

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 22 May
Time: 09:00 – 17:30h
Location: Dublin
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No Items

1. Adoption of agenda *BS/57 decision*

Decision: The agenda was adopted.

2. Summary of conclusions of March meeting *BS/58 decision*

Decision: The summary of conclusions was approved with the inclusion of comments by Gérard Rameix (FR) on items 7. and 10.

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

The Chair reported on;

- the recent activities of the European Systemic Risk Board, in particular in relation to asset quality reviews;
- the recent activities of the Joint Committee, in particular the organisation of a joint consumer protection day;
- the recent meeting of the Economic and Financial Committee, in particular the discussions on the Green Paper on long term financing;
- the upcoming elections for the position of Vice-Chairman and the Management Board;
- the appointment of Ms Hannelore Lausch as chair of the Corporate Reporting Standing Committee;
- the recent activities of the Securities and Markets Stakeholder Group, and the renewal process for the group;

- the ESMA representation at the next meeting of the OTC Derivatives Regulators Group; it was agreed that Giuseppe Vegas (IT) will join the delegation in his capacity as Chair of the Post Trading Standing Committee; and
- the European Commission’s mandate to Mr Philippe Maystadt to review the IFRS governance and endorsement mechanism.

The Executive Director reported on;

- the recent activities in the area of CRA supervision, in particular advice on equivalence of several jurisdictions, registration procedures and the supervisory work plan;
- the roundtable of press contacts of national competent authorities organised by ESMA staff;
- the 2012 audit by the European Court of Auditors;
- developments regarding the 2014 budget where ESMA has not yet received comments from the European Commission; and
- the obligations of professional secrecy for members of the Board.

4. Investment Management Standing Committee

- Report by Gareth Murphy *BS/56 information*

Gareth Murphy (IE) presented the report and the accompanying documents.

- Final report on guidelines on key concepts of the AIFMD *Annex 1 decision*

The Board discussed the report.

Karl-Burkhard Caspari (DE) was against the approach according to which, where the investment compartment of an undertaking matches the definition of ‘AIF’ under the AIFMD, the undertaking as a whole should be considered as an AIF.

Julie Galbo (DK) was of the view that the guidelines would enlarge the scope of the AIFMD by capturing entities that have a limited number of investors.

Decision: The Board approved the final report on guidelines on key concepts of the AIFMD.

- Memoranda of Understanding under the AIFMD *Annexes 2 - 23 decision*

The Board discussed the MoUs, in particular;

- the importance of approving and signing the MoUs as soon as possible taking into account the deadline of 22 July;
- the MoUs taking the form of guidelines and applying the comply-or explain procedure;
- the possibility to sign the MoUs before transposition of the AIFMD at the national level;
- stating that the MoUs do not supersede national legislation;

- in relation to the MoU with the US SEC, the provisions on direct access to EU entities for supervisory purposes;
- the position of the Turkish CMB to only sign MoUs with the authorities from those countries with which Turkey has diplomatic relations; and
- the use of EU-terminology for naming 3rd countries.

Gérard Rameix (FR) underlined that the SEC's interpretation of the MoU is not compatible with the provisions according to which the MoU cannot supersede national law. He stressed that by allowing the SEC to have direct access to European entities without certain safeguards, the MoU would go beyond the IOSCO principles on supervisory cooperation and against the principle of trust and reliance on each other.

Karl-Burkhard Caspari (DE) was of the view that NCAs should not be considered non-compliant if they do not sign an MoU with a particular authority provided there is no cross-border activity involving entities from that authority's jurisdiction.

The European Commission explained that only the EU, by virtue of the AIFMD, had such far-reaching legislation on alternative investment fund managers and that the lack of an equivalence or substituted compliance regime in the AIFMD meant that EU NCAs needed to have direct supervisory access in the relevant non-EU country. In this context, on-site visits and direct supervisory access were crucial to effective enforcement by EU NCAs.

Decision: The Board approved the Memoranda of Understanding under the AIFMD, with Gérard Rameix (FR) opposing. A side letter will be attached to the MoUs mentioning the status of the transposition of the AIFMD in each of the EU Member States and clarifying that the MoU does not supersede national law. Also, ESMA will approach the Turkish CMB to stress the importance of equal treatment of EU national competent authorities and the authority of the Former Yugoslav Republic of Macedonia (FYROM) in order to clarify that the name FYROM should be used in the MoU.

Regarding the comply or explain mechanism, it was clarified that NCAs would comply with the guidelines by signing the specific MoU with each non-EU authority as set out in the guidelines. Where an NCA chooses not to sign a particular MoU, it could comply by committing to use the specific MoU set out in the guidelines for the purposes of any future MoU with that non-EU authority in the context of the AIFMD. In the case of non-signature, it should be clear that the relevant cross-border activity must be prohibited from 22 July onwards.

- Consultation paper on guidelines on reporting under the AIFMD *Annex decision*

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The European Commission indicated that the inclusion of certain additional information items might conflict with the Level 1 requirements.

Pavel Hollmann (CZ) indicated that the standardisation of the reporting format should only apply for the transmission of information between NCAs and ESMA, not from AIFMs to NCAs.

Decision: The Board approved the consultation paper on guidelines on reporting under the AIFMD with Pavel Hollmann (CZ) abstaining.

- IMSC Terms of Reference *Annex decision*

Decision: The Board approved the revised terms of reference.

5. Corporate Finance Standing Committee

- Report by Gérard Rameix

BS/59 information

Gérard Rameix (FR) presented the report and the accompanying documents.

- Report on liability regimes

Annex 1 decision

The Board discussed the report, in particular whether the cover letter from ESMA to the European Commission should mention investor protection issues related to the findings of the report and where further work in the form of studies or analysis could be of value.

Decision: The Board approved the report on liability regimes. The Board decided to exclude the possible investor protection implications of the findings of the report from the letter to the European Commission.

- Q&A on profit estimate regimes

Annex 2 decision

The Board discussed the Q&A, in particular;

- whether the new regime on profit estimates is applicable to annual accounts or annual financial reports approved by the person responsible within the issuer for which the auditors' report has not yet been issued; and
- whether quarter four reports should be considered within the definition of profit estimates.

Decision: The Board approved the Q&A on the profit estimate regime with the majority positions as reflected in the report. ESMA will develop a further Q&A on the issue of the agreement with the auditor, taking into account the minority position and the additional costs involved.

- Q&A on retail cascades

Annex 3 decision

Decision: The Board approved the Q&A on retail cascades.

- Q&A on age of latest audited financial information in SME proportionate disclosure regime prospectuses.

Annex 4 decision

Decision: The Board approved the Q&A on age of latest audited financial information in SME proportionate disclosure regime prospectuses.

- Q&A on age of audited financial information in the absence of published interim financial statements

Annex 5 decision

Decision: The Board approved the Q&A on age of audited financial information in the absence of published interim financial statements.

6. Joint EBA-ESMA work on reference rates and other benchmarks-setting processes

- Cover Note *BS/60 information*

The Executive Director presented the note and the accompanying documents.

- Final report on Principles for Benchmark-Setting Processes in the EU *Annex 1 decision*

The Board discussed the report, in particular;

- aligning with the work done by IOSCO;
- the wording of the provision on liquidity requirements; and
- the continuity of the provision of benchmarks.

Decision: The Board approved the final report on Principles for Benchmark-Setting Processes in the EU.

- Letter from Elke König & Karl-Burkhard Caspari

Karl-Burkhard Caspari (DE) explained the letter.

Conclusion: The Board agreed that the Joint EBA-ESMA Task Force should further explore medium-term options of anchoring reference rates for unsecured inter-bank transactions in actual transactions.

7. Investor Protection and Intermediaries Standing Committee

- Report by Jean-Paul Servais *BS/61 information*

Jean-Paul Servais (BE) presented the report and the accompanying documents.

- Final report on MiFID remuneration guidelines *Annex 1 decision*

Decision: The Board approved the final report on MiFID remuneration guidelines.

- Discussion paper on MiFID/MiFIR *Annex 2 discussion*

The Board discussed the paper, in particular;

- the development of criteria for product intervention and at what stage intervention could take place;
- the possible requirements in respect of product governance including oversight, design, distribution strategy, information and post-sale obligations;
- the need to develop a cross-sector view; and
- the need to consider 3rd country responsibilities in the context of incoming originators.

Conclusion: IPISC will continue its work in order to prepare for the Discussion Paper on the forthcoming MiFID 2/MiFIR Level 2 empowerments. The Chair indicated that IPISC will also consider submitting a list

of possible technical amendments to MiFID 2/MiFIR to the EU Council, Parliament and Commission.

8. Secondary Markets Standing Committee & Commodity Derivatives Task Force

- Report by Martin Wheatley *BS/62 discussion*

Martin Wheatley (UK) presented the report and the accompanying documents.

- Discussion paper on MiFID/MiFIR *Annex 1 discussion*

The Board discussed the paper, in particular;

- the expansion of pre- and post-trade transparency requirements to non-equities; and
- the implications of MiFID 2/MiFIR on ESMA regarding resources and the required technical infrastructure.

Conclusion: SMSC and CDTF will continue its work in order to prepare for the Discussion Paper on the forthcoming MiFID 2/MiFIR Level 2 empowerments.

- List of Level 1 technical amendments *Annex 2 decision*

Decision: The Board approved the list of Level 1 technical amendments to MiFID 2/MiFIR to be submitted to the EU Council, Parliament and Commission.

9. Market Integrity Standing Committee

- Report by Konstantinos Botopoulos *BS/63 information*

Konstantinos Botopoulos (EL) presented the report and accompanying documents.

- List of Level 1 technical amendments on MiFIR transaction reporting *Annex 1 decision*

Decision: The Board approved the list of Level 1 technical amendments on MiFIR transaction reporting to be submitted to the EU Council, Parliament and Commission.

- Discussion paper on Market Abuse Regulation *Annex 2 discussion*

Nicoletta Giusto (IT), coordinator of the MAR preparatory working group, presented the report.

Conclusion: The Board took note of the discussion paper on Market Abuse Regulation without comments.

- Report on Short Selling Regulation review *Annex 3 decision*

The Chair noted the unfortunate timing to deliver a technical advice on the evaluation of the Short Selling Regulation since the SSR only entered into application on 1 November 2012.

Decision: The Board approved the report on Short Selling Regulation review with the Options A2, B2, C2 and D2 as mentioned in the report by Konstantinos Botopoulos (BS/63).

10. Credit Rating Agencies

- Report by Verena Ross *BS/64 information*
- Guidance on scope *Annex 1 decision & 2*

The Executive Director presented the report and the accompanying documents.

Decision: The Board approved the guidelines on scope.

11. Post Trading Standing Committee

- Report by Giuseppe Vegas *BS/65 information*

Giuseppe Vegas (IT) presented the report and the accompanying documents.

- Guidelines and Recommendations on standard written agreement for CCP colleges *Annex 1 decision*

The Board discussed the report, in particular;

- the timing of publishing the guidelines in relation to the adoption of the Technical Standards and the non-objection period by the European Parliament and the Council; and
- the working language of the college.

Decision: The Board approved the Guidelines and Recommendations on the standard written agreement for CCP colleges with the inclusion of a sentence in the Chapter 4 on the working language of the College. The report will be published, but will enter into force only after completion of the translations, which is likely to occur after the expiry of the non-objection period.

- Second set of Q&As on EMIR implementation *Annex 2 decision*

Decision: The Board approved the Q&As on EMIR implementation with Karl-Burkhard Caspari (DE) objecting.

- Opinion on the delay of the reporting obligation for exchange traded derivatives *Annex 3 decision*

The Board discussed the opinion, in particular the timing of the reporting obligation for exchange traded derivatives and the development of guidelines by ESMA.

Decision: The Board agreed that ESMA will start developing the guidelines and will send a letter to the European Commission on the timing of the reporting obligation.

- Terms of Reference of the CSD Task Force *Annex 4 decision*

Decision: The Board approved the Terms of reference of the CSD Task Force.

- Reporting scenario for exchange traded derivatives *Annex 5 discussion*

Conclusion: With a view at the decision regarding the opinion on the delay of the reporting obligation for exchange traded derivatives (Annex 3), the Board agreed that the reporting scenario for exchange traded derivatives will be part of the Guidelines to be developed.

- Guidelines and Recommendations on a model MoU between the CFTC and EU Authorities for the registration of European Swap Dealers and Major Swap Participants *Annex 6 discussion*

The Board discussed the Guidelines and Recommendations on a model MoU, in particular;

- whether the cooperation arrangements between the CFTC and EU Authorities should take the form of Guidelines and applying the comply-or explain procedure; and
- the involvement of EBA and the relevant banking supervisors.

Conclusion: The Board agreed to start working on cooperation arrangements between the CFTC and EU Authorities on the basis of a standard template and discuss the final form of these arrangements at a later stage in the process. The relevant banking supervisors will be kept informed with EBA helping to inform its members.

- The way forward on the equivalence assessments for US and Japan *Annex 7 discussion*

The Board discussed the report, in particular stressing the importance of having equivalence decisions before the 15 September deadline for CCPs to apply for recognition.

Conclusion: ESMA will discuss with the European Commission the dates to submit the technical advice on equivalence of US and Japan.

12. Financial Innovation Standing Committee

- Report by Anneli Tuominen *BS/66 & discussion Annexes*

Anneli Tuominen presented the report and the accompanying documents.

The Board discussed the report, in particular;

- the role of FISC and the possible overlap with other Standing Committees;
- cooperation with EBA in the area of captive placements;
- crowdfunding as a new form of financing and whether regulatory intervention at the European level is needed;

- the difficulties faced in the area of data collection.

Conclusion: The Board will revisit the issue of data collection at a future meeting.

13. Committee for Economic and Markets Analysis

- Report by Ronald Gerritse *BS/68 information*
- Report on Retailisation in the EU *Annex 1 decision & 2*

Gerben Everts (NL) presented the report and the accompanying documents.

The Chair indicated to focus the discussion on the retailisation report itself due to time constraints.

The Board discussed the report, in particular;

- the sample of products upon which the analysis is based; and
- the recommendations made to ensure that appropriate information regarding the characteristics of each product is provided to retail investors.

Decision: The Board approved the report on Retailisation in the EU, including a correction in the final paragraph of the executive summary.

14. Review Panel

- Report by Jean Guill *BS/69 information*

Jean Guill presented the report and the accompanying documents.

- Mandate on Best Execution *Annex 1 decision*

Decision: The Board approved the mandate on Best Execution.

- Peer Review on MAD supervisory practices, incl. good practices *Annex 2 decision*

Decision: The Board approved the Peer Review on MAD supervisory practices, incl. good practices.

- Executive Summary of the MAD mapping report *Annex 3 information*

Conclusion: The Board took note of the executive summary of the MAD mapping report.

- MiFID conduct of business good practices *Annex 4 decision*

Decision: The Board approved the MiFID conduct of business good practices.

15. ESMA organisation

- Note on IOSCO membership *BS/70 discussion*

The Chair presented the note.

The Board discussed the note, in particular;

- the timing of the application by ESMA to become ordinary member with a view at the current discussions within IOSCO on membership issues;
- whether the current IOSCO by-laws allow ESMA to become an ordinary member; and
- whether ESMA would be able to sign the IOSCO MMoU.

Conclusion: The Board in principle supported the application by ESMA for ordinary membership of IOSCO. ESMA staff will further investigate the formal requirements for ordinary membership and report back to the Board of Supervisors.

- Organisation of ESMA's work on market data reporting requirements *BS/71 + decision Annex*

The Executive Director presented the report.

The Board discussed the report, in particular;

- the need to liaise with the relevant ESMA groups; and
- to take into account earlier work on transaction reporting.

Decision: The Board approved to establish a new group on market data reporting and its terms of reference. A call for candidates will be sent to the Board of Supervisors shortly.

16. A.O.B.

17. Future meetings

information

- 4 July 2013 (Paris)
- 24 September 2013 (Paris)
- 25 September 2013 - joint meeting with SMSG (Paris)
- 7 November 2013
- 17 December 2013

Participants list

Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Antoniya Gineva (alternate)	
Czech Republic	Pavel Hollmann	
Denmark	Julie Galbo	Hanne Rae Larsen
Germany	Karl-Burkhard Caspari	Philipp Sudeck
Estonia		Gerle Reinumägi
Ireland	Gareth Murphy (alternate)	Bryan Friel Oliver Gilvarry
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Antonio Mas (alternate)	
France	Gérard Rameix	Dora Blanchet
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Liana Ioannidou
Latvia	Kristaps Zakulis	
Lithuania	Valvonis Vytautas	
Luxembourg	Jean Guill	

Hungary	Karoly Szasz	
Malta	Mike Duignan (alternate)	
Netherlands	Gerben Everts (alternate)	Pim de Wild
Austria	Klaus KumpfmueLLer	Andrea Kuras-Goldmann
Poland	Ilona Pieczyna-Czerny	Katarzyna Tomczyk
Portugal	Carlos Tavares	Gabriela Figueiredo Dias
Romania	Daniel Daianu (alternate)	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Slavomir Stastny (alternate)	
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Anna Jegnell (alternate)	Ulle Jakobson
United Kingdom	Martin Wheatley	Cristina Frazer

Non-voting members

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

Observers

Croatia	Silvana Bozic	
Iceland	Sigurveig Guomundsdottir	
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	Kristin Lund

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Max Simonis
Head of Markets Division	Rodrigo Buenaventura
Markets Division	Fabrizio Planta Carsten Ostermann Christophe Polisset
Head of Credit Rating Agencies Unit	Felix Flinterman

Credit Rating Agencies Unit	Paolo Santella
Head of Economic Research & Financial Stability Unit	Steffen Kern
Economic Research & Financial Stability Unit	Antoine Bouveret
Head of Communications	David Cliffe
Head of Legal, Cooperation and Convergence Unit	Stephan Karas
Investment and Reporting Division	Patrick Armstrong Ronan Dunne Jose Moncada Sarah Raisin Richard Stobo

Done at Paris on 4 July 2013

Steven Maijoor
Chair
For the Board of Supervisors