

Summary of Conclusions

Board of Supervisors

Date:	Tuesday 3 and Wednesday 4 October 2023
Time:	14h30 – 18h00 (Tuesday) and 8h45 – 11h30 (Wednesday)
Location:	Hotel Meliá Sevilla, Seville
Contact:	ESMABoard@esma.europa.eu

- 1. Adoption of agenda** Decision

Decision: The agenda was adopted.

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

Decision: The Board endorsed 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

The ESMA Chair reported on the:

- Interaction with the European Institutions, and in particular, meetings with the relevant members of the European Parliament to discuss recent legislative developments before the planned ECON hearing, as well as a recent meeting of the Financial Services Committee;
- International activities, and in particular, ESMA participation in meetings of IOSCO and the FSB, notably with regards to non-bank financial intermediation and 2024 FSB work programme;
- Joint Committee / 3ESAs, and in particular, recent deliverables of the Joint Committee submitted to the Board of Supervisors, and ongoing engagement with the European Institutions on possible access by the Microstates to the single market in financial services;
- October 2023 Management Board, and in particular, discussions on 2025-2027 budgeting and planning highlights, review of the ESMA Key performance indicators and targeted review of ESMA's Conflict of Interest Policy for non-staff;

- First meeting of the Board Task Force on effectiveness of EU capital markets that brainstormed on possible topics to be covered during its mandate. The Terms of Reference of the Task Force will be submitted for approval by the Board of Supervisors in written procedure.
- Securities and Markets Stakeholder Group (SMSG), and in particular, (i) the last joint SMSG meeting with the Board in July, discussing Retail Investment Strategy and sustainable finance; (ii) upcoming SMSG advice on DORA and MiCA; and (iii) agenda of the next SMSG meeting planned for 6 October 2023;
- One-off exercise on climate risk, and in particular, the adverse scenarios developed by the ESRB’s Task Force on Stress Testing and process for their expected approval by end of 2023;
- European Single Access Point (ESAP), and in particular, the status of the legislative process and ESMA/ESAs’ preparations for the first Consultation Paper to be issued as soon as possible after publication of the legal text in the Official Journal;
- Update on market developments, and in particular (i) market nervousness as consequence of the transition to the “higher for longer” interest rate environment; (ii) risks arising from the real estate market, including its impact on the asset management sector; (iii) possible risks in corporate bond markets; and (iv) concern on US treasury markets.
- EMIR clearing obligation and bilateral margining, and in particular possible ways to address from the supervisory perspective the timing gap between expiry of the application of (i) exemption for clearing obligation for certain third-country pension funds in EMIR (which has already expired) and (ii) temporary exemption for bilateral margining in EMIR (that is expected to expire in January 2024), and corresponding exemptions expected from ongoing legislative proposals in EMIR 3. While both exemptions are generally supported in the political negotiations on the EMIR 3 legislative proposal, their application is contingent on reaching a consensus on the entire proposal, the timeline of which remains uncertain. The Board discussed the issue and the desire to find aligned supervisory approaches where possible. The Board reiterated the need for ESMA to be granted real no-action letter powers to deal with situations such as these in an agile manner and to ensure an EU wide approach.

The Chair of the CCP Supervisory Committee reported on the:

- New Operational Resilience Group set up by CPMI-IOSCO that covers from the perspective of financial market infrastructure issues such as cyber resilience, third-party risk management as well as emerging issues inter alia arising from innovations or climate risk.

4. 2024 Supervisory Convergence Heatmap

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| 1) Presentation | Decision |
| 2) Explanatory note | Discussion |

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

The Board discussed the 2024 Supervisory Convergence Heatmap, in particular the:

- Support for the proposed Heatmap and improved methodology;
- Emerging risks stemming from technological innovation across ESMA’s remit, such as the use of artificial intelligence, and for the SSF to further discuss next year the possible inclusion of artificial intelligence-related risks in the Heatmap;
- Specific importance of certain risks, such as those stemming from crypto assets, cyber and digital operational resilience, and aggressive retail marketing, across ESMA’s remit; and

— The role that leverage can play in certain types of investment funds e.g. property funds

Decision: The Board adopted the 2024 Supervisory Convergence Heatmap.

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 Report on the Union Strategic Supervisory Priorities.

The Board discussed the 2023 Report on the Union Strategic Supervisory Priorities , in particular the:

- Continuing importance of supervisory focus on data quality, while bringing the related USSP to an end;
 - Support for the ongoing supervisory focus on addressing the risk of greenwashing and the need to give more attention to investor's understanding of ESG disclosures; and
- Need for increasing focus on cyber and digital operational resilience risks and preparing supervision of digital operational resilience under DORA and thus creating an USSP around this topic.

Decision: The Board adopted the 2023 USSP Report.

6. Markets in Crypto Assets Regulation (MiCA)

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| 1) Presentation | Discussion |
| 2) DFSC cover note and ESMA statement on the transition to MiCA | Discussion |
| 3) Letter about MiCA transitional measures | Decision |

The Chair of the Digital Finance Standing Committee presented the second MiCA consultation package, the ESMA statement on the transition to MiCA, and the letter about MiCA transitional measures.

The Board discussion focused on the ESMA statement on the transition to MiCA, and the letter about MiCA transitional measures and Board members raised in particular the following points:

- Supervisory views about the most appropriate length of the transition period;
- Importance of discussions about real supervisory and authorisation cases brought by national supervisors in order to foster supervisory convergence, both from MiCA and MiFiD perspectives;
- Importance of developing harmonised authorisation procedures;
- Need for communicating the supervisory concerns about MiCA application to the market participants in the public statement and finding the most appropriate tools for reaching retail investors;
- Risks stemming from advertisements of crypto assets by third-country providers through social media and importance of supervision of reverse solicitation in this context;
- Importance of national governments nominating the relevant competent authorities under MiCA; and
- Importance of co-legislators addressing the identified issues not currently covered by MiCA early in the new legislative period, and the importance of ESMA's contribution in this regard.

Decision: The Board adopted the letter about MiCA transitional measures and, subject to comments provided, the ESMA statement on MiCA. The Board requested that national supervisors actively bring

real supervisory and authorisation cases for discussion in relevant ESMA Groups in order to foster convergence and agreed on ESMA helping to proactively identify such cases.

7. Digital Operational Resilience Act (DORA) and oversight preparations

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| 1) Presentation | Discussion |
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ESMA Chair presented the preparations for oversight under DORA.

Conclusion: The Board took note of the preparations for the oversight mandate under DORA and supported the establishment of a High-Level Group on Oversight to ensure close cooperation between the ESAs and NCAs on this topic.

8. Use of MiFIR transaction data

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| 1) Presentation | Discussion |
| 2) Note | Decision |

The Chair of the Data Standing Committee presented the note on the use of MiFIR transaction data.

The Board discussed the note on the use of MiFIR transaction data, in particular the:

- Strong support for the proposed use cases of data; and
- Need of further discussion by the Board of Supervisors when developing further use cases in the future.

Decision: The Board adopted the note on the use of MiFIR transaction data.

9. Way forward on funds' names with ESG or sustainability - related terms

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| 1) Presentation | Discussion |
| 2) Note | Discussion |

The Chair of the Investment Management Standing Committee presented the note on the way forward on funds' names with ESG or sustainability-related terms.

The Board discussed the note, in particular the:

- Urgent need for supervisory action related to funds' names with ESG or sustainability-related terms and support for doing so in the form of ESMA Guidelines;
- Possible specific guidance for "transition" funds;
- Possibility to allow only stricter requirements at national level, to the extent those are consistent with the single market (passporting) given the importance to ensure harmonisation of the requirements at EU level;
- The new ESMA mandate in UCITS/AIFMD;
- Length of the transition period for the future guidelines; and

- Recognition of the importance of the review of the requirements of the SFDR launched by the Commission and desire to communicate the views of supervisors on possible level 1 changes, while recognising that the new requirements will not be applicable earlier than in 3-5 years.

Conclusion: The Board discussed the note on the way forward on funds' names with ESG or sustainability-related terms. The Board asked the Investment Management Standing Committee to further develop the proposal for ESMA Guidelines reflecting the Board discussion and submit them for approval of the Board in December 2023.

10. Progress report on draft joint ESAs RTS reviewing the SFDR Delegated Regulation

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| 1) Presentation | Discussion |
| 2) Note | Discussion |

The Head of the Investor Protection and Sustainable Finance Department presented the progress report on draft joint ESAs RTS reviewing the SFDR Delegated Regulation.

The Board discussed the progress report on draft joint ESAs RTS reviewing the SFDR Delegated Regulation, in particular the:

- Impact of the materiality requirements in the European Sustainability Reporting Standards (ESRS) on reporting Principal adverse impact (PAI) under SFDR; and
- Options for presentation of sovereign bonds in investment product disclosures in relation to taxonomy-alignment.

Conclusion: The Board discussed the progress report on draft joint ESAs RTS reviewing the SFDR Delegated Regulation. After considering feedback from all three ESAs, the draft joint ESAs RTS reviewing the SFDR Delegated Regulation will be submitted to the Board for approval by written procedure.

11. Follow-up on policy measures taken in response to market developments in 2022 and 2023

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| 1) Presentation | Discussion |
| 2) Note on continuing the ad-hoc reporting of net short positions | Decision |
| 3) Final report on the extension of emergency measures on CCP collateral requirement | Decision |

The ESMA Chair and the Chair of the CCP Supervisory Committee presented follow-up on policy measures taken in response to market developments in 2022 and 2023, specifically the note on continuing the ad-hoc reporting of net short positions and the final report on the extension of emergency measures on CCP collateral requirements.

The Board discussed the topic and in particular:

- the need for continuing ad-hoc reporting and exchange of certain net short positions in the current market environment and before the onboarding of all competent authorities to the automatic exchange of information through a dedicated IT system (which is now up and running); and

- the need for an appropriate length for the temporary extension of emergency measures on CCP collateral requirements, given the ongoing political negotiations related to EMIR 3 and current market situation before the winter season.

Decision: The Board agreed in majority with maintaining the ad-hoc reporting of net short positions of certain types of shares until further notice. The Board agreed with the final report on the extension of emergency measures on CCP collateral requirement, proposing to the co-legislators to extend the RTS by 6 months.

12. EU CLO credit ratings – risks of conflicts of interest relating to methodology changes

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| 1) Presentation | Discussion |
| 2) Note | Discussion |

The Head of the Conduct Supervision and Convergence Department presented the main findings of the work conducted on the EU CLO credit ratings – risks of conflicts of interest relating to methodology changes.

Conclusion: The Board discussed the EU CLO credit ratings – risks of conflicts of interest relating to methodology changes. The final report will be submitted to the Board for approval by written procedure.

13. Call for evidence on shortening the settlement cycle

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| 1) Presentation | Discussion |
| 2) Call for evidence | Decision |

The Chair of the Markets Standing Committee presented the call for evidence on shortening the settlement cycle.

The Board discussed the call for evidence on shortening the settlement cycle, in particular the:

- Importance of cost benefit analysis and impact assessment of shortening the settlement cycle by asset class;
- Impact of the shortening of the settlement cycle in the US on EU market players; and
- Distinction between shortening of the settlement cycle using current technologies on the one hand and the impact of new technologies on speed of settlement, especially in the long run, on the other hand.

Decision: The Board adopted the call for evidence on shortening the settlement cycle.

14. A.O.B.

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15. CCP Policy Committee

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| 1) Cover note | Information |
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- 2) Opinion on CCP back testing requirements Decision

Decision: The Board adopted the opinion on CCP back testing requirements.

- 3) Consultation Paper on Tier 1 TC-CCP Fees Technical Advice Decision

Decision: The Board adopted the consultation paper on Tier 1 TC-CCP Fees Technical Advice.

16. Risk Standing Committee

- 1) Cover note Information

- 2) Note on the August 2022 natural gas market price spike Decision

Decision: The Board adopted the note on the August 2022 natural gas market price spike.

- 3) TRV Risk Analysis Articles:

- a) DeFi in the EU: developments and risks Decision

- b) A taxonomy of smart contracts Decision

- c) The Greenium of EEA-issued ESG bonds Decision

- d) Evolution of EEA share market structure since MiFID II Decision

Decision: The Board adopted the TRV Risk Analysis Articles.

17. Senior Supervisors Forum

- 1) Cover note Information

- 2) Thematic study on public messaging of enforcement outcomes Decision

Decision: The Board adopted the thematic study on public messaging of enforcement outcomes.

18. Supervision Policy Committee

- 1) Cover note Information

- 2) Assessment framework for the CSA on the Benchmarks ESG disclosure Information

Conclusion: The Board took note of the assessment framework for the CSA on the Benchmarks ESG disclosure. Due to the ongoing BMR review, the final scope of the CSA might be refined at the level of the Supervision Policy Committee.

19. Digital Finance Standing Committee

- 1) Cover note Information

- 2) Consultation paper on MiCA draft technical standards (for the public) Decision

Decision: The Board adopted the consultation paper on MiCA draft technical standards for the public.

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| 3) Consultation paper on MiCA draft technical standards on cooperation between authorities (for the SMSG only) | Decision |
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Decision: The Board adopted the consultation paper on MiCA draft technical standards on cooperation between authorities for the SMSG only.

20. Data Standing Committee

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| 1) Cover note | Information |
| 2) FITRS and DVCAP Data Quality Engagement Framework | Decision |
| a) Annex FITRS | Decision |
| b) Annex DVC | Decision |

Decision: The Board adopted the FITRS and DVCAP Data Quality Engagement Framework.

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| 3) ISO Standards identifiers in MiFIR Review | Information |
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Conclusion: The Board took note of the ISO Standards identifiers in the MiFIR Review.

21. Issuers Standing Committee

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| 1) Cover note | Information |
| 2) 28th Extract from the Financial Reporting Working Group (FRWG) (European Enforcers' Coordination Sessions (EECS))'s Database of Enforcement | Decision |

Decision: The Board adopted the 28th Extract from the FRWG (EECS)'s Database of Enforcement.

22. Markets Standing Committee

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| 1) Cover note | Information |
| 2) Note on the follow-up on May 2022 flash crash – Proposal for a CSA on pre-trade controls | Decision |

Decision: The Board adopted the note on the follow-up on the May 2022 flash crash and the proposal for a CSA on pre-trade controls.

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| 3) Supervisory briefing on the calibration of circuit breakers | Decision |
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Decision: The Board adopted the supervisory briefing on the calibration of circuit breakers.

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| 4) Template for reporting circuit breakers | Decision |
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Decision: The Board adopted the template for reporting circuit breakers.

- 5) Q&As on transparency topics – update after publication of the Manual Decision

Decision: The Board adopted the Q&As on transparency topics – update after publication of the Manual of post-trade transparency.

- 6) Q&As on open access Decision

Decision: The Board adopted the Q&As on open access.

Participants list
Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais Erik Peetermans (ad-hoc alternate)	
Bulgaria	Maria Filipova Mariyan Ivanov (alternate)	Tsvetomita Borisova
Czech Republic	Vojtech Belling	Karel Juráš (alternate)
Denmark	Karen Dorte Abelskov Henrik Brarup Damgaard (alternate)	
Germany	Jens Fürhoff (alternate)	Jan-Ole Wagner
Estonia	Andre Nõmm	
Ireland	Derville Rowland	Patricia Dunne (alternate) John Montgomery
Greece	Vasiliki Lazarakou Vasiliki Koularmani (ad-hoc alternate)	
Spain	Rodrigo Buenaventura	Montserrat Martinez (alternate) Fatima Cerdan Victor Rodriguez Quejido

		Antonio Mas Sirvent
France	Marie-Anne Barbat-Layani	Jérôme Reboul Françoise Buisson
Croatia	Ante Žigman	Jurica Jednačak (alternate)
Italy	Carlo Comporti	Martina Tambucci
Cyprus	George Theocharides	George Karatzias (alternate)
Latvia	Santa Purgaile	Eliņa Sarkovska
Lithuania	Vaidas Cibas	
Luxembourg	Claude Marx Andrea Gentilini (alternate)	
Hungary	Krisztián Csáky (alternate)	
Malta	Lorraine Veilla (alternate)	Nathan French
Netherlands	Hanzo van Beusekom (altenate)	Quirine Hoogeveen
Austria	Eduard Müller	Andrea Kuras-Goldmann
Poland	Agata Gawin (alternate)	Dominika Szymanska
Portugal	Luís Laginha de Sousa	Tiago dos Santos Matias

Romania	/	
Slovenia	Anka Čadež	Sabina Bešter (alternate)
Slovakia	Peter Tkáč Tomáš Ambra (alternate)	
Finland	Armi Taipale	Merja Lehtimäki
Sweden	Susanna Grufman	Fredrik Elmberg
Chair	Verena Ross	

Non-voting members

European Commission	Ugo Bassi	Cesare Posti
EBA	/	
EIOPA	/	
ESRB	Francesco Mazzaferro	
Iceland	Björk Sigurgísladóttir	
Liechtenstein	Reto Degen	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marianne Arvei Moen	

ESMA

Executive Director	Natasha Cazenave
Summary of Conclusions	Tomáš Borovský
Chair of the CCP Supervisory Committee	Klaus Löber
Head of the Conduct Supervision and Convergence Department	Iliana Lani
Head of Investor Protection and Sustainable Finance Department	Evert van Walsum

Done at Paris on 11 November 2023

[signed]

Verena Ross

Chair

For the Board of Supervisors

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 4 July to 3 October 2023)

1. Final report on revised regulatory technical standards on anti-procyclicality

17 July 2023

1) Final Report

Decision

Decision: The Board adopted the final report on revised regulatory technical standards on anti-procyclicality.

	Approval	Objection	Abstain
Jean-Paul Servais (BE)	X		
Maria Filipova (BG)			X
Vojtěch Belling (CZ)			X
Karen Dorte Abelskov (DK)	X		
Thorsten Pöttsch (DE)	X		
Andre Nömm (EE)	X		
Derville Rowland (IE)		X	
Vasiliki Lazarakou (EL)	X		
Rodrigo Buenaventura (ES)	X		
Marie-Anne Barbat-Layani (FR)	X		
Ante Žigman (HR)		X	
Carlo Comporti (IT)	X		
George Theocharides (CY)	X		
Santa Purgaile (LV)	X		
Audrius Silgalis (LT)	X		
Claude Marx (LU)			X
Gergő Szeniczey (HU)	X		
Christopher P. Buttigieg (MT)	X		
Jos Heuvelman (NL)	X		
Eduard Müller (AT)	X		
Rafał Mikusiński (PL)		X	
Luís Laginha de Sousa (PT)	X		
Gabriel Grădinescu (RO)	X		
Anka Čadež (SI)			X
Peter Tkáč (SK)			X
Armi Taipale (FI)	X		
Susanna Grufman (SE)	X		

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| 2. Revised procedure for ESMA Groups | 20 July 2023 |
| 1) Procedure | Decision |
| Decision: The Board adopted the revised procedure for ESMA Groups. | |
| 3. Report on the revised Shareholder Rights Directive (SRD2) | 24 July 2023 |
| 1) Report | Decision |
| Decision: The Board adopted the report on the revised Shareholder Rights Directive (SRD II). | |
| 4. ESMA responses to the International Sustainability Standards Board (ISSB) consultations | 28 July 2023 |
| 1) Response to ISSB consultation on agenda priorities | Decision |
| 2) Response to ISSB consultation on Internationalisation of the SASB standards | Decision |
| Decision: The Board adopted the ESMA responses to the ISSB consultations. | |
| 5. Summaries of conclusions - meetings of 28 May 2020 and 5 November 2020 | 18 August 2023 |
| 1) Summary of conclusions | Decision |
| 2) Summary of conclusions | Decision |
| Decision: The Board adopted the summary of conclusions of the meeting of the Board of Supervisors of 28 May 2020 and 5 November 2020. | |
| 6. Composition of the Peer Review Committee (PRC) on STS Securitisation peer review | 3 August 2023 |
| 1) PRC composition | Decision |
| Decision: The Board adopted the composition of the PRC on STS Securitisation peer review. | |
| 7. Summary of conclusions – 4-5 July 2023 | 11 August 2023 |
| 1) Summary of conclusions | Decision |
| Decision: The Board adopted the summary of conclusions of the 4-5 July 2023 Board of Supervisors. | |
| 8. Joint ESAs draft Interactive consumer factsheet on financial education and sustainable finance | 5 September 2023 |

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| 1) Factsheet | Decision |
| 2) Cover note | Information |

Decision: The Board adopted the Joint ESAs virtual factsheet on financial education and sustainable finance.

9. Joint Committee Report on Risks and Vulnerabilities for Autumn 2023	1 August 2023
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| 1) Report | Decision |
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Decision: The Board adopted the JC Autumn 2023 Report on Risks and Vulnerabilities.

10. ESMA Report on Trends, Risks and Vulnerabilities (TRV) No. 2, 2023 and TRV Statistical Annex	18 August 2023
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| 1) Report | Decision |
| 2) Statistical Annex | Decision |

Decision: The Board adopted the ESMA Report on TRV No. 2, 2023 and TRV Statistical Annex.

11. Update to the European Single Electronic Format (ESEF) Reporting manual	31 August 2023
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| 1) Reporting Manual | Decision |
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Decision: The Board adopted the revised ESEF Reporting manual.

12. ESAs Report on the landscape of ICT third-party providers in the EU	7 September 2023
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| 1) Report | Decision |
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Decision: The Board adopted the ESAs Report on the landscape of ICT third-party providers in the EU.

13. TRV Risk Analysis Article on EU securitisation market	8 September 2023
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| 1) Article | Decision |
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Decision: The Board adopted the TRV Risk Analysis Article on EU securitisation market.

14. 2024 Joint Committee Work Programme	20 September 2023
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| 1) Work Programme | Decision |
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Decision: The Board adopted the 2024 Joint Committee Work Programme.

15. Joint ESAs technical advice to the European Commission on DORA

26 September 2023

1) Technical advice

Decision

Decision: The Board adopted the Joint ESAs technical advice to the European Commission on DORA on criticality criteria and oversight fees.

16. ESMA's 2024 Annual Work Programme

25 September 2023

1) Work programme

Decision

Decision: The Board adopted the ESMA's 2024 Annual Work Programme.

17. TRV Risk Analysis Article on ESG names and claims in the EU fund industry

29 September 2023

1) Article

Decision

Decision: The Board adopted the TRV Risk Analysis Article on ESG names and claims in the EU fund industry.

18. 2023 Joint ESAs' Report on the extent of voluntary disclosure of principal adverse impact under the SFDR

26 September 2023

1) Report

Decision

Decision: The Board adopted the 2023 Joint ESAs' Report on the extent of voluntary disclosure of principal adverse impact under the SFDR.