



SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 20 March 2012
Time: 11:30 – 17:00h
Location: ESMA, 103 rue de Grenelle, 75007 Paris
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No Items

1. Adoption of agenda *BS/27 decision*

Decision: The agenda was adopted.

2. Credit Rating Agencies
VOTING MEMBERS AND ADVISERS ONLY

– General report on supervisory findings *BS/28 & information
Annex 1 / discussion*

After an introduction by the Chair, the Head of the Credit Rating Agencies Unit presented the report providing an overview of ESMA's supervisory activity on CRA's and summarising the results of ESMA's first examination of the three groups of registered CRA's. He clarified that the examination is a first step in an on-going supervisory process conducted by ESMA. The observations set forth in the report refer to common issues affecting CRAs activities, while ESMA staff has not determined whether any observation highlighted in the report constitutes a breach of the Regulation. He further indicated the next steps in ESMA's supervisory activities towards CRA's, including a follow-up on the observations related to individual CRA's and the selection of supervisory projects focussing on crosscutting risks in the form of thematic reviews.

The Board discussed the report, in particular:

- welcoming the report as an important step in ESMA's supervisory activities and sending a strong signal towards CRA's;
- the role of the Board of Supervisors with regard to supervisory activities of ESMA, its involvement in enforcement procedures and whether this specific report needs approval by the Board;

- the wish for more insight on the underlying concerns, the gravity of the shortcomings and whether there are major differences between the individual firms;
- the need to clearly identify the key elements of the shortcomings, the possibility of identifying good practises and the importance of putting emphasis on the mitigation of risks;
- the need for early notification of a national competent authority in case of a request for assistance by ESMA;
- the need to clearly indicate that the Board will not be bound by the report in future enforcement cases.

The Executive Director and the Head of the Credit Rating Agencies Unit further clarified the general findings by ESMA. The Chair explained the allocation of responsibilities between the Board and ESMA staff; ESMA staff is responsible for the day-to-day supervision of CRA's while the Board is responsible for the strategic direction of ESMA's supervisory tasks, policy issues such as the development of technical standards and has a clear role in enforcement cases as laid down in the CRA Regulation.

Conclusion: The Chair concluded there was majority support in the Board for publishing the report without the approval by the Board. ESMA staff will take into consideration the suggestions by the Board when amending the report. It will be made clear that the Board of Supervisors has not approved the report and is not bound by the report in any possible future enforcement case.

3. Voting procedure on pre-trade transparency waivers

decision

The Chair explained that after the Board of Supervisors meeting of 14 February, one member expressed concerns regarding the validity of the vote by one national competent authority affecting the outcome of the vote on the waivers. The Chair indicated that this concern was justified and the Board should decide on two options: 1. the procedure remains valid, with the exception of one vote. As a consequence, waiver 1 will be considered to be compliant with MiFID; or 2. the Board should have a new vote on waiver 1. The Chair indicated his preference for the first option and invited the members of the Board to share their views.

The Board discussed the two options and the rules governing the voting procedure, in particular;

- the need to have clear rules of procedure for the Board of Supervisors and to apply them in a strict manner due to possible legal risks; and
- the requirement of national competent authorities to formally notify ESMA in advance of any changes to the usual nominated high-level alternate.

Decision: The Board agreed that the procedure remained valid, with the exception of one vote. As a consequence, the Board considered waiver 1 to be compliant with MiFID. The decision on the waivers will be published as soon as possible after the Board meeting.

4. Summary of conclusions of February meeting

BS/29 decision

Decision: The summary of conclusions was approved, including comments by Belgium and Czech.

5. Report by Chair and Executive Director

Oral information



The Chair reported on:

- the joint meeting of the Board of Supervisors with the Securities and Markets Stakeholder Group (SMSG) in February, noting in particular the discussion on the role of the SMSG, presentations from the SMSG on advice they previously adopted, and the recent and future activities of the SMSG;
- the outcome of the meeting of the Joint Committee on 22 February, noting in particular the progress made on the alignment of procedures and the agreement on a proposal for the remuneration policy for the ESA's Board of Appeal;
- the recent activities of ESMA within the ESRB, noting in particular the establishment of a joint group on data exchange, cooperation on the financial stability implications of EMIR and reporting on other activities that touch upon financial stability;
- the upcoming meeting of global regulators on OTC derivatives regulation in May and the possible involvement of the members of the Board as representatives of ESMA. At its next meeting, the Board of Supervisors will discuss the international aspects of EMIR; and
- a letter from the Chair of the Hellenic Capital Market Commission (HCMC) on the impact of austerity plans in Member States resulting in budget cuts. These cuts may affect the capacity and independence of national competent authorities to meet the objective of stronger regulation of the financial markets at the national level and as part of the European System of Financial Supervision. Konstantinos Botopoulos (EL) clarified the letter sent by him to ESMA members and requested for a letter on this issue by ESMA to be sent to the Greek government. The Chair indicated that he already sent a letter to HCMC and that the actions will also be discussed within the Joint Committee in order to reach a common approach. The Commission indicated that they received a letter as well and are examining it at the highest level.

The Executive Director reported on:

- the state of play concerning the CRA endorsement/equivalence decisions with non-EU countries. With regard to Canada the Executive Director indicated that in addition to the Ontario Securities Commission, the MoU has been signed by the Autorité des Marchés Financiers of Quebec and the British Columbia Securities Commission. A decision on Argentina, Mexico and Brazil will be sent for approval to the Board in the next few weeks. Also, the technical advice on the equivalence between the US, Canada and Australia and the EU regime applied to Credit Rating Agencies will be finalised in the near future. On request by the Board, the final signed MoU's with the US, Canada, Hong Kong and Singapore will be sent to the Board members;
- the ESMA group procedures were revised reflecting the discussion in the Board and approved by written procedure taking into account comments by Karl-Burkhart Caspari (DE). The final procedures will be circulated to the Board of Supervisors and will take effect on 26 March;
- discussions with the US SEC within the context of a more formalized confidentiality arrangement between the SEC and ESMA in order to share information on the underlying data to the SEC report on accounting matters: It was noted that the recently agreed MoU between the US SEC and ESMA could not be used for this purpose;

- a visit from the European Court of Auditors to ESMA and the overall positive result with the auditors commenting on improvements made since the last audit in October but also pointing out some issues in ESMA’s 2011 provisional accounts which are being corrected; and
- discussions with the European Commission on the repayment of the 2011 budget surplus. The Board discussed the issue, indicating their strong objections against the position of DG Budget that the legal requirements only allow for returning the budget surplus to the Community budget. The Chair urged the Commission to find an acceptable solution within reasonable time.

6. Budget 2013

*BS/30 decision
& annexes*

The Executive Director presented the report, noting the approval of the budget by DG Markt and the meeting with DG Budget to discuss the 2013 budget, and asked the Board of Supervisors to formally approve ESMA’s 2013 budget proposal.

The Board discussed the report, in particular;

- the concern that some national competent authorities are facing budget cuts while at the same time ESMA’s budget and national contributions will further increase;
- reiterating their strong objections against the position of DG Budget on the 2011 budget surplus and urging the Commission to find an acceptable solution urgently;
- the concern that any surpluses from the 2013 budget will also not be returned to national competent authorities due to the position of DG Budget on the 2011 budget; and
- national legal provisions that do not allow members to redistribute their funding to member State governments or the European Union budget.

The Chair noted that there was already broad support on the 2013 budget itself but the redistribution of the share of the national competent authorities in the 2011 budget surplus is a condition for approval. Pavel Hollman (CZ) did not approve the budget, while concerns on the overall level of the budget were expressed by Giuseppe Vegas (IT) and Antoniya Gineva (BG). Konstantinos Botopoulos (EL) noted that any further increase of the budget will pose a problem for the Hellenic Capital Market Commission.

Decision: The Board decided that ESMA will only submit its 2013 budget to the Commission after a clear signal from the Commission on a good solution for the redistribution issue or by submitting the budget on the condition that the repayment of the 2011 surplus needs to be solved. ESMA will continue its discussion with the European Commission in order to find an acceptable solution. The budget will be sent to members before the end of March by written approval on the basis of this decision.

7. ESMA-Pol

- Report by Konstantinos Botopoulos *BS/31 information*
- Technical standards on short selling *Annex 1 decision (QMV)*
- Cover note to final report on draft technical standards on short-selling *Annex 2*

Konstantinos Botopoulos presented the final report on draft technical standards indicating that certain pending issues need to be addressed individually in a more detailed discussion by the Board of Supervisors. The Chair indicated that there were five remaining issues and two concerns raised by Karl-Burkhart Caspari (DE).

The Board discussed the report, in particular;

- the concept of easy to borrow or purchase for the purpose of Article 6 of the implementing technical standard, determining the necessary arrangements and measures to provide reasonable expectation that settlement can be effected when it is due;
- the requirements under Article 8 (2)(a) that the third party has to fulfil in order to be considered eligible for the purpose of taking measures and arrangements under Articles 6 and 7 of the draft implementing technical standards;
- the use of personal data in the short position notification form;
- the inclusion of master lending agreements in Article 5 of the implementing technical standard;
- the legal review and related amendments to the draft technical standards, in particular the deletion of Article 5 (3) of the implementing technical standard;
- overnight positions in the context of time limited confirmation arrangements in relation to sovereign debt; and
- the exemption where the principal venue is located outside the European Union.

Decision: The Board approved the final report on draft technical standards on short selling on the basis of the proposals from the Chair of ESMA-Pol, the proposed changes in the legal note by ESMA staff and the deletion of the possibility to have an overnight position in the context of Article 7 (2) of the implementing technical standard. Karl-Burkhart Caspari (DE) did not approve the implementing technical standards.

– Access to telephone data records

Annex 3 decision

Konstantinos Botopoulos presented the note on access to telephone data records and related data provisions under the MAD review.

The Board discussed the note, agreeing on the analysis that certain provisions in the draft legislation could pose a serious threat to investigation and enforcement of market abuse cases by administrative competent authorities.

Decision: ESMA will send a letter to the European Commission, Parliament and Council.

8. Corporate Finance Standing Committee

– Report by René Maatman

BS/32 information

The Head of the Investment and Reporting Division presented the report.

- Discussion paper on proxy advisors *Annex 1 discussion*

The Head of the Investment and Reporting Division presented the discussion paper on proxy advisors.

Conclusion: The Board did not contest the publication of the discussion paper.

- Cover note on establishing the CFSC OWG *Annex 2 decision*
- Terms of Reference for the CFSC OWG *Annex 3 decision*

The Head of the Investment and Reporting Division presented the note on the establishment of an Operational Working Group (OWG) to deal with prospectus-related items and asked for approval of the Terms of Reference for the OWG.

Decision: The Board approved the Terms of Reference for the OWG.

9. Committee for Economic and Markets Analysis

- Report by Carlos Alves *BS/33 information*
- Background information on stress tests *Annex 1 discussion*

Carlos Alves presented his report informing the Board of Supervisors on stress testing and to provide the Standing Committees with a basis for their own work on the possible use of stress testing.

The Board discussed the report, in particular;

- the need for Standing Committees to discuss the use of stress testing in their area;
- the need for ESMA staff to coordinate between Standing Committees in order to have a consistent approach; and
- the importance of liaising with the European Banking Authority to see what areas are already covered by their stress tests.

Decision: The Board approved the report with the amendment that the report concerns investment management firms rather than investment firms. The report will be forwarded to the relevant Standing Committees.

10. Crisis management

- Crisis scenarios *BS/34 discussion*

The item will be discussed at the April meeting of the Board of Supervisors.

11. Breach of Union Law *BS/35 discussion*

The item will be discussed at the April meeting of the Board of Supervisors. The Executive Director asked the Board of Supervisors for their written comments by 30 March.

12. Corporate Reporting Standing Committee

- Report by Julie Galbo *BS/39 information*
- Revision of the Transparency Directive – Letter to EU Commission on Binding Technical Standards on IFRS *Annex 1 decision*

Julie Galbo presented the proposal to send a letter to the European Commission, Parliament and Council on the need for binding technical standards regarding IFRS enforcement.

The Board discussed the letter, in particular;

- the importance of the consistent application of IFRS enforcement at the European level;
- the concern that the CESR standards on financial information are legally non-binding; and
- whether the revision of the Transparency Directive is the right instrument to address the issue.

Decision: The Board approved the letter. Karl-Burkhard Caspari (DE) disagreed with the letter because the introduction of a harmonised accounting enforcement system in the EU in his view required a clear legal basis in the Transparency Directive. The letter will be amended reflecting the discussion in the Board and followed by transmission to the European Commission, Parliament and Council.

- Mandate for the review of the accounting practices on sovereign bonds in the IFRS 2011 year-end accounts *Annex 2 decision*

Julie Galbo presented the mandate for the review of the accounting practices on sovereign bonds in the IFRS 2011 year-end accounts.

Decision: The Board approved the mandate of the Task Force.

13. AOB

14. Future meetings

information

- 19 June 2012 (Copenhagen, Denmark)
- 11 September 2012 (Paris)
- 12 September 2012 (Paris) – Joint meeting with SMSG, 09:30h – 13:00h
- 6 November 2012 (Nicosia, Cyprus)
- 18 December 2012 (Paris)



Participants list

Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Michel van Cotte (alternate)	Antoine van Cauwenberge
Bulgaria	Antoniya Gineva (alternate)	Nina Koltchakova
Czech Republic	Pavell Hollmann	
Denmark	Julie Galbo	Hanne R�e Larsen
Germany	Karl-Burkhard Caspari	Philipp Sudeck
Estonia	Raul Malmstein	
Ireland	Gareth Murphy (alternate)	Oliver Gilvarry
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Fernando Restoy	Antonio Mas
France	Thierry Francq	Fran�oise Buisson Thierry Courret
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Liana Ioannidou	
Latvia		
Lithuania	Vytautas Valvoni�s	
Luxembourg	Jean Guill	
Hungary	L�szl� Balogh (alternate)	
Malta	Mike Duignan (alternate)	
Netherlands	Ronald Gerritse	Pim de Wild
Austria	Kurt Pribil	Andrea Kuras-Goldmann
Poland	Ilona Pieczynska-Czerny (alternate)	Tomczyk Katarzyna
Portugal	Carlos Tavares	Carlos Alves
Romania	Gabriela-Victoria Anghelache	Raluca �ariuc
Slovenia	Damjan Zugelj	Sabina Be�ter



Slovakia	Ivan Barri	
Finland	Ville Kajala (alternate)	
Sweden	Anna Jegnell (alternate)	Ulle Jakobson Matilda Gjirja
United Kingdom	Martin Wheatley	Cristina Frazer Dilwyn Griffiths

Non-voting members

European Commission	Maria-Teresa Fabregas-Fernandez	Emiliano Tornese
ESRB	Francesco Mazzaferro	Fabio Recine
EIOPA	Daniela Rode	
EBA		

Observers

Iceland		
Liechtenstein		
Norway	Eirik Bunaes	Johan Frederik Ohman

ESMA

ESMA Chair	Steven Maijoor
Executive Director	Verena Ross
Head of Markets Division	Rodrigo Buenaventura
Head of Investment and Reporting Division	Laurent Degabriel
Head of Operations Division	Nicolas Vasse
Head of Credit Rating Agencies Unit	Felix Flinterman
Head of Legal, Cooperation and Convergence Unit	Stephan Karas
Minutes	Max Simonis



Steven Majoor
Chair



PARTICIPANT LIST

Voting Members

Non-voting members

Observers

ESMA