisory dialogue with them is by definition overcoming national interests, while the systematic multicultural engagement is helping to shape a common EU approach to supervision. Also, such framework is conceived to be scalable, and this is what we are currently observing as the recent supervisory mandates are benefitting from well-established practices and procedures.

I believe that the current setup puts ESMA in a good position to stand firm as a credible supervisor, both in normal and stressful times. I believe we have demonstrated that in the recent challenges of the COVID-19 outbreak and the current war in Ukraine

Challenges for future

Nevertheless, the risk-based approach also presents several challenges, and this is the reason why we constantly aim to learn lessons and continue to evolve our supervisory approach. The quantification of risks can be complex, especially when these are associated with more qualitative concepts such as the effectiveness of governance or the empowerment of internal control. In this regard, the “judgment” of experienced supervisors remains a key asset when mitigating such risks, in line with developing our “supervisory culture”.

A second challenge is due to the diversity of the entities we supervise, as they might differ in size and complexity even within the same industry. An immediate implication is that any risk

framework needs to be flexible enough to capture all relevant but sometimes different types of risks, let alone different types of firms and industries.

Finally, as ESMA stands ready to take on further direct supervision mandates (for example in the area of genuine EU infrastructures or third-country entities), we should not forget that the vast majority of day-to-day supervision is undertaken – and will remain – at national level. Therefore, ESMA will also need to continue through its supervisory convergence effort to drive forward high-quality supervision by all national competent authorities across the EU.

Like in direct supervision, it is crucial to strike the right balance between the minimum supervisory coverage across entities and the prioritisation of risks with high impact on financial markets and investors. Having an efficient and effective prioritisation process remains of ultimate importance for ESMA to be able to fulfil its own supervisory mission and ensure that across the EU we are focused in our supervision on the most important risks in the financial markets.

ESMA's role in integrated EU level transparency

Let me move on to the second topic of my remarks today - how ESMA is driving forward transparency in the single EU capital market.

If we want to have a truly integrated European capital market, it is important that data and information on companies and on the trading of financial instruments is available to investors. Unfortunately, at the current time such information is still very fragmented, which means that on the one hand companies – and particular SMEs – are finding it hard to be visible on a cross-European basis and thus attract investors' interest. On the other hand, the information that investors need to take well informed financial decisions is not easy to access, to use or to compare. Two recent sets of legislative proposals from the European Commission, in the implementation of which ESMA will play a key role, are aimed at addressing this issue of fragmented information at the cross-European level. The European Single Access Point and consolidated tapes. I will briefly touch on each of these in turn.

European Single Access Point (ESAP)

Firstly, the European Single Access Point – or ESAP for short.

Nowadays corporates are required to generate large amounts of text and data to fulfil various obligations for disclosure and transparency. Some of this information is being collected by national registers and regulators whereas other information is reported directly to European authorities like ESMA or EBA/EIOPA.

The fragmentation is not just limited to the location of the data but also to the format and the language in which the data is provided. This situation is not only inefficient for the companies providing the data, it also constitutes an important barrier for investors and other users of the data and as such could be detrimental to cross-border investment and thus to companies' ability to raise capital across the EU.

The objective of the ESAP is to create a common source of public and freely available financial and sustainability-related information of EU companies and investment products, regardless of where in the EU they are located or originated while enabling a better use and reuse of this information. In doing so, the aim is to be able to provide more visibility and make funding more accessible for EU companies and save time and resources of investors in finding information, so that investors will be able to make sound and well-informed investment decisions.

In concrete terms, if adopted, ESAP will be a data platform through which an investor will be able to draw public information reported to several national and EU registers. ESAP is not foreseen to create new reporting obligations. Instead, the idea is to gather all the information into a user-friendly web portal available in all EU official languages. The portal will ultimately include automated translation services and search tools. The ESAP is also planned to support an Application Programming Interface (API) and notification services enabling easy access and monitoring.

The aim of ESAP is to include over time all relevant information relating to issuers as well as financial products. However, the implementation will be done in phases, foreseen to start as soon as 1 January 2024 with a gradual expansion which will continue until 2026 and potentially beyond. The first data which will be available will be that which is reported under the Transparency Directive, the Prospective Regulation, the Short Selling Regulation, the Securities Financing Transactions Regulation and the Taxonomy Regulation.

Though the ESAP is a project for the whole European System of Financial Supervision, ESMA is due to play a central role in its development, both in terms of delivering, maintaining, and managing the IT infrastructure as well as in terms of

developing the technical and legal standards. To succeed, we will need to cooperate closely with the other European supervisory authorities, the national competent authorities and the so called Official Appointed Mechanisms (i.e. the national registers in each country). This is a truly European project, with great ambitions, and ESMA stands ready to play its part in making it a reality. It will not be easy, and there are questions about phasing/timing, but it is necessary to achieve the ambitious goal of creating a single platform in Europe that provides information on EU companies and products and is used by investors to gain comparable information in order to take their investment decisions.

Consolidated Tape

Last November, the Commission also issued legislative proposals under the MiFID II/MiFIR review that focus on the importance of consolidating information. This time the focus is on transparency of what is traded in European markets by whom and at what price. Again the aim is to ensure that information is meaningful, comparable, and accessible to all.

When MiFID II/MiFIR came into force in 2018, one of the key focus points was to increase transparency in the European markets. A lot has happened since then and overall the markets are definitely more transparent than they were. Nonetheless, the detailed information on trades in the different asset classes remains fragmented, being published by various trading venues and/or trade repositories. What has not emerged is a 'consolidated tape' – i.e. a place where all the trading that has taken place is published, easily accessible in a single location. In this context, we believe that in order to drive forward towards a genuinely integrated European capital market, the emergence of consolidated tapes in the EU is an indispensable step, and we fully support the political momentum that the European Commission has initiated with its proposals in this regard.

While we are fully aligned with the goal and the ambition, we recently have taken the opportunity to alert the co-legislators to some issues regarding the envisaged timeline for the selection and authorisation processes, inviting them to consider a more carefully choreographed sequence of events. Notably, it does not appear feasible to run the procedures for the four asset classes all in parallel and there would be clear advantages in introducing a staggered approach here. This would provide more time to non-prioritised asset classes (typically derivatives) to address remaining issues, for instance in relation to the format and quality of the transparency reports. It would also allow ESMA to concentrate on the consolidated tapes where there is the most benefit and demand, and learn lessons from their establishment.

Conclusion

These two EU level initiatives (ESAP and consolidated tape) to enhance transparency of information are an important next step in building a true European single financial market, and we at ESMA are excited about playing our role in making them a reality. Together with our drive to enhance quality supervision, whether by ESMA itself, or by the national competent authorities, we will jointly continue to build the EU single capital market step by step.

A genuine single and efficient, but also stable and orderly, financial market is what Europe needs – ever more so in these uncertain and difficult times. It is only with more transparency – providing simple, comparable and easily accessible information to investors - Europe will be able to fully utilise its financial markets to help sustainable growth, to the benefit of companies, citizens and the society as a whole.

I hope these remarks gave you an impression of some of ESMA's key focus points at the current time.

Thank you very much for your attention and I look forward to discussing these and other issues in more depth with you over the next hour.