

Summary of Conclusions

Management Board

Date:	Tuesday 20 June 2023
Time:	09h00 – 13h00
Location:	ESMA, rue de Bercy 201-203, 75012 Paris
Contact:	ESMABoard@esma.europa.eu

- 1. Adoption of agenda** Decision

Decision: The agenda was adopted.

- 2. Confirmation of absence of conflict of interests** Information

Decision: The Board took note of the ESMA 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 Chair, Executive Director and Chair of the CCP Supervisory Committee** Discussion

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- 4. 2024 Supervisory Convergence Heatmap**

- 1) Presentation Discussion
- 2) 2024 Heatmap Decision

The Head of the Conduct Supervision and Convergence Department presented the proposed 2024 Heatmap.

The Board discussed the 2024 Heatmap, in particular the:

- Cross-sectoral risks related to cyber and operational resilience;
- Emerging risks related to artificial intelligence (AI), including its potential impact on algorithmic trading activity and whether supervisors have the appropriate tools to detect related events;

- Importance of continuing to effectively supervise risks related to costs and charges following the finalisation of the corresponding Union Strategic Supervisory Priority (USSP);
- Relevance of the current methodology and the importance of it remaining stable across future iterations of the heatmap to the extent possible; and
- Supervisory convergence work recently undertaken on product governance.

Decision: The Board endorsed the 2024 Heatmap. The Board agreed to raise to the Board of Supervisors the question of whether to add AI-related risks in the heatmap. It will be brought to the October 2023 Board of Supervisors for discussion and approval.

5. Union Strategic Supervisory Priorities (USSPs)

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| 1) Presentation | Discussion |
| 2) 2023 USSP Report | Decision |

The Head of the Conduct Supervision and Convergence Department presented the 2023 USSP Report.

The Board discussed the 2023 USSP Report, in particular the:

- Phasing out of the USSP on data quality and importance of continuing to effectively supervise related risks outside the scope of USSP-related work;
- Important progress made on the USSP on ESG disclosures and the need to continue devoting efforts on this;
- The proposed phasing in of a USSP on cyber / digital operational resilience, and the opportunity to inform the European Banking Authority and European Insurance and Occupational Pensions Authority for their consideration;
- Importance of ensuring ESMA and NCAs build adequate supervisory expertise and methods on cybersecurity.

Decision: The Board endorsed the 2023 USSP Report. It will be brought to the October 2023 Board of Supervisors for discussion and approval.

6. NCA independence criteria

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| 1) Presentation | Discussion |
| 2) Note | Discussion |
| 3) Draft criteria | Discussion |

The Head of the Conduct Supervision and Convergence Department presented the draft national competent authority (NCA) independence criteria.

The Board discussed the draft NCA independence criteria, in particular the:

- Relevant selection criteria, and the balance between the type of expertise to be expected from each Member of a NCA governance body and that expected of the Board as a whole;
- Relevance of “perceived” conflicts of interest;
- Risk of a supervisory community to become a “closed shop” if the criteria are interpreted too narrowly;
- Proportionality of the requirements, for instance in the scope of staff to be concerned by cooling off periods and in the requirement for documents to be translated into English;
- Extent to which supervisory activities should be delegable; and

- Interaction of the draft criteria with the draft Capital Requirements Regulation (CRR); and
- Intention to publish the final independence criteria.

Conclusion: The Board discussed the note on NCA independence criteria and the draft criteria. It will be brought to the July 2023 Board of Supervisors for discussion.

7. 2022 Annual Peer Review on Clearing Member Due Diligence

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) Report | Discussion |

The Independent Member of the CCP Supervisory Committee presented the report on the 2022 Annual Peer Review on Clearing Member Due Diligence.

The Board discussed the report on the 2022 Annual Peer Review on Clearing Member Due Diligence, in particular the:

- Scope of the requirements on which supervisory expectations are based, notably when the requirements go beyond the legal obligations;
- Frequency and focus of mandatory CCP-related peer reviews under EMIR; and
- Process and timeline of the peer review.

Conclusion: The Board discussed the report on the 2022 Annual Peer Review on Clearing Member Due Diligence. It was agreed that the report would be further discussed at the CCP Supervisory Committee and brought back to the Management Board in writing before being brought to the Board of Supervisors for approval.

8. 2024 Planning

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| 1) Presentation | Discussion |
| 2) Note on the 2024-2025 Peer Review Work Plan | Discussion |
| 3) 2024 Annual Work Programme | Discussion |
| 4) Risk assessment | Discussion |

The Executive Director and the Head of the Conduct Supervision and Convergence Department presented the 2024 planning documents.

The Board discussed the 2024 planning, in particular:

- ESMA's supervisory convergence toolbox and concerns that the amount and timing of mandatory and/or annual peer reviews foreseen by legislation, though they aim to ensure ESMA's legitimacy in enforcing rules, might impede ESMA from undertaking risk-based discretionary peer reviews and from using other relevant tools where more appropriate;
- The competing legislative requirements with regards to CSD-related peer reviews and the corresponding follow-up reports;
- Prioritisation of the work on the regulatory technical standards on securitisation disclosure requirements; and

- In relation to risk assessment, opportunities for peer learning and possibility to learn from organizations outside of the financial sector.

Conclusion: The Board discussed the 2024 planning.

9. Forward Plan of the Board of Supervisors

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| 1) H2 2023 Forward Plan | Discussion |
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The ESMA Chair presented the Forward Plan of the Board of Supervisors for the second half of 2023.

The Board discussed the H2 2023 Forward Plan for the Board of Supervisors, in particular the:

- Importance of convergence work in the run up to the implementation of MiCA, including in relation to risks of regulatory arbitrage by firms seeking to provide crypto-related services (such as crypto-related derivatives) through a MiFiD licence;
- Benefit of exchanging good practices on the use of *SupTech*;
- ESMA's conflict of interest policy for non-staff; and
- Importance of maintaining flexibility in Board planning.

Conclusion: The Board discussed the forward plan. The Management Board took note of the fact that the Board of Supervisors will discuss at its July 2023 meeting convergence efforts relating to the licensing of crypto assets service providers, and that the Management Board can engage in further related discussions thereafter should it still wish to.

10. Internal Audit Service

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) 2023-2025 IAS Strategic Internal Audit Plan | Discussion |
| 4) 2023 IAS Audit Plan | Discussion |

The representatives of the European Commission's Internal Audit Service (IAS) presented the 2023-2025 IAS Strategic Internal Audit Plan and the 2023 IAS Audit Plan.

The Board discussed the 2023-2025 IAS Strategic Internal Audit Plan and the 2023 IAS Audit Plan, in particular the:

- Scope of the planned Multi-entity audit on coordination between DG FISMA and the decentralised Agencies, including the fact that it does not aim to cover cooperation among decentralised agencies; and
- Procedure for following up on audit reports.

Conclusion: The Board discussed the 2023-2025 IAS Strategic Internal Audit Plan and the 2023 IAS Audit Plan.

11. Follow-up to the peer review on certain aspects of the compliance function under MiFID

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| 1) Cover note | Information |
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2) Follow-up report

Decision

Decision: The Board endorsed the follow-up report to the peer review on certain aspects of the compliance function under MiFID. It will be brought to the July Board of Supervisors for approval.

12. IT implementation report 2022

1) Cover note

Information

2) Report

Information

Conclusion: The Board took note of the IT implementation report 2022.

13. A.O.B.

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Participants list

	Members
ESMA	Verena Ross
DE	Thorsten Pötzsch
ES	Rodrigo Buenaventura
IE	/
EL	Nikos Kontaroudis (alternate)
NL	Jos Heuvelman
AT	Eduard Müller

Non-voting Members

Executive Director	Natasha Cazenave
European Commission	Ugo Bassi

Observer

Vice-Chair	Vojtech Belling
Upcoming Member (FIN)	Armi Taipale

ESMA

Summary of Conclusions	Jakub Michalik / Tomas Borovsky Laura Weil
Head of the Conduct Supervision and Convergence Department	Iliana Lani
Independent Member of the CCP Supervisory Committee	Nicoletta Giusto

European Commission Internal Audit Service (IAS) (for item 10)

Head of Unit – IAS Audit Unit C.3	Niina Lehtinen
Team Leader - IAS Audit Unit C.3	Marie-Estelle Lucas

For the Management Board,

Done at Paris on 17 July 2023

Verena Ross

Chair

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 16 May to 19 June 2023)

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