

SUMMARY OF CONCLUSIONS

Management Board

Date: 7 November 2011
Time: 14:00 – 19:00h
Location: ESMA
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No Items

1. Adoption of agenda *MB/97 decision*

The Chair noted that the meeting would not be quorate until the arrival of Fernando Restoy (ES). The meeting would therefore proceed in a way which enabled decisions to be taken when the meeting was quorate.

Decision: The agenda was adopted.

2. Summary of conclusions of September meeting *MB/98 decision*

Decision: The summary of conclusions was approved.

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

The Executive Director reported on:

- confidentiality measures implemented since the previous Management Board meeting;
- the visit by the Court of Auditors;
- progress in relation to adoption of a headquarters agreement;
- the negotiations in the budgetary authority regarding ESMA's budget for 2012;
- the arrival of Felix Flinterman as Head of the CRA Unit and Stephan Karas as Head of the Legal, Convergence and Cooperation Unit;
- some individual staff issues (in restricted session); and



- attendance at a number of meetings, including the Head of EU Agencies meeting, the upcoming Financial Services Committee meeting at which the ESAs would report on their achievements and challenges in 2011 and their work programmes for 2012; and EBA and EIOPA Board of Supervisors meetings.

The Chair reported on:

- his hearing before the European Parliament which had included points on ESMA's funding, CRA registration and accounting issues on Greek sovereign debt;
- his attendance at a number of meetings, including with individual MEPs, two national visits to Spain and Luxembourg, the October meeting of the Securities and Markets Stakeholder Group and the micro-infrastructure meeting in London chaired by FSA and SEC;
- a complaint regarding the establishment of the Securities and Markets Stakeholder Group which has been referred to the European Ombudsman by Uni Europa;
- ongoing coordination in relation to the ban on net short positions adopted by a number of countries in August;
- an SEC proposal for a meeting with a number of regional authorities regarding EMIR and the Dodd-Frank Act which will be hosted by ESMA in December; and
- discussions regarding ESMA's participation as an observer in the IASB's Monitoring Board which oversees the Board of Trustees, and participation in IOSCO.

Conclusion: The Chair agreed to consider further the role national authorities might play in explaining ESMA's role to stakeholders and other regulators.

4. 2012 establishment plan and recruitment

MB/99 information

The Executive Director reported on the draft 2012 establishment plan and ongoing and planned recruitment exercises. The Executive Director welcomed support from ESMA's Board members on recruitment of SNEs.

The Management Board discussed the report, in particular:

- the size of the operations division in comparison with other parts of the authority, noting that it includes the IT function which delivers some of ESMA's core responsibilities; and
- the extent to which ESMA could also rely on resources available through standing committees.

The ED explained that the final establishment plan will be approved in January 2012 with ESMA's budget.

5. 2011 contributions and distribution of CESR reserves

MB/100 decision

Nicolas Vasse presented the report on the 2011 contributions from competent authorities and the distribution of CESR's reserves.



The Board discussed the report, in particular:

- the response of the accountants and auditors to issues identified in CESR’s accounts;
- the need to issue invoices to competent authorities in respect of 2009 contributions due for the TREM system.

Decision: Having received assurances regarding the accuracy of the revised figures stated in the report, the Board approved the proposal to reduce the 2011 national competent authority contributions to ESMA by the amounts set out in the report according to the distribution key used for CESR Members in 2010. ESMA staff would provide competent authorities with an overview of contributions, together with, as appropriate, a recovery order for the 2009 TREM contributions, a recovery order/reminder for the 2010 TREM contributions and a recovery order for the full 2011 ESMA contributions. ESMA staff should check whether there are any errors in CESR’s 2010 financial statements that need to be corrected and, if so, any tax implications.

6. 2012 work programme

MB/101 decision

The Executive Director presented the proposed 2012 work programme noting that a revised high-level note to accompany the work programme would be circulated separately for approval in written procedure.

The Management Board discussed the programme, in particular:

- the inclusion of AIFMD, MAD and the Short-Selling Regulation in section V;
- whether ESMA should refer to ‘investor protection’, ‘consumer protection’ or use a separate term such as ‘financial consumer protection’; and
- the balance achieved between providing an effective overview and setting out detailed workstreams;

Decision: The Management Board approved the 2012 work programme for proposal to the Board of Supervisors.

7. IT work programme

MB/102 discussion

Nicolas Vasse reported on the IT work programme and the status of the project to replace ESMA’s website.

The Board discussed the proposed IT work programme, in particular:

- the need for ESMA to ensure that any systems for registers are sufficiently flexible and integrated;
- the obligations on national competent authorities to provide information to ESMA under the Omnibus Directive; and
- the reduced priority given to the document management project.

Nicolas Vasse noted that ESMA is establishing a task force on registers which will meet in December, part of the aim of which is to ensure that national competent authorities are involved in the development



process given that the registers will be populated from information provided by competent authorities.

Conclusion: The Board supported the IT work programme, noting that it would be important to revisit the prioritisation of projects in Q2 to ensure progress on the projects and that the funds allocated are being used most effectively.

8. Procedure for electing standing committee chairs *MB/103 discussion*

The Chair reported on the proposals for electing standing committee chairs.

The Board discussed the proposals, in particular:

- the need for an open process for appointing standing committee chairs and to appoint individuals rather than authorities;
- the term for which chairs are appointed and whether appointments should all end on a single date, or should always last for two years;
- that candidates could voluntarily make a presentation in the Board of Supervisors, but there should be no mandatory hearing;
- the timing of the reappointments; and
- the role of the Chair in managing the process.

Conclusion: Considering that the term of most existing chairs of standing committees will expire in December, a discussion should take place in the December Board of Supervisors meeting. The Board supported proposing:

- the appointment of new chairs, preferably in Spring 2012 but subject to ESMA's workloads, with existing terms extended until then;
- appointments being made on the basis of calls for indications of interest with the Chair mandated to find a position supported by the candidates, with provision for elections if necessary;
- pending the appointments, that SMSC and ESMA-Pol continue to be chaired by members from the UK FSA and the Greek CMC as an interim measure to ensure continuity;
- that the Chairs of FISC and CRSC would not require reappointment until expiry of their existing terms;
- no automatic right of a competent authority to keep the chairmanship if the individual who chairs a standing committee steps down, instead a new selection procedure should take place; and
- that where chairs are replaced mid-term, their replacements should be appointed for the remainder of the term rather than for a new two-year term.

9. Crisis management *MB/104 discussion*

The Executive Director and Eija Holttinen presented the report on crisis management.



The Board discussed the report, in particular:

- concerns regarding situations where ESMA and competent authorities may not have adequate powers to take effective action, with the related risk that ESMA is perceived to have broader powers than it has in practice;
- the need for clear powers in sectoral legislation at both national and European levels;
- the move away from describing coordinating actions under Article 18(1) as ‘step one’ given that the coordinating powers are not limited to those situations that could ultimately result in a Council emergency declaration (‘step two’); and
- the scope for widening the ability to act in an emergency in the legislation.

Emiliano Tornese (EC) supported the legal interpretations set out in the report and emphasised the importance of coordination. Mr Tornese welcomed information ESMA could provide to the Commission on the sectoral provisions that ESMA considers might be needed.

Conclusion: The Management Board noted the report and agreed it should be discussed in the Board of Supervisors, together with a proposal for a letter to the institutions setting out ESMA’s concerns and proposals.

10. CRA supervision manual

MB/105 discussion

Felix Flinterman reported on the supervision of CRAs.

The Board discussed the report, in particular:

- findings from the registration process in terms of possible priorities for ESMA;
- the scope of the enquiries being made on sovereign debt rating actions;
- ESMA’s interactions with entities that are the subject of ratings;
- the mixture of staff the unit plans to recruit, including staff who have worked for CRAs; and
- the plans for ESMA’s first public report on its CRA supervision.

Conclusion: The Chair agreed to keep the Board informed on CRA supervision.

11. Board of Appeal – appointment of alternates

MB/106 decision

The Chair reported on the appointment of the Board of Appeal and the proposal to appoint two alternates to replace those who were unable to accept their appointments.

The Board discussed possible alternates.

Decision: The Chair would consider further the remaining candidates and put forward a proposal to the



Management Board for adoption in written procedure.

12. Breach of Union law procedures

MB/107 discussion

Jonathan Overett Somnier presented the report on breach of Union law procedures.

The Board discussed the report, in particular:

- the need for competent authorities and their staff to be aware of the procedures that are adopted;
- the timing of the pre-investigation and investigation processes;
- whether the Board of Supervisors, Management Board and/or Review Panel should have a role in filtering potential investigations;
- the need to ensure ESMA can investigate issues arising from anonymous requests, even if the specific requests are closed due to their anonymous nature.

Conclusion: ESMA staff should consider further with EBA and EIOPA the possibility of the Chair involving the Management Board in relation to proposals not to open investigations. The Board supported consulting the Board of Supervisors once the ESA staff have revised their proposals in the light of feedback from their respective Boards.

13. Annual report structure

MB/108 information

The Executive Director reported on the proposed structure of ESMA's first annual report.

The Board discussed:

- the extent to which the annual report should be translated, including the possibility to translate a summary; and
- listing in an annex the deliverables provided by ESMA during the year.

Conclusion: The Management Board supported the proposed structure, and the Chair's proposal to provide a summary based on ESMA's objectives, followed by a report based on a legislative structure.

14. Board of Supervisors forward agenda

MB/109 information

The Board noted the Board of Supervisors forward agenda.

15. Budget transfers

MB/110 information

The Board noted the budget transfers.

16. AOB

There was no further business.



- 19 December 2011 (pm) (Paris)
- 13 February 2012 (pm) (tbd)
- 16 April 2012 (pm) (tbd)
- 18 June 2012 (pm) (tbd)
- 10 September 2012 (pm) (tbd)
- 5 November 2012 (pm) (tbd)
- 17 December 2012 (pm) (tbd)

Steven Maijoor
Chair



Participant List

	Members	Advisers
ESMA	Steven Maijoor (Chair)	
EC	Emiliano Tornese	
DE	Thomas Neumann (observer)	Philipp Sudeck
EE	Raul Malmstein	Gerle Reinumagi
ES	Fernando Restoy	Antonio Mas
LU	Jean Guill	
AT	Kurt Pribil	Andrea Kuras-Goldmann

Vice-Chair	Carlos Tavares
Executive Director	Verena Ross
Head of Operations	Nicolas Vasse
Adviser to the Executive Director	Eija Holttinen (items 8 and 9)
Head of Credit Rating Agencies Unit	Felix Flinterman (item 10)
Minutes	Jonathan Overett Somnier