

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** 29 January  
**Time:** 09:00 – 17:00h  
**Location:** Paris  
**Contact:** steven.maijoor@esma.europa.eu T: +33 1 58 36 51 12

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No Items

- **Opinion on the emergency measure by the Greek HCMC under the Short Selling Regulation** BS/ decision

#### *VOTING MEMBERS ONLY*

Konstantinos Botopoulos (EL) explained the notification by the Hellenic Capital Market Commission (HCMC) on the introduction of the measures under Article 27 of the Short Selling Regulation.

The Head of the Markets Division presented the opinion explaining the procedure for ESMA to issue an opinion on the proposed measure by the HCMC.

**Decision:** The Board approved the opinion with an amendment to the final sentence in the opinion.

1. **Adoption of agenda** BS/3 decision

**Decision:** The agenda was adopted.

2. **Summary of conclusions of December meeting** BS/4 decision

**Decision:** The summary of conclusions was approved with the inclusion of a comment by Konstantinos Botopoulos (EL) on item 6. ESMA-Pol.

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

The Chair reported on;

- the previous day's Management Board meeting, in particular the discussions on the 2014 budget and the 2012 Annual Report;

- the recent activities of the Securities and Markets Stakeholder Group (SMSG) and the agenda of the next day's meeting of the SMSG;
- the recent activities of the Joint Committee and joint work done by the ESAs, in particular the self-assessment of the ESAs regarding the ESFS 2013 review and the upcoming recruitment process for the Securities and Markets Stakeholder Group;
- meetings with members of the European Parliament and the discussions within the European Parliament on the EMIR technical standards;
- the activities by ESMA regarding the MiFID implementing measures and the process to be followed;
- the recent developments regarding the OTC Derivatives Regulators Group. The Chair will be accompanied to the next meeting by Martin Wheatley in his position as Chair of the Secondary Markets Standing Committee;
- the request by the European Commission for technical advice on fees for trade repositories and the envisaged timeline;
- the meeting of the General Board of the European Systemic Risk Board that took place on 20 December, in particular the discussions on money market funds;
- recent developments regarding the Commission's proposal on Audit;
- the next steps in ESMA's activities on Proxy Advisors;
- the organisation of a Board Away Day in May to discuss the evaluation of ESMA and the European System of Financial Supervision; and
- the need to have an election for the vacant position in the Management Board at the March Board of Supervisors meeting following Kurt Pribil's departure.

The Executive Director reported on:

- the recent activities of the CRA Unit, in particular the preparations for the future work stemming from the CRA 3 Regulation and on-going thematic reviews;
- the 2011 budget surplus which will be set off against the second contribution demand from national competent authorities in 2013;
- the level of the current budget expenditures and the 2014 budget process; and
- the meeting of the Financial Services Committee that took place on 23 January, in particular the discussions on the creation of a Legal Entity Identifier (LEI), which was followed by the first meeting of the LEI Regulatory Oversight Committee, where the establishment of an interim global LEI solution was decided along the lines suggested by ESMA and the Commission. A further discussion on the LEI will take place at the March Board of Supervisors meeting.

#### 4. Post Trading Standing Committee

- Report by Giuseppe Vegas, incl. decision on ESMA’s role in the negotiation of MoUs with US authorities on swap dealers activity *BS/5 decision*

Nicoletta Giusto (IT) presented the report.

The Board discussed the report, in particular;

- the procedure for timely involvement of national competent authorities in the process;
- whether banking supervisors not represented in the Board of Supervisors should be involved; and
- the need to pay special attention to the issues of extra-territorial application of US legislation, data access and the free exchange of information amongst EU Member States.

The Chair indicated that the Post Trading Standing Committee and the Board of Supervisors will be involved in an early stage and will be regularly updated on the negotiations according to the current practice in the area of the AIFMD negotiations. He also indicated that banking supervisors will be represented through EBA and should be informed as necessary by national competent authorities represented within ESMA.

**Decision:** The Board approved the mandate.

#### 5. Market Integrity Standing Committee

- Report by Konstantinos Botopoulos *BS/6 information*
- Q&A on short selling *Annex 1 decision*

Konstantinos Botopoulos (EL) presented the report.

The Board discussed the report, in particular whether the Q&A constitutes an interpretation of the Level 1 Regulation.

The Chair indicated that clarifying the application of the Short Selling Regulation through Q&As is within ESMA’s remit in order to strengthen supervisory convergence. The European Commission stressed that ESMA should only apply European legislation and is not allowed to make interpretations.

**Decision:** The Board approved the Q&A, supporting alternative answer nr. 2 to question 1g, with Karl-Burkhard Caspari (DE) abstaining.

- Procedure for emergency measures under Art. 23 of the Short Selling Regulation *Annex 2 decision*

Konstantinos Botopoulos (EL) presented the report.

The Board discussed the report, noting in particular the cumbersome procedure stemming from the Short Selling Regulation. The Chair indicated that the procedures for emergency measures would need to be

looked at in the evaluation of the Short Selling Regulation.

**Decision:** The Board approved the procedure for emergency measures under Art. 23 of the Short Selling Regulation, with Karl-Burkhard Caspari (DE) abstaining.

- Final report on market making guidelines under the Short Selling Regulation *Annex 3 decision*

Konstantinos Botopoulos (EL) presented the report.

**Decision:** The Board approved the final report on market making guidelines under the Short Selling Regulation.

## 6. Investment Management Standing Committee

- Report by Gareth Murphy, incl. update on AIFMD MoU negotiations *BS/7 discussion*

Gareth Murphy (IE) updated the Board on the current negotiations with non-EU authorities of the Memoranda of Understanding required by the Alternative Fund Managers Directive (AIFMD).

The Board discussed the report, noting in particular;

- the approach in the negotiations towards enforcement and onward sharing of information;
- the aim of harmonising the Memoranda of Understanding with the different non-EU authorities; and
- the development of a strategy for a common framework for Memoranda of Understanding.

The Executive Director indicated that ESMA staff has already started an internal project on developing a strategy for a common framework for Memoranda of Understanding and the outcome of this project will be discussed with the Board.

**Decision:** The Board agreed to the general approach for the negotiations as outlined in the report. Further work on harmonising the Memoranda of Understanding will be considered by the Investment Management Standing Committee at a later stage.

- Guidelines on sound remuneration policies under the AIFMD *Annex 1 decision*

Gareth Murphy (IE) presented the report.

The Board discussed the report, in particular the applicable regulatory requirements on remuneration in case of delegation of portfolio management or risk management activities.

**Decision:** The Board approved the guidelines on sound remuneration policies under the AIFMD with Julie Galbo (DK) and Martin Wheatley (UK) objecting.

- Terms of reference of AIFM reporting task force *Annex 2 decision*

Gareth Murphy (IE) presented the report.

**Decision:** The Board approved the terms of reference with a minor amendment on page 2.

## 7. Review Panel

- Report by Jean Guill *BS/8 information*
- Mapping report on MiFID conduct of business rules *Annex 1 decision*

Jean Guill (LU) presented the report.

**Decision:** The Board approved the mapping report on MiFID conduct of business rules.

- Peer review report on supervisory practices under the MAD *Annex 2 decision*

Jean Guill (LU) presented the report.

**Decision:** The Board approved the peer review report on supervisory practices under the MAD subject to minor changes on the basis of comments received from members.

- Proposal for good practices under the MAD *Annex 3 discussion*

Jean Guill (LU) presented the report.

The Board discussed the report, in particular whether ESMA should postpone the development of good practices with a view at the on-going revision of the MAD.

Jean Guill (LU) explained that the revision of the MAD has been taken into account for identifying relevant areas for good practices.

**Conclusion:** The Board took note of the proposal for good practices under the MAD. The Review Panel will involve relevant Standing Committees in order to develop the good practices.

## 8. Securities and Markets Stakeholder Group – SMEs report

- Discussion note on SMEs report *BS/15 discussion*

The Head of the Investment and Reporting Division presented the report, asking the Board to identify the items where further work by ESMA should be undertaken.

The Board discussed the report, in particular;

- the importance of finding the right balance between investor protection and less regulatory requirements for SMEs;
- whether changes to the prospectus regime could make it easier for SMEs to access capital markets;
- whether capital and liquidity requirements applicable to institutional investors make SMEs less in-

teresting to invest in and if appropriate exemptions for investments in small cap securities should be implemented; and

- a possible review of the UCITS directive to identify ways to attract dedicated UCITS funds for SMEs.

**Conclusion:** The Chair concluded that ESMA staff will look further into the identified areas taking into account the discussions in the Board and discuss possible activities within the relevant Standing Committees.

## 9. Corporate Reporting Standing Committee

- Report by Julie Galbo *BS/16 information*
- IFRS for SMEs *Annex 1 decision*

Julie Galbo (DK) presented the report and the draft letter.

The Board discussed the report and the draft letter, in particular;

- the importance of finding the right balance between investor protection and less regulatory requirements for SMEs; and
- whether to support the option to use IFRS for SMEs for issuers only trading on MTFs in the EU.

**Decision:** The Board approved the letter with Gérard Rameix (FR) abstaining. The letter will be revised clarifying that ESMA supports the option to use IFRS for SMEs in the EU for issuers only trading on MTFs.

## 10. ESMA stress testing obligations

- Note on stress testing *BS/9 discussion*

The Executive Director presented the note.

The Board discussed the note, in particular;

- the potential overlap of the proposals with the activities by the Secondary Markets Standing Committee; and
- the need for more information on the proposed measure 2 to prepare a report on methodology, scenarios and templates.

**Decision:** The Board of Supervisors approved Measures 1 and 3, and asked ESMA to provide greater detail on the planned proceedings under Measure 2 to the SMSC for consideration and subsequent final approval by the Board.

## 11. Secondary Markets Standing Committee

- Report by Martin Wheatley *BS/17 decision*

The Board of Supervisors took note of the report. The decision on the possible activities on stress-testing was postponed awaiting the further discussion on agenda item 10.

## **12. Follow-up to joint EBA-ESMA work on reference rates and other benchmarks-setting processes**

- Reaction to the European Commission *BS/20 decision*

The Executive Director presented the discussion note.

The Board discussed the note, in particular;

- whether sending a letter to the European Commission at this stage could pose a conflict with the on-going consultation on benchmarks by ESMA and EBA; and
- whether to include a recommendation to ensure the continuity of a benchmark by contributors.

The Chair indicated that the letter to the European Commission would only focus on the legislative framework and consistency with the current consultation paper by ESMA and EBA would be ensured.

**Decision:** The Board approved the proposal to send a letter to the European Commission with Petr Staněk (CZ) objecting. The letter will be drafted on the basis of the proposal taking into account the discussion in the Board and will be submitted for approval by written procedure.

## **13. ESMA organisation**

- Regulatory Work Programme 2013 *BS/10 decision  
Annex 1*

The Head of the Operations Division presented the 2013 regulatory work programme.

**Decision:** The Board approved the 2013 regulatory work programme, subject to including more information on the foreseen deadline of delivering technical advice, technical standards and guidelines. Petr Stanek (CZ) abstained.

- Note on recovery and resolution procedures & Investor Compensation Schemes *BS/11 information*

The Executive Director presented the note.

**Conclusion:** The Board took note of the report.

- Use of Guidelines under Article 16 ESMA Regulation *BS/12 discussion  
+ annex*

The Executive Director and the representative from the Legal, Cooperation and Convergence Unit presented the note.

The Board discussed the note, in particular;

- to ensure that guidelines and recommendations have a secure legal basis in Union law and ESMA's scope of action;
- the role of the Commission's legal interpretations in discussions on ESMA's guidelines and recommendations vis-à-vis ESMA's independent role concerning the application of Union law; and
- the compliance by national competent authorities with guidelines and recommendations and the possibility for ESMA to start a Breach of Union Law procedure.

**Conclusion:** The Chair concluded that the note received general support from the members. The note, with no formal status, will be revised taking into account the discussion in the Board and circulated amongst members. The issue will be further discussed with the European Commission and within the Joint Committee.

- Board of Supervisors Rules of Procedure *BS/13 decision*  
*BS/14*

The Executive Director presented the note.

The Board discussed the note, in particular whether the provision on arrangements for specific (types of) decisions should be of a general nature or should mention the specific decisions already taken by the Board.

**Decision:** The section on decision-making procedures in the Board of Supervisors Rules of Procedure shall be amended by including a provision mentioning the specific cases where the Board agreed to have different arrangements for taking certain decisions. A revised version will be circulated for approval by written approval.

#### 14. Progress reports

- Report by Anneli Tuominen (FISC) *BS/18 information*

The Board of Supervisors took note of the report.

- Report by Ronald Gerritse (CEMA) *BS/19 information*

The Board of Supervisors took note of the report.

#### 15. A.O.B.

#### 16. Future meetings *information*

- 14 March 2013 (Paris)
- 22 May 2013
- 4 July 2013
- 24 September 2013





- 7 November 2013
- 17 December 2013

## Participants list

### Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Michel van Cotte (alternate)	Antoine van Cauwenberge
Bulgaria	Antoniya Gineva (alternate)	Dimitar Koychev
Czech Republic	Petr Stanek (alternate)	
Denmark	Julie Galbo	Hanne Rae Larsen
Germany	Karl-Burkhard Caspari	Philipp Sudeck
Estonia	Raul Malmstein	Gerle Reinumägi
Ireland	Gareth Murphy (alternate)	Bryan Friel
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Ana-Isabel Fernandez (alternate)	Antonio Mas
France	G�rard Rameix	Fran�oise Buisson Dora Blanchet
Italy	Vittorio Conti (alternate)	Nicoletta Giusto
Cyprus	Liana Ioannidou (alternate)	
Latvia	Sandis Andersmits (alternate)	
Lithuania	Vilius Sapoka (alternate)	
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)	Anna Skrzypek
Portugal	Carlos Alves (alternate)	Manuel Ribeiro da Costa
Romania	Carmen Negoita	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Ivan Barri	Slavomir Stastny
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Anna Jegnell (alternate)	Oscar Ode
United Kingdom	Martin Wheatley	Cristina Frazer

### **Non-voting members**

ESMA Chair	Steven Maijoor	
European Commission	Emil Paulis	Philip Tod
ESRB	Francesco Mazzaferro	
EIOPA	Patrick Hoedjes	
EBA	Adam Farkas	



## Observers

Croatia	Petar-Pierre Matek	
Iceland	Sigurveig Guomundsdottir	
Liechtenstein		
Norway	Kristin Lund	

## ESMA

Chair	Steven Maijoor
Executive Director	Verena Ross
Summary of Conclusions	Max Simonis
Head of Markets Division	Rodrigo Buenaventura
Head of Operations Division	Nicolas Vasse
Head of Investment and Reporting Division	Laurent Degabriel
Head of Credit Rating Agencies Unit	Felix Flinterman
Legal, Cooperation and Convergence Unit	Jonathan Foster
Head of Economic Research & Financial Stability Unit	Steffen Kern

Done at Paris on 14 March 2013

Steven Maijoor  
Chair  
For the Board of Supervisors