

Terms of Reference

Senior Supervisors Forum

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 2023-2028¹ 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) enabling sustainable finance, and (ii) facilitating technological innovation and effective use of data.
3. Furthermore, ESMA is committed to supporting the European Commission² in its efforts to build the Savings and Investment Union which include increasing the effectiveness of financial markets, as well as reducing the administrative and reporting burden on regulated entities, while maintaining effective supervision, a high level of financial stability and strong investor protection.
4. ESMA acts within the powers conferred by its establishing Regulation (ESMA Regulation or ESMAR³) and among others within the scope of Articles 1(5)(a),(d),(g), 8(1)a),(aa),(b),(e), 29 and 29a and Recital 40 of the ESMAR. These provisions, inter alia, require promoting sound, effective and consistent supervision, preventing regulatory arbitrage, and enhancing supervisory convergence across the internal market, by establishing high quality common supervisory standards and practices, developing a common supervisory handbook and building a common supervisory culture through a diversified toolkit, including Union Strategic Supervisory Priorities (USSPs).
5. In order to fulfil ESMA's mission and in line with ESMAR, the Board of Supervisors has established the Senior Supervisors Forum, thereafter SSF, 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

6. The SSF contributes to ESMA's mission mainly by (i) promoting risk-based, outcome-focused and data driven supervision and enforcement and fostering its implementation across authorities, (ii) enabling the development of a common supervisory and enforcement culture and of an enforcement and supervisory community in the EU, (iii) developing high quality common supervisory principles,

¹ https://www.esma.europa.eu/sites/default/files/library/esma_strategy_2023-2028.pdf

² See mission letter to Commissioner Albuquerque [link](#) and Council Budapest declaration [link](#)

³ ESMA Regulation No 1095/2010 of the European Parliament and of the Council

criteria, methodologies and practices (iv) overall, facilitating the exchange of best supervisory practices and sharing supervisory knowledge and experience.

7. Through its activities in these areas and related deliverables, the SSF contributes to all ESMA strategic priorities with a view to strengthening supervision of EU financial markets. The SSF's contribution to ESMA strategic priorities is done through its own work and by informing the work of relevant ESMA groups which promote supervisory convergence in their respective areas of action.
8. In particular, the SSF plays an integral role in ensuring a risk-based, outcome focused and data driven approach to supervisory convergence by identifying those supervisory risks of potential highest impact on investor protection, orderly functioning of markets or financial stability that need to be addressed through supervisory convergence work, including coordinated supervision and enhanced supervisory capabilities⁴. Notably, the SSF carries out and presents to the Management Board and Board of Supervisors an annual risk assessment that will be used to prioritise and shape ESMA's supervisory convergence work.⁵ Through this exercise, the SSF develops a common understanding of the key supervisory risks which inform NCAs' supervision and planning in those areas. The SSF then engages in discussions on how these risks are tackled in their supervision and observations therein.
9. Based on the risk assessment exercise, the SSF periodically recommends to the Management Board and Board of Supervisors the establishment of USSPs that NCAs shall take into account when drawing up their work programmes. The SSF develops outcome-focused frameworks to implement the USSPs concertedly across the EU using the most appropriate tools⁶. Considering the mitigation activities taken by NCAs, including those supported by ESMA, and the conclusions and outcomes of such activities, the SSF provides on an annual basis input, direction and advice to the Management Board and Board of Supervisors including on possible follow-up actions needed. The SSF develops and maintains the framework of convergence tools, guiding on the best choice of convergence tools to use based on the risks identified and desired supervisory outcomes.
10. The SSF develops high level supervisory principles and approaches for supervision, notably through a common supervisory Handbook. The handbook aims to act as an important guidance tool to supervisors in carrying out effective and consistent supervision across the EU. The SSF considers the implementation of those principles to ensure their effective application on the ground throughout authorities' supervision and related ESMA' groups' initiatives.
11. The SSF can also provide input, direction and advice on cross-cutting and cross-border supervisory risks that may arise, including emerging risks, and may provide

⁴ The risk identification exercise will capture all sectors covered by ESMA under its convergence mandate. For two sectors, namely corporate reporting and CCPs, ESMA will gather discourse from the relevant Groups with a supervisory focus already in place and hence the risk identification exercise will be conducted through those [CCP SC in relation to CCPs and) Financial Reporting Working Group (FRWG) and Sustainability Reporting Working Group (SRWG) for corporate reporting]. The SSF on market related matters will therefore be informed of the risks identified by the CCP SC in relation to CCPs, thereby ensuring a comprehensive and fulsome overview of risks in the market area. Additionally, for corporate reporting, the risk identification will be conducted on a written basis integrating the risks identified through the FRWG and SRWG process.

⁶ The outcome-focused approach for the USSPs may also be used for other projects in light of ESMA's outcome focused strategic ambition.

views on supervisory initiatives that would require concerted supervision amongst NCAs and on the convergence tools to use for an EU wide response.

12. The SSF provides input, direction and advice to foster a common enforcement culture with the overriding aim of ensuring consistency of outcomes for similar infringements across the EU and legally sound enforcement. In this role, the SSF might inter alia facilitate cross-border enforcement action or cooperation or advise on possible common enforcement priorities. In relation to enforcement, the SSF is responsible for drafting of an annual consolidated report on sanctions and administrative measures imposed in Member States under the relevant EU texts.
13. Overall, the SSF provides senior supervisory input and expertise on common supervisory issues and ensures consistency in addressing horizontal convergence issues. It promotes continuous discussions and development of an effective EU common supervisory and enforcement culture, including through innovative supervisory tools and methods, under a risk-based, outcome focused and data-driven approach to supervision.
14. In addition, the SSF contributes to the objective of simplification and burden reduction when developing its regulatory and supervisory output, and shall be accountable to the Board of Supervisors on the way in which those aims have been addressed in its work.

Cooperation

15. The SSF is expected to interact with the other ESMA groups or Joint Committee groups that remain responsible for addressing matters in their respective areas.
16. The SSF shall ensure close cooperation with all other ESMA groups, in particular in respect to the risks prioritised through the annual risk assessment exercise, the USSPs, the principles and approaches in the common supervisory Handbook, and common supervisory culture, and the experience with convergence tools, as well as any relevant cross-cutting or cross-border convergence topics.
17. Cooperation with the relevant groups could be achieved, among other ways, through:
 - Discussing the outcome of the annual risk identification exercise with the Chair and/or Rapporteur of the relevant group to exchange the risks identified and use of this tool.
 - Discussing the identified USSPs and their outcome-focused framework.
 - Discussing the development and practical implementation on the ground of a common supervisory culture through the principles and approaches in the common supervisory handbook, and related application to supervisory / convergence initiatives.
 - Mutually exchanging input, information or updates in relation to workstreams and matters which are within the SSF and the relevant group's mandate through periodic and ad-hoc exchange of information and inviting chairs or rapporteurs to participate in relevant parts of respective meetings or joint ad-hoc sessions or joint project teams.

Composition

18. The SSF currently has four different compositions reflecting the diverse range and scope of security markets in the EU. Notably there are three sectoral configurations on (i) investment services, (ii) investment management, (iii) market⁷, and (iv) a horizontal configuration on enforcement.
19. For each configuration, the SSF 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 email distribution list. In special circumstances, a representative of an authority other than the ones represented on the Board of Supervisors can be invited to participate as an observer on an ad-hoc or permanent basis. This decision is taken in agreement with the Member or Members of the SSF from the same Member State. Participants at a SSF meeting from the same Member State are expected to coordinate their positions in advance of the meeting.
20. For each sectoral configuration, the SSF is comprised of Heads of supervision within the sectoral area, with significant knowledge and experience of supervising the financial services industry in their Member State. For the enforcement configuration, the SSF is comprised of Heads of Enforcement, or an equivalent function depending on the relevant NCA's organisation. As a general principle, the Board Member shall ensure that the nominee has the appropriate seniority, expertise and experience and may wish to nominate a different participant for the different SSF configurations. It is important that this seniority is kept through the actual SSF meetings.
21. A member of the SSF may, when a topic for discussion in the SSF so requires, be accompanied by an expert from their Competent Authority for that part of the SSF meeting. The SSF member shall announce this intent to the Rapporteur in advance of the meeting.
22. Members of the SSF shall coordinate their positions with those held by persons from the same NCA who serve as Members / alternates of other SSF compositions or ESMA groups. Furthermore, representatives of the European Commission shall be appointed as observers to the SSF. The observers are not allowed to be present during discussion of confidential supervisory cases relating to individual financial market participants.

Governance

23. The responsibilities of the Chair, Rapporteurs⁸ and Members of the SSF are as set out in the 2023 Procedures for ESMA groups, (ESMA22-104-5119), which also set out the rules concerning ESMA Group's structure, governance and working methods.

⁷ Notably market abuse, trading and post-trading excluding CCPs.

⁸ The SSF has one rapporteur for all sectoral configurations, and one rapporteur for the enforcement configuration.

24. The SSF may set up permanent working groups or temporary task forces or project / drafting teams reporting to the SSF, if required by the work and in line with the Procedures for ESMA groups.
25. The SSF has established the following permanent working group with its own terms of reference: the Enforcement Working Group (**EWG**), established to address in particular: work to foster greater supervisory convergence in enforcement matters through projects with tangible outcomes; the provision of a forum for NCAs to share and exchange best practices through thematic real case discussions; proactive engagement with ESMA groups and substructures; and proactive engagement with the European Commission on topics of relevance for the EWG. This working group shall report to the SSF enforcement configuration, with the Terms of Reference [ESMA43-1527801302-1796]. The SSF provides strategic direction to the EWG by identifying priority topics as well as providing a critical review of its output.
26. Each configuration of the SSF will meet at least twice a year of which at least half of the meetings will take place virtually. Notably, the SSF may also decide when needed to meet in a joint setting across all configurations or to meet on an ad hoc basis as needed in order to deliver its tasks under ESMA's (multi-)annual work programme. Meetings of substructures will be organised as necessary to enable the SSF to fulfil its tasks.
27. The Chair may invite the European Commission to attend an SSF meeting or part of a meeting to discuss non-supervisory matters.

Working Methods

28. The working methods will follow the Procedures for ESMA groups including for the use of written procedures for the adoption of documents.
29. In addition, the SSF shall adopt the following approach to the submission of documents:
30. Documents prepared by a subgroup reporting to the SSF concerning issues which are of strategic and / or cross-cutting nature and/or which have been controversial at the level of the subgroup, will be discussed at and agreed upon by the SSF (A-items). Documents from the subgroup concerning issues which are neither strategic nor cross-cutting in nature and which were supported by a large majority of WG Members will be submitted to the SSF for endorsement without discussion (B-items) and will hence not be subject to discussion unless requested by a significant minority of the SSF Members or ESMA staff. Items on the SSF agenda not coming from or discussed in the subgroups reporting to the SSF should generally be classified as A-items.

Confidentiality

31. All Members [and observers] of the SSF are under the obligation to respect confidentiality requirements equivalent to those applicable to ESMA staff and to Board of Supervisors' Members under Article 70 of the ESMA Regulation. It is the responsibility of Board of Supervisors' Members to ensure that their representatives

in the SSF are subject to equivalent professional secrecy rules, in line with Article 70(2a) of the ESMA Regulation.

Review

32. The Terms of Reference will be reviewed every two years by the Board of Supervisors.