

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** Thursday 8 July 2021  
**Time:** 09h00 – 17h30  
**Location:** Conference call  
**Contact:** [frederiek.vermeulen@esma.europa.eu](mailto:frederiek.vermeulen@esma.europa.eu) Tel: +33 1 58 36 43 37

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**1. Adoption of agenda** Decision

The Interim Chair warmly welcomed Natasha Cazenave, who joined ESMA on 1 June 2021 as Executive Director, to her first Board of Supervisors meeting.

**Decision:** The agenda was adopted.

**2. Confirmation of absence of conflict of interests** Decision

**Decision:** The Board endorsed the Interim Chair's statement not to have received any indication by a Board Member of any interest which might be considered prejudicial to her/his independence in relation to any items on the agenda.

**3. Report by ESMA Interim Chair, Executive Director and CCP Supervisory Committee Chair** Oral Discussion

The Interim Chair reported on the:

- Absence of news on the status of the ESMA Chair appointment process and her letter sent to the President of the Council on Economic and Financial Affairs (ECOFIN) in this regard;
- July 2021 Management Board meeting, in particular its discussions on the 2022 Annual Work Programme, ESMA's Peer Review Work Plan for 2022-2023 and on the mandate for the CSD supervision peer review;
- Adoption of the accepted market practice by the Autorité des marchés financiers (AMF) following ESMA's opinion;
- Activities of the Securities and Markets Stakeholder Group (SMSG), in particular its advice on the Money Markets Fund Regulation Review, on the European Commission's targeted consultation on the supervisory convergence and the single rulebook ("ESAs' Review), and on the upcoming regulatory technical standards on taxonomy-related product disclosures;
- Activities of the European Systemic Risk Board (ESRB), in particular the draft opinions on CCP Tiering received, and its discussions on asset repricing, on systemic vulnerabilities in the real estate market and on policy options regarding the systemic vulnerabilities observed in money market funds; and

- Interactions with Members of the European Parliament, in particular ESMA staff's participation in a public hearing hosted by the European Parliament's Special Committee on Artificial Intelligence in a Digital Age (AIDA).

The Executive Director reported on:

- The continued impact of COVID-19 on ESMA's activities, in particular that teleworking remains the rule for ESMA staff until 20 September 2021 after which, subject to the evolution of the situation and the potential guidance from the relevant authorities, ESMA staff will be working at least one day a week from the office;
- ESMA's international activities, in particular ESMA's participation in the recent EU-Canada regulatory dialogue, which covered sustainable finance and digital finance, as well as the status of ESMA's 2021 equivalence monitoring exercise;
- The activities of the Joint Committee, in particular its preparation of the autumn risk report and the 2022 Joint Committee work programme and the process for the renewal of the Board of Appeal;
- The June and July 2021 Financial Services Committee (FSC) meetings, in particular ongoing work on the cost and past performance of retail investment products, the European Commission's work on information exchange between tax and supervisory authorities and on the EU strategy for supervisory data, and a special meeting of the FSC attended by a US delegation which focused on sustainability;
- The European Commission's Retail Investment Strategy, in particular the Commission's ongoing consultation and the relevant pieces of work already conducted by ESMA in this context and informal contacts with the Commission staff with regard to a possible call for advice;
- The proposal to publish a statement to provide more certainty to market participants on the application of the open access provisions for ETDs until the application of the new exemption period.

The Chair of the CCP Supervisory Committee reported on ESMA's activities in relation to anti-procyclicality for central counterparties.

**Conclusion:** The Board discussed the report, in particular the MiFIR open access provisions for exchange traded derivatives (ETDs) and agreed to consider and approve a statement by written procedure.

#### 4. Trends, risks and vulnerabilities report

1) Cover note	Discussion
2) Presentation	Discussion
3) TRV	Discussion
4) Statistical Annex	Discussion

The Chair of the Committee for Economics and Markets Analysis and the Head of the Risks, Analysis and Economics Department presented the trends, risks and vulnerabilities report.

The Board discussed the trends, risks and vulnerabilities report, in particular the:

- State of financial markets following the COVID19-related financial crisis, in particular the economic forecast and the associated level of risk;

- Risks observed, including the interaction between financial markets and the real economy, the risk of overvaluation in real estate and ESMA’s activities in relation to assessing risks relating to green finance, cyber risks and cloud computing;
- Impact of the eligibility criteria under the Eurosystem’s Collateral Assessment Framework (ECAAF) on small credit rating agencies and the market segments covered by them such as commercial paper; and
- Market research conducted on green bonds.

**Conclusion:** The Board discussed the trends, risks and vulnerabilities report. A revised version of the report which will be presented to the Board for adoption by written procedure.

## 5. Taxonomy-related product disclosures

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| 1) Presentation  | Discussion |
| 2) Update report | Discussion |

The Chair of the Joint Committee Sub-Committee on Consumer Protection and Financial Innovation presented the update report on taxonomy-related product disclosures.

The Board discussed the update report, in particular:

- The most appropriate key performance indicator (KPI) to measure non-financial undertakings’ alignment with the taxonomy, bearing in mind transparency, simplicity, feasibility and risks of greenwashing; and
- Whether assets that cannot be assessed for taxonomy alignment, such as sovereign bonds, should be included in the denominator of the chosen key performance indicator, and relevant implications; and
- The elimination of exceptions to the requirement that financial products committing to making sustainable investments provide a detailed description explaining how those sustainable investments do not significantly harm (DNSH) sustainable investment objectives.

**Conclusion:** The Board discussed the update report and expressed a preference for the use of one KPI for all non-financial undertakings’ investments in pre-contractual disclosures but disclose all three in periodic disclosures, and for the inclusion of all investments, including sovereign bonds, in the denominator of the taxonomy-alignment KPI. The final report of the regulatory technical standards on taxonomy-related product disclosures will be presented to the Board for comments and adoption by written procedure shortly.

## 6. ESMA statement on SPACs: prospectus disclosure and investor protection considerations

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| 1) Presentation | Discussion |
| 2) Cover note   | Discussion |
| 3) Statement    | Decision   |

The Chair of the Corporate Finance Standing Committee (CFSC) presented the statement on special purpose acquisition companies (SPACs).

The Board discussed the statement, in particular the:

- Importance of providing guidance in view of the varying level of complexity of SPACs; and
- Balancing investor protection and promoting access to EU capital markets.

**Decision:** The Board adopted the statement subject to drafting amendments which will be shared with the Board by written procedure.

#### **7. Methodology on the review of Tier 2 CCP Recognition**

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| 1) Presentation  | Discussion |
| 2) Cover note  | Discussion |
| 3) Methodology on the review of Tier 2 CCP Recognition | Decision   |

The Independent Member of the CCP Supervisory Committee presented the methodology on the review of Tier 2 CCP recognition.

The Board discussed the methodology, in particular the:

- Importance of the review in light of the volumes of transactions cleared in third countries;
- Sources used for the obtention of different types of data; and
- Definition of relevant indicators.

**Decision:** The Board discussed and adopted the methodology on the review of Tier 2 CCP recognition.

#### **8. Clearing and trading obligations regarding risk-free rates**

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| 1) Presentation       | Discussion |
| 2) Consultation Paper | Decision   |

The Chair of the Committee for Economics and Markets Analysis (CEMA) presented the consultation paper.

**Decision:** The Board adopted the consultation paper on clearing and trading obligations regarding risk-free rates.

#### **9. Data Reporting Service Provider Project update**

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| 1) Presentation | Discussion |
| 2) Report       | Discussion |

The Head of the Data Reporting Unit presented the data reporting service provider project update report.

The Board discussed the report, in particular the:

- Updates on ESMA's preparatory work for the supervision of DRSPs; and
- Supervisory principles on the operational separation of the supervisory activities between national competent authorities and ESMA .

**Decision:** The Board took note of the data reporting service provider update and agreed with the supervisory principles on operational separation.

#### **10. Payment for Order Flow (PFOF)**

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| 1) Presentation | Discussion |
| 2) Cover note   | Discussion |

3) Public Statement

Decision

The Chair of the Investor Protection and Intermediaries Standing Committee (IPISC) presented the public statement.

The Board discussed the statement, in particular Payment for order flow (PFOF) within the context of MiFID II and its provisions on conflict of interest and best execution.

**Decision:** The Board adopted the Statement on Payment for Order Flow (PFOF) subject to a drafting amendment.

**11. Common Supervisory Handbook**

1) Presentation

Discussion

2) Cover note

Discussion

3) Handbook

Decision

The Chair of the Supervisory Convergence Standing Committee presented the common Supervisory Handbook.

The Board discussed the Supervisory Handbook, in particular the basis on which to develop its chapter on the cross-cutting principles for securities markets supervision in the EU.

**Decision:** The Board adopted the common Supervisory Handbook.

**12. Peer Review Mandate - Scrutiny and Approval Procedures of Prospectuses by Competent Authorities**

1) Presentation

Discussion

2) Cover note

Discussion

3) Mandate

Decision

The Chair of the Peer Review Committee on the scrutiny and approval procedures of prospectus by competent authorities presented the mandate.

The Board discussed the mandate, in particular the scope of the peer review and the need to look into the level-playing field of the scrutiny of prospectuses across the EU.

**Decision:** The Board adopted the peer review mandate.

**13. 2022 Annual Work Programme**

1) Presentation

Discussion

2) Cover note

Discussion

3) 2022 Annual Work Programme

Discussion

The Head of the Governance and External Affairs Department presented the new structure for the 2022 Annual Work Programme.

The representative of the European Commission indicated that the European Commission's Opinion on ESMA's 2022-2024 Programming Document will be submitted shortly to ESMA and is expected to contain elements which would also be relevant for the 2022 Annual Work Programme.

**Conclusion:** The Board discussed the draft 2022 Annual Work Programme and agreed with the proposed structure.

#### 14. Trade repositories fees under EMIR and SFTR

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| 1) Cover note  | Information |
| 2) Final Report on Technical Advice to European Commission on the simplification and harmonisation of fees to Trade Repositories under EMIR and SFTR | Decision    |

**Decision:** The Board adopted the final report on technical advice to European Commission on the simplification and harmonisation of fees to Trade Repositories under EMIR and SFTR.

#### 15. Benchmarks Network

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| 1) Benchmarks Network Report | Information |
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**Conclusion:** The Board took note of the Benchmarks Network report.

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| 2) BMR Q&As | Decision |
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**Decision:** The Board adopted the BMR Q&As.

#### 16. CCP Policy Committee

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| 1) CCP Policy Committee Report | Information |
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**Conclusion:** The Board took note of the CCP Policy Committee Report.

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| 2) Consultation Paper on RTS on Second Skin In the Game | Decision |
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**Decision:** The Board adopted the consultation paper on regulatory technical standards on second skin in the game.

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| 3) Consultation Paper on RTS on Recompense | Decision |
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**Decision:** The Board adopted the consultation paper on regulatory technical standards on recompense.

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| 4) Consultation Papers on recovery plans         |          |
| o Consultation Paper on RTS on factors           | Decision |
| o Consultation Paper on Guidelines on scenarios  | Decision |
| o Consultation Paper on Guidelines on indicators | Decision |

**Decision:** The Board adopted the consultation papers on recovery plans.

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| 5) Consultation Paper on Guidelines on early intervention measures | Decision |
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**Decision:** The Board adopted the consultation paper on guidelines on early intervention measures.

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| 6) Consultation Paper on Guidelines on restrictions on dividends | Decision |
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**Decision:** The Board adopted the consultation paper on guidelines restrictions on dividends.

#### 17. Corporate Finance Standing Committee

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| 1) CFSC Report | Information |
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**Conclusion:** The Board took note of the CFSC report.

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| 2) Prospectus Q&As | Decision |
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**Decision:** The Board adopted the Prospectus Q&As.

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| 3) Report on EEA Prospectus Activity and Sanctions in 2020 | Decision |
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**Decision:** The Board adopted the report on EEA Prospectus activity and sanctions in 2020.

#### 18. Corporate Reporting Standing Committee

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| 1) CRSC Report | Information |
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**Conclusion:** The Board took note of the CRSC report.

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| 2) 2021 ESEF Reporting Manual | Decision |
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**Decision:** The Board adopted the 2021 ESEF reporting manual.

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| 3) 25th Extract of selected enforcement decisions | Decision |
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**Decision:** The Board adopted the 25<sup>th</sup> extract of selected enforcement decisions.

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| 4) Letter to the IFRS Foundation on changes to the Constitution related to Sustainability Standard-Setting | Decision |
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The Interim Chair presented the letter to the IFRS Foundation on changes to the constitution related to sustainability standard setting, in particular the European Commission representative's proposed amendment.

The Board discussed the letter, in particular:

- The mission of the International Sustainability Standards Board (ISSB);
- Whether and how the funding of the Foundation's activities should be addressed; and
- The European Commission's recent proposal on the Corporate Sustainability Reporting Directive (CSRD) and its double materiality reporting perspective for sustainability reporting standards.

**Decision:** The Board discussed the letter. A revised version will be presented for adoption by written procedure.

#### 19. Data Standing Committee

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| 1) DSC Report | Information |
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**Conclusion:** The Board took note of the DSC report.

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| 2) Update to FIRDS data quality methodology | Decision |
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1. Revised FIRDS Analytical tests
2. Revised FIRDS Technical tests
3. New FIRDS template analytical results

**Decision:** The Board adopted the updated to the FIRDS data quality methodology.

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| 3) Consultation Paper on Guidelines for reporting under EMIR Refit | Decision |
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**Decision:** The Board adopted the consultation paper on guidelines for reporting under EMIR Refit.

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| 4) Validation rules under EMIR Refit | Decision |
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**Decision:** The Board adopted the validation rules under EMIR Refit.

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| 5) MiFIR Q&A | Decision |
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**Decision:** The Board adopted the MiFIR Q&A.

## 20. Investment Management Standing Committee

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| 1) IMSC Report | Information |
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**Conclusion:** The Board took note of the IMSC report.

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| 2) Annual report on UCITS sanctions | Decision |
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**Decision:** The Board adopted the annual report on UCITS sanctions.

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| 3) Annual report on AIFMD sanctions | Decision |
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**Decision:** The Board adopted the annual report on AIFMD sanctions.

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| 4) AIFMD Q&As | Decision |
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**Decision:** The Board adopted the AIFMD Q&As.

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| 5) UCITS Q&As | Decision |
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**Decision:** The Board adopted the UCITS Q&As.

## 21. Investor Protection and Intermediaries Standing Committee

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| 1) IPISC Report | Information |
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**Conclusion:** The Board took note of the IPISC report.

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| 2) Consultation Paper on review of Guidelines on remuneration of staff | Decision |
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**Decision:** The Board adopted the consultation paper on the review of guidelines on remuneration.

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| 3) Public Statement on the common supervisory action on suitability | Decision |
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**Decision:** The Board adopted the public statement on the common supervisory action on suitability.

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| 4) Letter to the European Commission on crowdfunding | Decision |
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**Decision:** The Board approved the letter to the European Commission on crowdfunding.

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| 5) Report on sanctions and measures imposed under MiFID II in 2020 | Decision |
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**Decision:** The Board adopted the report on sanctions and measures imposed under MiFID II in 2020.

## 22. Market Integrity Standing Committee

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| 1) MISC Report | Information |
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**Conclusion:** The Board took note of the MISC Report.

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| 2) Consultation Paper on interactions with prudential supervision and review of MAR Guidelines on delayed disclosure of inside information | Decision |
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The Chair of the Market Integrity Standing Committee (MISC) presented the consultation paper on interactions with prudential supervision and review of MAR Guidelines on delayed disclosure of inside information.

The Board discussed the consultation paper, in particular the cases currently listed as those in which Pillar 2 Capital Guidance (P2G) may not be price sensitive and the possibility of consulting stakeholders on any further cases in which P2G might not be price sensitive.

**Decision:** The Board adopted the consultation paper whilst agreeing to add specific questions seeking input from market participants. The revised consultation paper will be shared with the Board of Supervisors by written procedure.

## 23. Post Trading Standing Committee

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| 1) PTSC Report | Information |
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**Conclusion:** The Board took note of the PTSC report.

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| 2) Report on supervisory measures and penalties | Decision |
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**Decision:** The Board adopted the report on supervisory measures and penalties.

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| 3) Report on the provision of banking-type ancillary services | Decision |
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**Decision:** The Board adopted the report on the provision of banking-type ancillary services.

## 24. Secondary Markets Standing Committee

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| 1) SMSC report | Information |
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**Conclusion:** The Board took note of the SMSC Report.

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| 2) Consultation Paper on review of RTS on transparency requirements under MiFIR | Decision |
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**Decision:** The Board adopted the consultation paper on the review of regulatory technical standards on transparency requirements under MiFIR.

**25. Activity-based costing and fee management - 2020 report**

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| 1) Cover note | Information |
| 2) Report     | Information |

**Conclusion:** The Board took note of the 2020 report on activity-based costing and fee management.

**26. IT implications of Regulation on Cross-Border Distribution of Investment Funds**

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| 1) Note | Information |
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**Conclusion:** The Board took note of the note on the IT implications of the regulation on the cross-border distribution of investment funds.

**27. A.O.B**

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## Participants list

### Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Vojtech Belling	
Denmark	Karen Dorte Abelskov	
Germany	Thorsten Pötzch	
Estonia	Kilvar Kessler (alternate)	
Ireland	Derville Rowland	
Greece	Vasiliki Lazarakou	
Spain	Montserrat Martinez	
France	Robert Ophèle	
Croatia	Ante Žigman	
Italy	Carmine di Noia (alternate)	
Cyprus	Demetra Kalogerou	
Latvia	Girts Ruda (alternate)	
Lithuania	Ruta Merkeviciute	

Luxembourg	Claude Marx	
Hungary	Gergő Szeniczey	
Malta	Christopher Butigieg	
Netherlands	Jos Heuvelman (alternate)	
Austria	Eduard Mueller	
Poland	Agata Gawin (alternate)	
Portugal	Gabriela Figueiredo Dias	
Romania	Oana Stefanoiu (alternate)	
Slovenia	Sabina Bester (alternate)	
Slovakia	Peter Tkáč	
Finland	Armi Taipale (alternate)	
Sweden	Malin Omberg (alternate)	
Interim Chair	Anneli Tuominen	

#### **Non-voting members**

European Commission	Ugo Bassi	
EBA	Philippe Allard (alternate)	

EIOPA	Kai Kosik (alternate)	
ESRB	Francesco Mazzaferro	
Iceland	Aðalsteinn Eymundsson (alternate)	
Liechtenstein	Reto Degen (alternate)	
Norway	Geir Holen (alternate)	
EFTA Surveillance Authority	Marco Uccelli (alternate)	

## ESMA

Executive Director	Natasha Cazenave
Summary of Conclusions	Frederiek Vermeulen Laura Weil
Chair of the CCP Supervisory Committee	Klaus Löber
Chair of the Committee for Economics and Markets Analysis	Carmine di Noia
Chair of the Corporate Finance Standing Committee	Benoit de Juvigny
Chair of the Investor Protection and Intermediaries Standing Committee	Rodrigo Buenaventura
Chair of the Market Integrity Standing Committee	Rodrigo Buenaventura
Chair of the Supervisory Convergence Standing Committee	Jos Heuvelman

Chair of the Joint Committee Sub-Committee on Consumer Protection and Financial Innovation	Gráinne McEvoy
Independent Member of the CCP Supervisory Committee	Froukelien Wendt
Head of the Governance and External Affairs Department	Roxana de Carvalho
Head of the Risk, Analysis and Economics Department	Steffen Kern
Chair of the Prospectus Peer Review Committee	Isabelle Grauer-Gaynor

Done at Paris on 10 September 2021

Anneli Tuominen

Interim Chair

For the Board of Supervisors