

## SUMMARY OF CONCLUSIONS

### Management Board

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**Date:** 11 April 2011  
**Time:** 16:00 – 19:00h  
**Location:** Hungarian Financial Supervisory Authority, Krisztina krt. 39, Budapest  
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No Items

**1. Adoption of agenda** ESMA/2011/MB/42 *for decision*

**Decision:** The agenda was adopted with point 7 amended as a point for decision.

**2. Summary of conclusions of 21 February meeting** ESMA/2011/MB/40 *for decision*

**Decision:** The summary of conclusions was adopted without amendments.

**3. Structure of ESMA** ESMA/2011/BS/78 *for discussion*

The Chair explained that one of the important tasks to be accomplished is installing the new internal organisation and taking the right steps for it to grow as expected. The Chair explained that the Executive Director-elect (ED) and Chair had been involved although the work of the Task Force had started prior to their appointment, and that both believe the Task Force's proposal is a good starting point for the organisation. The Chair considered it important to have a round of discussions in the Management Board and Board of Supervisors and to gather input from ESMA staff.

The Vice-Chair presented the report, noting that the structure proposed is relatively closely related to the structure of the existing standing committees. Cristina Fraser (as co-chair of the Task Force) noted that the boxes underneath teams should not be seen as separate, but functions that the relevant team would carry out.

The Chair explained that the proposals had been shared with ESMA staff who had provided six main comments through the Staff Committee concerning:

Areas of the proposal that are not clear and will require further detail

Potential imbalance between the policy divisions



The span of control for the ED which appears wide given the number of direct reports

Unclear proposals for IT as regards the different roles of IT support and IT development supporting ESMA's supervisory tasks

The wording on nationality considerations

The ability of secondees to have team leader roles

Board Members discussed the proposals, in particular:

the merits of splitting or continuing to combine policy and supervisory roles in relation to CRAs and future supervisory roles, taking account of the different nature of the tasks and types of staff required, the relatively low number of staff concerned and potential for efficiencies in easily reallocating staff as necessary, and the balance between having proper governance over each task while avoiding creating separate silos;

the balance between the two policy divisions;

the need to focus recruitment on hiring the best staff rather than nationality;

the initial and future ratio between management and non-management staff and need for further information on the numbers of staff concerned;

whether cooperation and integrity functions should be kept together or cooperation should form part of the proposed legal/enforcement team;

the role of legal oversight during the development of technical standards and consideration of breach of law issues, and the desirability of legal resource being concentrated in a single team but working together with the policy divisions;

the concept of teams and method of recruitment of team leaders.

**Conclusion:** The Chair concluded that:

there was a clear preference to combine CRA policy and supervision, at least in the short term;

the split between the policy divisions is not fundamental to the model and can easily be rebalanced if necessary, but that combining them in one division would make the division too large;

initial and future numbers should be added to the chart, but that the number of management positions was appropriate with a better ratio between management and non-management positions being achieved as the authority grows;

it would be important to consider the longer-term philosophical issue of whether to combine or split policy and supervision as ESMA grows;

while management roles will be recruited through open competition, further consideration should be given to recruitment of team leader roles.



The Chair asked the Task Force to revise the proposals in the light of the discussions, taking account of the next day's Board of Supervisors discussions, ahead of a Management Board meeting before the end of April to discuss the final proposals. The meeting would be held via conference call unless a physical meeting was considered more appropriate following circulation of the proposals.

#### 4. Document management

Access to documents report	ESMA/2011/MB/44	<i>for discussion</i>
Document management project presentation document	ESMA/2011/MB/45	<i>for decision</i>

The Acting Secretary General presented the access to documents report, noting that the aim is to achieve a common approach across the three ESAs.

Members supported the proposals with the exception of the proposal to publish summaries of conclusions of the Board of Supervisors and Management Board meetings where the preference was not to publish, subject to further legal advice. The Chair noted that a form of words had been agreed between the ESA Chairs concerning their commitments to the European Parliament to publish information on meetings held with industry representatives.

**Decision:** The document management project presentation document was approved.

#### 5. Finance

2012 budget	ESMA/2011/BS/79	<i>for decision</i>
Information on budget transfers	Oral report	<i>for information</i>
Revised members contributions following closing of CESR accounts	ESMA/2011/MB/47	<i>for decision</i>
Implementing financial rules	ESMA/2011/MB/54	<i>for decision</i>

The Acting Secretary General (ASG) presented the report on ESMA's 2012 budget.

The Board queried what would happen to surpluses from CRA supervision. The Interim Executive Director (IED) explained that DG BUDG was currently unable to answer this question since ESMA is the first agency to have three different sources of income, but discussions would continue and the current expectation is that CRA fees should balance ESMA's supervisory costs so any difference should be limited. That difference would be part of ESMA's budget and so any surplus a priori would be redistributed to the Commission and competent authorities. However, it is believed that it may be possible to rebalance income and expenditure across different years. The Chair noted that revenue should be certain so the risk of variation is mainly on the level of expenditure.

In relation to the revenue split between the Union and competent authorities, the IED noted that the EU budget is under severe constraints, especially as the end of the current multi-annual framework is approaching in 2013 and the Commission says there is no margin under the budget heading that covers agencies. However, the Commission has suggested that ESMA could negotiate with the Parliament and Council.



Following discussion by the Board, the Chair concluded that it was clear that changing the contribution split for 2012 is not possible, particularly while the views of the ESAs are not aligned and it would take time to find institutional support. However, the Chair noted the uneasiness of the Board over the way the contribution split issue has developed and would raise it with the other ESA Chairs in the Joint Committee with a view to being prepared to open discussions on the split.

The ASG presented the competent authority contribution proposals for 2011, noting that (subject to the outcome of the next day's CESR meeting), significantly higher CESR reserves had been transferred to ESMA than had been anticipated. The ASG noted that, following previous discussions, the reimbursement should be done at a specified time following the methodology in the annex to the draft decision. A question had arisen whether the offset should be done through the 2012 contribution round, but it was considered that the timing could create difficulties with the Board of Auditors. While CESR approves its final accounts and so the final level of reserves, the allocation of those reserves is a decision for the Management Board.

It was noted that CESR is still due to receive €600k from the Commission, and that account would also need to be taken of non-contributing authorities. It was agreed that if the proposal was agreed this did not amount to a reduction in competent authority contributions: the full contributions would still be demanded, with a refund of the CESR reserves being provided on or after payment of the contributions. It was noted that under the terms of the decision competent authorities would only receive their refund after making their 2011 contributions.

Finally, the IED presented the revised financial regulation.

**Decisions:** The 2012 budget proposals were approved for adoption by the Board of Supervisors and revised financial contributions were approved subject to adoption by CESR of its final accounts and approval by the Board of Supervisors of the proposal to invite Liechtenstein to be an observer (ESMA/2011/MB/47) and therefore for signature by the Chair only in the event that those proposals are adopted without material changes. The financial regulation was adopted subject to confirmation of its approval by the Commission (ESMA/2011/MB/54a).

## 6. Human resources

Implementing rules	ESMA/2011/MB/48	<i>for decision</i>
Update on remaining implementing rules	Oral report	<i>for information</i>
Update on recruitment	Oral report	<i>for information</i>

The IED presented the Staff Regulations implementing rules that have received the Commission's approval.

The IED noted the remaining implementing rules remain under negotiation and that he may shortly invite the Chair to write to DG HR concerning the lack of progress.

The ASG provided an update on recruitment, noting that the final stages had been reached on the post-trade and investment management positions, while procurement, financial and logistic assistance candidates are still being considered. The need to spend time on these positions had resulted in delay in relation to other positions.



The ASG noted that ESMA has two 'remote members' who were part of the CESR Secretariat but worked from their home authorities. ESMA would need to replace those members who are not in a position to take up positions as temporary agents in Paris and job vacancies will be published to ensure a smooth transition.

Finally, the Chair confirmed that middle management recruitment would start around 1 May, both internally and externally, assuming that there is final agreement on the future structure.

**Decision:** The implementing rules were adopted (ESMA/2011/MB/55 and ESMA/2011/MB/56) with decision ESMA/2011/MB/56 replacing decision ESMA/2011/MB/8.

#### **7. Data protection** ESMA/2011/MB/49 *for decision*

The ASG presented the report and proposed adopting the revised rules.

**Decision:** The data protection rules were adopted (ESMA/2011/MB/57).

#### **8. Update on the Board of Appeal** ESMA/2011/MB/50 *for discussion*

The ASG presented the report and explained that the Commission's shortlist is now expected to be adopted on 20 April.

The Board Members discussed how to coordinate the appointment process, noting the need for consultation with the Boards of Supervisors ahead of appointment by the Management Board. It was proposed that an iterative process be used whereby following ESMA staff advice each ESA Management Board chooses and ranks in order of priority 6-7 candidates and the Joint Committee is asked to adopt a joint position combining the lists and ensuring appropriate balance. ESA Chairs would then provide the joint position to their respective Management Boards. The Management Boards would coordinate adoption or ask the Joint Committee to revise the proposal, with the process continuing until all Management Boards are ready to adopt.

**Conclusion:** The Chair agreed to propose the process discussed at the first Joint Committee meeting.

#### **9. Report by Chair, Acting Secretary General and Interim Executive Director** Oral report *for information*

The Chair noted that he had taken up his position on 1 April and prior to that had met in March with Gary Gensler, CFTC Chairman and had given interviews to a number of newspapers. In the coming period his priorities would be to drive the programme on ESMA's organisation and get to know ESMA better, with bilaterals organised with the acting heads of division and unit and subsequent meetings with the various teams. Also, interviews and speeches will be conducted to explain the role of ESMA. The Chair noted he would be giving the keynote speech at the ISDA Conference on EMIR and its impact.

#### **10. Governance**

Draft plan for Management Board decisions ESMA/2011/MB/51 *for discussion*

The Chair presented the draft plan which sets out the legal role of the Management Board, but noted that



he understood there was a desire to have a broader discussion on the Board's role.

Board Members discussed the role they saw for the Management Board, noting:

the need to ensure there is a proper method for the Board to have early sight of budget, resource and related issues if it is to properly carry out its role in managing them;

the desire for a Management Board work plan covering the next 12-18 months;

the Board's role in providing input on the planning for the considerable amount of technical work ESMA needs to carry out over the next few years;

the need for opportunities to discuss broader issues in addition to focusing on immediate tasks;

developing a process for creating the multi-annual work programme;

the need for Standing Committee Chairs to understand that there is a new governance process that affects their ability to commit ESMA resources.

**Conclusion:** The Chair concluded that there is a clear desire for a more substantial document that discusses what happens and is discussed at different points of the year. There was also a need for a discussion on what is expected from each of the relevant actors, which is driven not just by the need for the formal decisions currently listed, but by what will further ESMA's legitimacy and help ensure support for proposals made to the Boards. The Chair accepted that he and the ED would need to carry out work on this and proposed including it on the agenda for the July meeting when the ED will have taken up her position.

## 11. Varia

Update on the new premises ESMA/2011/MB/53 *for information*

Update on the headquarters agreement Oral report *for information*

The ASG presented the report on the new premises noting that the move is expected on the weekend of 18/19 June.

The Vice-Chair noted the 30% deviation from the original budget and that one reason for choosing Rue de Grenelle was the lower need for works and questioned whether the advisers should also share in the additional costs. The ASG confirmed that consideration would be given to whether there is any liability.

The ASG recalled the Management Board's unhappiness at the previous meeting concerning the French Government's response to the headquarters agreement negotiations. In the meantime a letter had been received from the French authorities essentially stating that France would only grant the minimum requirements mandated by the relevant protocol. Having looked at what EBA and EIOPA had received it appeared that Germany is being a little more generous and so the ESAs will discuss this further and consideration will be given to whether there is scope to achieve anything further with the Chair taking over the discussions with the French authorities. The ASG agreed to share the letter with Board Members.



## **12. Future meetings**

*for information*

By end of April – Conference call/meeting on ESMA organisation

24 May 2011 (Paris)

11 July 2011 (Paris)

It was agreed that it would be useful to establish meeting dates for the second half of the year.

Steven Maijoor  
Chair



## **PARTICIPANT LIST**

<b>Voting Members</b>	<b>Advisers</b>
Steven Maijoor (Chair)	
Karl-Burkhard Caspari	Philipp Sudeck
Kilvar Kessler (alternate)	
Fernando Restoy	Antonio Mas
Jean Guill	
Kurt Pribil	Andrea Kuras-Goldmann
Alexander Justham	Cristina Frazer

Vice-Chair	Carlos Tavares
Acting Secretary General	Carlo Comporti
Interim Executive Director	Olivier Salles
Minutes	Jonathan Overett Somnier