

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 11 July 2019
Time: 8h30 – 17h00
Location: ESMA, rue de Grenelle 103, 75007 Paris, France
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda Decision

Decision: The agenda was adopted.

2. Oral Report by Chair and Executive Director Information

The Chair reported on:

- The activities of the European Systemic Risk Board (ESRB), in particular on the upcoming report by the ESRB Expert Group on the macroprudential use of margins and haircuts;
- The activities of the Joint Committee, in particular the successful Joint ESAs Consumer Protection Day which took place in Dublin;
- The fact that the Belgian FSMA had authorised EURIBOR (by the European Money Markets Institute) under the Benchmark Regulation and that EURIBOR has shifted to the new Hybrid Methodology;
- ESMA's activities related to the mandate it received on undue pressure leading to short-termism, in particular the public survey launched by ESMA;
- His meetings with US authorities and stakeholders, in particular his participation in the CFTC Market Advisory Committee (MRAC); and
- The July 2019 Management Board, in particular the discussion on the EMIR and ESMA review, ESMA's strategic orientation and the 2020 work programme.

The Executive Director reported on:

- The meetings of the Financial Services Committee (FSC), in particular the quarterly risk update provided by ESMA and ESMA's presentation on its work related to the implementation of EMIR 2.2;
- The list maintained and updated by ESMA staff on the competent authorities for each of the EU Acts under ESMA's remit; and
- ESMA's activities in relation to preparing its future premises and the related move.

3. Trends, Risks and Vulnerabilities

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| 1) Cover Note | Discussion |
| 2) TRV Report (including Risk Dashboard) | Discussion |
| 3) Statistical Annex | Discussion |
| 4) Presentation | Discussion |

Carmine Di Noia and the Head of Risk Assessment and Economics Department presented the Trends, Risks and Vulnerabilities report and accompanying documents.

The Board discussed the note, in particular the

- Rising credit quality concerns in relation to corporate bonds;
- General outlook for the asset management industry and the work ESMA is conducting in relation to closet indexing; and
- Involvement of national competent authorities in developing the Report.

Conclusion: The Board discussed the Trends, Risks and Vulnerabilities Report which will be further developed by ESMA staff and presented to the Board of Supervisors for adoption by written procedure.

4. Strategic Orientation

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| 1) Presentation | Discussion |
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The Executive Director presented the slides on the revised strategic orientation 2020-2021.

The Board discussed the strategic orientation for ESMA, in particular

- Endorsing ESMA's current mission, objectives and four activities and the Board's commitment to the timely implementation of the revised ESMA Regulation;
- The prominence to be given to investor protection and whether further initiatives are needed by ESMA in that respect;
- ESMA's focus on fostering supervisory convergence, in particular in relation to cross-border business and by adopting a risk-based priority-setting and an outcome-based approach;
- How ESMA could contribute to the development of a capital markets union, to promote sustainable finance and to ensure proportionality; and
- The need for ESMA to enhance its activities in relation to financial technology and digitalisation by actively monitoring developments and adapting the regulatory framework where needed, including regulatory technology;

Conclusion: The Board discussed the strategic orientation which will be further developed by ESMA staff and presented to the October 2019 Board of Supervisors.

5. Impact new legislative files

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| 1) ESA review | |
| ○ Implementation | Discussion |
| ○ Governance | Discussion |

The Head of Resources Department presented the slide deck on the implementation of the revised ESMA Regulation.

The Board discussed the presentation, in particular how the Board would like to steer and monitor the implementation of the ESA review.

The Chair presented the slide deck on the potential impact on the governance bodies following the revised ESMA Regulation.

The Board discussed the presentation, in particular the:

- Role of the Management Board vis-à-vis the Board of Supervisors, including whether the Management Board should provide an opinion on certain decisions to be taken by the Board of Supervisors; and
- Impact of the ESA and EMIR review on ESMA's internal committee structure.

Conclusion: The Board took note of the project organisation and will provide strategic steer on the implementation of the revised ESMA Regulation. An additional meeting by conference call will be set-up prior to the October 2019 meeting to discuss among others the governance impact. Further additional conference calls will be scheduled where relevant.

2) EMIR 2.2 Governance Discussion

The Chair presented the slide deck on the EMIR 2.2 governance.

The Board discussed the presentation, in particular the:

- Need to ensure the timely set-up of the CCP Supervisory Committee, including the recruitment of the Chair and the Independent Members; and
- The impact on the mandate of the Post-Trading Standing Committee;

Conclusion: The Board endorsed the suggested way forward on the implementation of EMIR 2.2 which will be further discussed with the Board of Supervisors.

3) Prolonging mandate of Standing Committee Chairs Decision

Decision: The Board agreed to prolong the mandate of the Standing Committee Chairs until January 2020.

4) Impact of the new mandates on 2019 resources, on key elements of the 2020-2022 Programming Document and on 2020 high-level IT planning Decision

The Head of Resources Department presented the impact of the new mandate on the 2019 resources, on key elements of the 2020-2022 Programming Document and on 2020 high-level IT-planning.

The Board discussed the resource impact, in particular the:

- Funding arrangements in EMIR 2.2; and
- Development of IT projects.

Decision: The Board approved the amendment of the 2019 budget and endorsed the proposed impact and implications of the new mandates on 2019 and also the 2020-2022 Programming Document, including on 2020 high-level IT planning. Tomas Ambra (SK) abstained.

6. Consultation Paper on market data costs and consolidated tape

1) Cover Note Discussion

2) Consultation Paper on market data costs and consolidated tape Decision

Elisabeth Roegele presented the consultation paper on market data costs and consolidated tape.

The Board discussed the consultation paper, in particular the interaction with European Commission's initiatives in this area.

Decision: The Board adopted the consultation paper on market data costs and consolidated tape. It was highlighted that the ESMA staff will continue to liaise with the European Commission Services to align initiatives.

7. UK's withdrawal from the European Union

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| 1) Update Note on Brexit related activities | Discussion |
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The Executive Director presented the update note on Brexit related activities.

The Board discussed the note, in particular:

- Whether further work is needed in relation to the trading obligation for derivatives;
- The contributions by national authorities to the Supervision Coordination Network (SCN); and
- The fact that market participants should continue preparing for a no-deal scenario.

The Chair informed the Board that ESMA is closely co-operating with the European Commission Services regarding the recognition of UK CCPs in case the United Kingdom would leave the Union without a deal, taking into account that the current equivalence decision expires by the end of March 2020.

Conclusion: The Board instructed the Secondary Markets Standing Committee (SMSC) to consider whether further work on the trading obligation for derivatives is needed.

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| 2) Memoranda of Understanding | |
| o Cover Note | Discussion |
| o MMoU on recognition of EU CCPs operating in the UK | Discussion |

Conclusion: The Board endorsed the suggested MMoU on recognition of EEU CCPs in the UK which will be presented to the Board of Supervisors for adoption after discussion with the UK parties.

8. Voluntary Supervisory Colleges – Pilot Projects

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| 1) Cover Note | Discussion |
| 2) Model Cooperation Arrangement | Discussion |
| 3) Legal Advice on Information Sharing | Information |
| 4) Pilot Projects Mapping Exercise | Information |

The Head of Legal, Convergence and Enforcement discussed the Voluntary Supervisory Colleges.

The Board discussed the note, in particular

- The importance of sharing information among national competent authorities within the current legal framework; and
- Whether in certain cases prudential supervisors including the Single Supervisory Mechanism (SSM) should participate in the colleges as well.

Conclusion: The Board endorsed the setting up voluntary supervisory colleges.

9. Review of the PRIIPS Delegated Regulation

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| 1) Presentation | Discussion |
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The Head of Issuers and Investors Department presented the update on the PRIIPS-related activities of the European Supervisory Authorities.

The Board discussed the content of the PRIIPS delegated Regulation review, in particular

- Whether the European Commission should consider legislative proposals to clarify the scope of PRIIPS and whether further clarification can be provided by ESMA;
- The interaction with the review of the Delegated Regulation;
- The consumer testing conducted by the European Commission Services; and
- The impact of the PRIIPS KID on the access to bonds for retail investors.

Conclusion: The Board took note of the suggested way forward, including the consultation.

10. Stress simulation for investment funds

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| 1) Cover Note | Discussion |
| 2) Report | Decision |
| 3) Presentation | Decision |

Robert Ophele (FR) and Andrew Bailey (UK) updated the Board of Supervisors on the activities in relation to the H20 and Woodford cases.

The Head of Risk Analysis and Economics Department presented the Report on stress stimulation for investment funds.

The Board discussed the report, in particular

- How to use the stress simulation for micro-supervision; and
- Whether the stress simulation should be further extended to other entities.

Decision: The Board adopted the Report on stress simulation for investment funds. The Board instructed the Investment Management Standing Committee (IMSC) to consider whether there are any lessons learnt from the H20 and Woodford cases, in particular in relation to co-operation between national competent authorities.

11. ECB European Distribution of Debt Instruments

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| 1) Issues Note | Discussion |
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Robert Ophele presented the note on the European Central Bank's (ECB) European Distribution of Debt Instruments proposal.

The Board discussed the note, in particular

- The absence of market failure in the current set-up; and
- Whether competition should be encouraged.

Conclusion: Whilst noting concerns on the initiative, the Board agreed to send a letter to the ECB taking note of the proposal and instructed the Post-Trading Standing Committee (PTSC) to monitor the developments in this area.

12. Peer review on CCP Supervision

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| 1) Cover Note | Discussion |
| 2) Report | Decision |

Decision: The Board adopted the Report.

13. Amendment to the bilateral margins technical standards

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| 1) Issues Note | Decision |
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Robert Ophele presented the amendment to the bilateral margins technical standards.

The Board discussed the note, in particular the

- Introduction of fall-backs for legacy derivatives; and
- Co-operation with the European Banking Authority (EBA).

Decision: The Board agreed with the suggested way forward on the extension of the exemptions and to launch a consultation paper.

14. EMIR Refit, clearing and trading obligation

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| 1) Cover Note | Discussion |
| 2) Statement | Decision |

Decision: The Board adopted the Statement on EMIR Refit, clearing and trading obligation.

15. 2020 Annual Work Programme

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| 1) Cover Note | Discussion |
| 2) 2020 Annual Work Programme | Discussion |

Conclusion: The Board took note of the draft 2020 work programme which will be further developed by ESMA staff and consulted with NCAs and the SMSG. Board Members were invited to share comments in writing after the meeting.

16. MAR RTS on cooperation with third countries

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| 1) Cover Note | Discussion |
| 2) Final Report on RTS on cooperation with third countries | Discussion |

Nicoletta Giusto introduced the MAR RTS on cooperation with third countries.

The Board discussed the note, in particular whether a specific clause on ESMA's coordination and facilitation role should be included in the Regulatory Technical Standard (RTS).

Conclusion: The Board decided that no specific clause on ESMA's coordination and facilitation role should be included in the RTS. ESMA will first seek the opinion of the Securities and Markets Stakeholder Group (SMSG) before submitting the RTS for approval to the Board of Supervisors.

17. Update MAR review

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| 1) Cover Note | Decision |
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Decision: The Board agreed to the list of topics for the MAR review and the timeline for delivery.

18. Q&A on tick sizes

1) Report & Q&A

Decision

The Board discussed the Q&A, in particular whether only orders in periodic auction systems should be subject to the mandatory tick size regime or also transactions executed in such systems

Decision: The Board adopted the Q&A deciding that both orders and transactions in periodic auction systems should comply with the MiFID II mandatory tick size regime.

| | Both orders and transaction | Only orders | Abstain |
|---------------------------|-----------------------------|-------------|---------|
| Jean-Paul Servais (BE) | | | |
| Vladimir Savov (BG) | X | | |
| Vojtěch Belling (CZ) | | X | |
| Karen Dorte Abelskov (DK) | X | | |
| Elisabeth Roegele (DE) | | X | |
| Derville Rowland (IE) | X | | |
| Andre Nõmm (EE) | | | |
| Charalampos Gotsis (EL) | | | |
| Sebastian Albella (ES) | X | | |
| Robert Ophéle (FR) | X | | |
| Ante Žigman (HR) | | X | |
| Carmine Di Noia (IT) | X | | |
| Demetra Kalogerou (CY) | X | | |
| Sandis Andersmits (LV) | X | | |
| Vaidas Cibas (LT) | | X | |
| Claude Marx (LU) | X | | |
| Gábor Laki (HU) | X | | |
| Marianne Scicluna (MT) | | | |
| Gerben Everts (NL) | | X | |

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| Klaus Kumpfmüller (AT) | | | |
| Magdalena Łapsa-Parczewska (PL) | X | | |
| Gabriela Figueiredo Dias (PT) | X | | |
| Leonardo Badea (RO) | X | | |
| Tomas Ambra (SK) | X | | |
| Miloš Čas (SI) | X | | |
| Eeva Granskog (FI) | X | | |
| Fredrik Elmberg (SE) | | X | |
| Andrew Bailey (UK) | | X | |

19. Corporate Finance Standing Committee

- 1) CFSC Report Information

Conclusion: The Board took note of the CFSC Report.

- 2) Consultation Paper on Guidelines concerning disclosure requirements under the Prospectus Regulation Decision

Decision: The Board adopted the consultation paper on Guidelines concerning disclosure requirements under the Prospectus Regulation.

- 2) Prospectus Q&As Decision

The Board discussed the Q&As, in particular the Q&A regarding application of Article 23(3) where an entity distributes its own securities, especially whether different obligations for issuers and financial intermediaries should be created in relation to informing investors and the publication of the statement.

Decision: The Board adopted the Q&As and instructed the Corporate Finance Standing Committee (CFSC) to consider further the practical implications of the Q&A regarding application of Article 23(3) where an entity distributes its own securities. Fredrik Elmberg (SE) disagreed with the Q&A regarding application of Article 23(3) where an entity distributes its own securities.

20. Corporate Reporting Standing Committee

- 1) CRSC Report Information

Conclusion: The Board took note of the CRSC Report.

- 2) Comment Letter to the IFRS Foundation and EFRAG on the proposed amendments to the Due Process Handbook Decision

Decision: The Board approved the comment letter to the IFRS Foundation and EFRAG on the proposed amendments to the Due Process Handbook. The Board asked the Chair to pro-actively reach out to the IFRS Foundation to discuss ESMA's concerns further.

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| 3) Response to EFRAG questionnaire on the alternatives to fair value measurement for equity instruments | Decision |
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Decision: The Board approved the response to the EFRAG questionnaire on the alternatives to fair value measurement for equity instruments.

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| 4) Update of the ESEF Reporting Manual | Decision |
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Decision: The Board adopted the update of the ESEF Reporting Manual.

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| 5) Practices on deferred tax assets arising from unused tax losses | |
| ○ Supervisory Briefing | Decision |
| ○ Public Statement on recognition of deferred tax assets arising from the carry forward for unused tax losses | Decision |

Decision: The Board adopted the supervisory briefing on practices on deferred tax assets arising from unused tax losses and agreed with the public statement on recognition of deferred tax assets arising from carry forward for unused tax losses.

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| 6) 23 rd Extract from the EECS Database of Enforcement | Decision |
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Decision: The Board adopted the 23rd Extract from the EECS Database of Enforcement.

21. CRA Technical Committee

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| 1) CRA TC Report | Information |
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Conclusion: The Board took note of the CRA TC Report.

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| 2) Technical Advice on sustainability considerations in the credit rating market | Decision |
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Decision: The Board adopted the technical advice on sustainability consideration in the credit rating market.

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| 3) Final Report on Guidelines for disclosure requirements applicable to credit ratings | Decision |
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Decision: The Board adopted the Final Report on Guidelines for disclosure requirements applicable to credit ratings.

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

22. Data Standing Committee

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

- 2) EMIR Q&A Decision

Decision: The Board adopted the EMIR Q&A.

- 3) MIFIR Q&A Decision

Decision: The Board adopted the MIFIR Q&A.

23. Financial Innovation Standing Committee

- 1) FISC Report Information

Conclusion: The Board took note of the Report.

- 2) Report Licensing of FinTech Business Models Decision

Decision: The Board adopted the Report on Licensing of FinTech Business Models.

24. Investment Management Standing Committee

- 1) IMSC Report Information

Conclusion: The Board took note of the IMSC Report.

- 2) Consultation Paper on Guidelines on Performance fees in UCITS Decision

Decision: The Board adopted the consultation paper on Guidelines on performance fees in UCITS.

- 3) Final Report on Guidelines on liquidity stress testing in UCITS and AIFs

Gabriela Figueiredo Dias presented the Final Report on Guidelines on liquidity stress testing in UCITS and AIFs. The Chair presented the note setting out concerns identified by ESMA staff.

The Board discussed the Final Report, in particular:

- Whether the wording in feedback statement should be strengthened on how ESMA considers that the Guidelines meet financial stability and investor protection concerns;
- How to interact with NCAs requiring managers to notify to NCAs material risks and actions taken to address them;
- Whether reverse stress-testing should remain optional; and
- Adjustments to the proportionality language.

Decision: The Board instructed the Investment Management Standing Committee (IMSC) to strengthen the wording in the feedback statement and to adjust the proportionality language in the Guidelines. The revised Guidelines will be presented to the Board of Supervisors for adoption by written procedure.

- 4) Final Report on Guidelines on stress test scenarios under the MMF Regulation Decision

Decision: The Board adopted the Final Report on Guidelines on stress test scenarios under the MMF Regulation. Vojtěch Belling (CZ) abstained.

- 5) Final Report on the Guidelines on the reporting to competent authorities under the MMF Regulation Decision

Decision: The Board adopted the Final Report on the Guidelines on the reporting to competent authorities under the MMF Regulation. Vojtěch Belling (CZ) abstained.

25. 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 Guidelines on the compliance function | Decision |
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Decision: The Board adopted the consultation paper on Guidelines on the compliance function.

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| 3) Call for Evidence on MIFID II reports | Information |
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Conclusion: The Board took note of the call for evidence on MIFID II reports.

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| 4) Annual Report on sanctions under MIFID II | Decision |
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Decision: The Board adopted the annual report on sanctions under MIFID II.

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| 5) MIFID II Q&As | Decision |
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Decision: The Board adopted the MIFID II Q&As

Product Intervention

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| 6) Product Intervention progress report | Information |
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Conclusion: The Board took note of the progress report on ESMA's and national competent authorities' product intervention activities.

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| 7) Statement on the application of PI measures | Decision |
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Decision: The Board adopted the Statement on the application of PI measures.

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| 8) Opinion on national product intervention measures (CZ) | Decision |
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Decision: The Board adopted the opinion on national product intervention measures.

26. Market Integrity Standing Committee

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

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

27. Post-Trading Standing Committee

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

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

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| 3) EMIR Q&As | Decision |
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Decision: The Board adopted the EMIR Q&As.

28. Secondary Markets Standing Committee

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

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| 2) Amended DVC Agreement | Decision |
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The Board discussed the amended DVC agreement, in particular the requirements set out in EU law.

Decision: The Board adopted the amended DVC agreement.

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| 3) Assessment of third-country trading venues | Decision |
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Decision: The Board adopted the assessment of third-country venues.

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| 4) MIFID II / MiFIR Q&A | Decision |
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Decision: The Board adopted the MIFID II / MIFIR Q&A.

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| 5) Q&A on hedging exemption | Decision |
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Decision: The Board adopted the proposed Q&A on hedging exemption. Andrew Bailey (UK) disagreed with the Q&A. He stated to believe that restricting the use of the hedging exemption to negotiated transactions does not reflect the legislative intent of the exemption.

29. Update on ESMA Financial Stability Activities

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| 1) Presentation | Information |
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Conclusion: The Board took note of the update on ESMA's Financial Stability Activities.

30. Annual Report on Supervisory Convergence

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| 1) Cover Note | Information |
| 2) Annual Report | Decision |

Decision: The Board adopted the annual report on ESMA's supervisory convergence activities.

31. ESMA's IT Implementation Report 2018

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| 1) Report | Information |
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Conclusion: The Board took note of ESMA's IT Implementation Report 2018.

32. Activity-Based costing and fee management - 2018 results

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| 1) Cover Note | Information |
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2) Presentation

Information

Conclusion: The Board took note of 2018 results concerning the Activity-Based costing and fee management.

33. 2018 Quality Engagement Framework for transparency and DVCAP

1) Report

Decision

Decision: The Board took note of the update of the transparency and DVCAP data quality and agreed with the suggested actions to further improve data quality.

34. Appointment of a SMSG Member

1) Report

Decision

Decision: The Board appointed Morten Pedersen as Member of the Securities and Markets Stakeholder Group (SMSG) in the category of consumer representatives.

35. Summary of Decisions ESMA Away Day

1) Note

Information

Conclusion: The Board took note of the summary of decisions of the ESMA Away Day.

36. ESMA groups

1) Cover Note

Information

2) Overview of ESMA groups

Information

Conclusion: The Board took note of the overview of ESMA groups.

37. A.O.B.

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Participants list

Voting members

| Member State | Representative | Accompanying Person |
|----------------|----------------------------|---|
| Belgium | Jean-Paul Servais | Antoine van Cauwenberge |
| Bulgaria | Vladimir Savov (alternate) | |
| Czech Republic | Vojtěch Belling | Karel Juras |
| Denmark | Karen Dorte Abelskov | Theodor J. Christensen |
| Germany | Elisabeth Roegele | Macus Hein |
| Estonia | Andre Nõmm | |
| Ireland | Derville Rowland | Colm Kincaid Cian Murphy |
| Greece | Charalampos Gotsis | Vasiliki Koularmani |
| Spain | Sebastian Albella | Fatima Cerdan de la Cruz Antonio Mas |
| France | Robert Ophèle | Benoit de Juvigny Viet-Linh Nguyen |
| Croatia | Ante Žigman | |
| Italy | Paolo Savona | Carmine Di Noia Nicoletta Giusto |

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|----------------|--------------------------------|--------------------------------|
| Cyprus | Demetra Kalogerou | Andreas Andreou |
| Latvia | Sandis Andersmits (alternate) | |
| Lithuania | Vaidas Cibas (alternate) | |
| Luxembourg | Claude Marx | Françoise Kauthen |
| Hungary | Gábor Laki (alternate) | |
| Malta | Marianne Scicluna | |
| Netherlands | Gerben Everts | Jos Heuvelman Fleur de Roos |
| Austria | Klaus Kumpfmüller | Andrea Kuras-Goldmann |
| Poland | Magdalena Łapsa-Parczewska | Joanna Kott |
| Portugal | Gabriela Figueiredo Dias | Rita Oliveira Pinto |
| Romania | Leonardo Badea | Raluca Alina Tariuc |
| Slovenia | Miloš Čas | Sabina Bešter |
| Slovakia | Tomas Ambra (alternate) | Adam Nadasky |
| Finland | Anneli Tuominen | Eeva Granskog |
| Sweden | Fredrik Elmberg (alternate) | |
| United Kingdom | Andrew Bailey (not for item 7) | Max Lyssewski (not for item 7) |

Non-voting members

| | | |
|-----------------------------|-----------------------------------|-----------------------|
| ESMA Chair | Steven Maijor | |
| European Commission | Ugo Bassi | Ellen Boelema |
| EBA | Anne Tiedemann | |
| EIOPA | Kai Kosik | |
| ESRB | Francesco Mazzaferro | |
| Iceland | Pall Fridriksson (alternate) | |
| Liechtenstein | Reto Degen (alternate) | |
| Norway | Geir Holen (alternate) | Marianne Elind Skaane |
| EFTA Surveillance Authority | Gunnar Thur Petursson (alternate) | |

ESMA

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| Executive Director | Verena Ross |
| Summary of Conclusions | Frederiek Vermeulen |
| Head of Resources Department | Nicolas Vasse |
| Head of Issuers and Investors | Evert van Walsum |
| Head of Legal, Cooperation and Enforcement | Sophie Vuarlot-Dignac |



Done at Paris on 28 August 2019

Steven Majoor

For the Board of Supervisors