

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** 27 September 2017  
**Time:** 09h00 – 17h00  
**Location:** ESMA, rue de Grenelle 103, 75007 Paris, France  
**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

**Decision:** The agenda was adopted.

**2. Summary of conclusions**

1) 5 July 2017 Decision

**Decision:** The summary of conclusions of the 5 July meeting was adopted.

**3. Oral Report by Chair and Executive Director** Oral Information

The Chair reported on:

- His meetings with European Commission Vice-Presidents Valdis Dombrovskis and Jyrki Katainen, mainly to discuss the European Commission's review of the operations of the European Supervisory Authorities (ESAs) and the review of the European Market Infrastructure Regulation (EMIR);
- His meeting with European Commissioner Jourova, mainly to discuss the implementation of the Data Protection Regulation, the impact of the United Kingdom's withdrawal from the European Union (EU) and the prudential treatment of investment firms;
- His meetings with Members of the European Parliament;
- His participation in the informal meeting of the Economic and Financial Council (ECOFIN);
- The activities of the European Systemic Risk Board (ESRB) and in particular the research on EU derivatives markets and the ESRB's annual conference;
- The European Central Banks's announcement to provide a European overnight rate on unsecured interbank lending and the working group that will be created in that context;
- The September 2017 meeting of the Management Board;
- The activities of the Securities and Markets Stakeholder Group (SMSG);
- The activities of the Joint Committee, in particular the adoption of the 2018 Joint Committee Work Programme and the technical advice provided to the European Commission on targeting specific environment and social objectives; and

- The upcoming election to appoint a Member of the Enforcement and Validation Panel.

The Executive Director reported on the :

- Discussions that took place at the September 2017 meeting of the Financial Services Committee (FSC), in particular on (i) leverage and liquidity in the area of asset management and (ii) the work conducted by the High Level Expert Group on Sustainable Finance;
- Conference ESMA is organising on 17 October 2017; and
- Appointment of Fabrizio Planta as Head of Markets Department.

### **3bis. Review of the operations of the European Supervisory Authorities**

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|---------------------------------|------------|
| 1) Cover Note                   | Discussion |
| 2) European Commission proposal | Discussion |

The European Commission representative presented the European Commission's proposal following the review of the operations of the ESAs.

The Board discussed the European Commission's proposal, in particular:

- The interaction with the Commission's EMIR 2.2 proposals, in particular in relation to the governance framework;
- The independence of national competent authorities whilst continuing promoting supervisory convergence;
- ESMA's potential role versus retail investors;
- Whether ESMA should be granted direct supervisory powers for certain market participants;
- The practical implementation of the proposed ESMA supervision of certain types of prospectuses; and
- The role ESMA could play in relation to data collection and consistency.

The Executive Director informed the Board that ESMA staff will discuss the budget impact of the Commission's proposal with the Management Board.

**Conclusion:** The Board exchanged views on the European Commission's proposal following the review of the operations of the ESAs. It was agreed that an explanatory note on the proposed supervision of certain prospectuses by ESMA will be prepared for the November 2017 Board of Supervisors meeting.

## **4. United Kingdom Leaving the European Union**

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| 1) UK withdrawal – potential cliff effects | Discussion |
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The Executive Director presented the potential cliff effects associated with the UK's withdrawal from the EU.

The Board discussed the cliff effects, in particular:

- The need for market participants to take the necessary mitigation measures and for national competent authorities to stimulate market participants doing so;
- The importance of ensuring consistency between national competent authorities in relation to, among others, reverse solicitation;
- The co-operation with the UK FCA following the UK's withdrawal and how to prepare for that in line with the ongoing negotiations between the EU and the UK;
- To inform retail investors of the consequences of the UK's withdrawal; and
- The potential impact on private contracts.

**Decision:** The Board agreed with the proposed work plan and will be informed on its execution by ESMA staff.

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| 2) Update on the Supervision Coordination Network | Discussion |
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**Conclusion:** The Board took note of the update on the activities of the Supervision Coordination Network.

#### **5. Impact of the Data Protection Regulation on Cooperation with third countries**

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| 1) Issues Note                      | Discussion |
| 2) Draft Administrative arrangement | Discussion |

The Head of Legal, Convergence and Enforcement presented the note and the draft administrative arrangement.

The Board discussed the draft administrative arrangement, in particular the:

- Assessment of equivalence with data protection regimes in place in third countries;
- Interaction with the Multilateral Memorandum of Understanding put in place by the International Organization for Securities Commissions (IOSCO); and
- Scope of information exchange.

**Conclusion:** The Board took note of the draft administrative arrangement and further steps taken forward in cooperation with IOSCO.

#### **6. Waiver and Position Limit Opinions**

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| 1) Note on Contingency Planning | Decision |
| 2) Public statement             | Decision |

Elisabeth Roegele presented the note on contingency planning and the proposed statement.

The Board discussed the contingency planning on waivers and position limits, in particular the:

- De-prioritisation of the opinions on non-equity pre-transparency waivers to 2018; and
- Importance of good co-operation between national competent authorities and ESMA throughout the process.

**Decision:** The Board endorsed the contingency planning and agreed with the statement informing market participants for publication on ESMA's website.

#### **7. Systematic Internalizers obligation on quotes availability**

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| 1) Note on Q&A on systematic internalizers on obligation on quotes availability | Decision |
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Elisabeth Roegele presented the Q&A.

The Board discussed the Q&A, in particular whether systematic internalizers may limit the transactions they undertake to enter into a transaction.

**Decision:** The Board decided that systematic internalizers may limit the number of transactions they undertake to enter into with clients pursuant any given quote to one transaction.

	Should not limit	May limit	Abstention
Klaus Kumpfmüller (AT)	X		
Jean-Paul Servais (BE)		X	
Karina Karaivanova (BG)	X		
Demetra Kalogirou (CY)		X	
Pavel Hollmann (CZ)	X		
Birgitte Sogaard Holm (DK)	X		
Andre Nõmm (EE)	X		
Anneli Tuominen (SU)	X		
Roberth Ophele (FR)	X		
Silvana Bozic (HR)	X		
Elisabeth Roegele (DE)		X	
Charalampos Gotsis (EL)		X	
Krisztian Csaky (HU)		X	
Deville Rowland (IE)		X	
Giuseppe Vegas (IT)		X	
Gunta Razane (LV)	X		
Vaidas Cibas (LT)		X	
Claude Marx (LU)		X	
Christopher Buttigieg (MT)		X	
Femke de Vries (NL)		X	
Ilona Pieczynska-Czerny (PL)		X	
Gabriela Figueiredo Dias (PT)		X	

Mircea Ursache (RO)	X		
Tomas Ambra (SK)		X	
Milos Cas (SI)	X		
Sebastian Albella (ES)		X	
Sophie Degenne (SE)		X	
Andrew Bailey (UK)		X	

## 8. Trading obligation derivatives

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| 1) Cover Note  | Information |
| 2) Final Report on RTS on trading obligation derivatives | Decision    |
| 3) RTS on Trading obligation derivatives                 | Decision    |

Elisabeth Roegele presented the Final Report on regulatory technical standards on the trading obligation for derivatives.

The Board discussed the Final Report, in particular whether the trading obligation will apply from the start of the MIFID II framework.

The European Commission representative underlined the Commission's commitment to apply the trading obligation from 3 January 2018.

**Decision:** The Board adopted the Final Report on the regulatory technical standards on the trading obligation.

## 9. MAR Accepted Market Practices

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| 1) Cover Note  | Discussion |
| 2) Opinion on the CMVM accepted market practice on liquidity contracts | Decision   |

**Decision:** The Board adopted the opinion on the CMVM accepted market practice on liquidity contracts.

## 10. RegTech and Innovation Facilitators

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| 1) Presentation                    | Discussion |
| 2) Note on RegTech                 | Discussion |
| 3) Note on innovation facilitators | Discussion |

Jean-Paul Servais presented ongoing developments and ESMA's related activities in relation to Regtech and innovation facilitators.

The Board discussed the work in relation to RegTech and innovation facilitators, in particular:

- The need to exchange best practices among national competent authorities;
- Whether certain focus areas should be identified;
- The increasing number of Initial Coin Offerings; and
- The use of so called sandboxes and the legal framework in which they operate.

**Conclusion:** The Board took note of the ongoing activities in relation to RegTech and innovation facilitators. It was agreed that ESMA should facilitate the exchange of (best) practices between national competent authorities. The Board instructed the Financial Innovation Standing Committee (FISC) to consider the increasing number of Initial Coin Offerings and whether further ESMA initiatives are needed in that context.

## 11. AIFMD data collection

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| 1) Issues Note | Discussion |
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The Head of Risk Analysis and Economics presented the note on the AIFMD data collection.

The Board discussed the note, in particular

- The strong commitment to data quality by ESMA and all national competent authorities; and
- Whether ESMA should develop further guidance.

**Decision:** The Board underlined the importance and priority of collecting AIFMD data for ESMA and national competent authorities. The Board will be updated on progress in Q1 2018.

## 12. AIFMD Q&A

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| 1) Cover Note | Discussion |
| 2) AIFMD Q&A  | Decision   |

Martin Moloney presented the cover note and related Q&A.

The Board discussed the Q&A, in particular:

- Whether any disclosure requirements should also apply to the staff of the delegate of an AIFM to whom portfolio management or risk management activities have been delegated;
- The instrument ESMA should use to provide guidance.

**Decision:** The Board adopted the Q&As. Claude Marx (LU) disagreed. Robert Ophele (FR) and Tomas Ambra (SK) abstained.

## 13. 2018 Annual Work Programme

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| 1) Cover Note                 | Discussion |
| 2) 2018 Annual Work Programme | Decision   |

The Executive Director presented the 2018 Annual Work Programme and the position of the Management Board.

The Board discussed the Annual Work Programme, in particular:

- The continued strong commitment to promote supervisory convergence and in particular in relation to the implementation of MIFID II;
- The exchange of data between home and host Member State supervisors in relation to investment firms; and
- Whether, and if so, how ESMA's objectives could be more outcome driven.

The Executive Director noted the ongoing work in relation (in the Operational Working Group of the Investor Protection and Intermediaries Standing Committee) to the exchange of data on investment firms between national competent authorities.

**Decision:** The Board adopted the 2018 Annual Work Programme subject to drafting changes. The final version will be shared with the Board for information.

#### **14. 2019 priorities and budget**

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|----------------------|------------|
| 1) Orientation paper | Discussion |
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The Executive Director presented the orientation paper on the 2019 priorities and budget.

The Board discussed the paper, in particular:

- The impact of the European Commission's proposals following the review of the operations of the European Supervisory Authorities on the 2019 budget;
- Whether human resources should be re-allocated between ESMA's activities; and
- The impact of the Securities Financing Transactions Regulation (SFTR).

**Conclusion:** The Board discussed the orientation paper. ESMA staff will develop a draft 2019 budget on that basis.

#### **15. Peer Review on ETF Guidelines**

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| 1) Mandate for the peer review on ETF Guidelines | Decision |
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**Decision:** The Board adopted the mandate for the peer review on ETF Guidelines.

#### **16. Commodity Derivatives Task Force**

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| 1) CDTF report | Information |
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**Decision:** The Board took note of the report.

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

#### **17. 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 report.

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

#### **18. Investment Management Standing Committee**

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

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| 2) AIFMD Q&A | Decision |
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**Decision:** The Board adopted the Q&A.

- 3) UCITS Q&A Decision

**Decision:** The Board adopted the Q&A.

#### 19. Market Data Standing Committee

- 1) MDSC Report Information

**Conclusion:** The Board took note of the report.

- 2) MiFIR Q&As on reporting Decision

**Decision:** The Board adopted the Q&As.

#### 20. Market Integrity Standing Committee

- 1) MISC Report Information

**Decision:** The Board took note of the report.

- 2) Consultation paper on guidelines on Benchmarks Decision

**Decision:** The Board adopted the consultation paper on guidelines on Benchmarks.

- 3) Benchmark Regulation Q&As Decision

**Decision:** The Board adopted the Q&As.

- 4) MAR Q&A Decision

**Decision:** The Board adopted the Q&A.

#### 21. Post-Trading Standing Committee

- 1) PTSC Report Information

**Conclusion:** The Board took note of the report.

- 2) CSDR Q&As Decision

**Decision:** The Board adopted the Q&As.

- 3) EMIR Q&As Decision

**Decision:** The Board adopted the Q&As.

- 4) MiFIR Q&As Decision

**Decision:** The Board adopted the Q&As.

#### 22. Secondary Markets Standing Committee

- 1) SMSC Report Information

**Conclusion:** The Board took note of the report.



- 2) MIFID II Q&As

Decision

**Decision:** The Board adopted the Q&As.

### **23. Supervisory Convergence Standing Committee**

- 1) SCSC report

Information

**Conclusion:** The Board took note of the report.

### **24. Memorandum of Understanding with FINMA (CH)**

- 1) Cover Note
- 2) ESMA-FINMA Memorandum of Understanding

Information

Decision

**Decision:** The Board adopted the Memorandum of Understanding with FINMA.

### **25. A.O.B.**

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## Participants list

### Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine Van Cauwenberge
Bulgaria	Karina Karaivanova	
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	Anne Bruun
Germany	Elisabeth Roegele	Marcus Hein Hannelore Lausch
Estonia	Andre Nomm	
Ireland	Derville Rowland	Martin Moloney Cian Murphy
Greece	Charalampos Gotsis	Anastasia Maltoudi
Spain	Sebastian Albella	Ana Martinez-Pina Antonio Mas
France	Robert Ophele	Benoit de Juvigny Françoise Buisson Laurène Duffa
Croatia	Silvana Bozic (alternate)	
Italy	Giuseppe Vegas	Nicoletta Giusto

Cyprus	Demetra Kalogerou	Andreas Andreou
Latvia	Gunta Razane	
Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Claude Marx	Françoise Kauthen
Hungary	Krisztian Csaky (alternate)	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Femke de Vries (alternate)	Ellen Boelema
Austria	Andrea Kuras-Goldman (alternate)	
Poland	Ilona Pieczyńska-Czerny (alternate)	Joanna Kott
Portugal	Gabriela Figueiredo Dias	Rita Oliveira Pinto João Gião
Romania	Mircea Ursache (alternate)	Raluca Tariuc
Slovenia	Milos Cas	Sabina Bešter
Slovakia	Tomas Ambra (alternate)	Adam Nadasky
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Sophie Degenne (alternate)	Oskar Ode
United Kingdom	Andrew Bailey	Cristina Frazer

### Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Tilman Lueder	Peter Ohrlander
EBA	Adam Farkas	
EIOPA	Kai Kosik	
ESRB	Francesco Mazzaferro	
Iceland	Sigurveig Guðmundsdóttir (alternate)	
Liechtenstein	Reto Degen (alternate)	
Norway	Anne Merethe Bellamy	Marianne Elind Skaane
EFTA Surveillance Authority	Frank Buchel	Per Christian Baeroe

### ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Risk Analysis and Economics Department	Steffen Kern
Head of Legal, Convergence and Enforcement Department	Sophie Vuarlot-Dignac



Head of Markets Department	Fabrizio Planta
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Done at Paris on 7 November 2017

Steven Maijor

For the Board of Supervisors