

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** 29 January 2015  
**Time:** 09h00 – 17h30  
**Location:** ESMA, 103, rue de Grenelle, 75007 Paris  
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**1. Adoption of agenda** BS/3 decision

**Decision:** The agenda was approved.

**2. Summary of Conclusions**

— 17 December 2014 meeting BS/4 decision

**Decision:** The Summary of Conclusions of the 17 December 2015 meeting was approved.

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

The Chair reported on:

- The activities of the Joint Committee and in particular that ESMA took over the chairmanship of the Joint Committee of the European Supervisory Authorities (ESAs) from the European Banking Authority (EBA) on 1 January 2015 and on the ongoing negotiations with the Member States of the European Economic Area (EEA) on the incorporation of EU law;
- The letter ESMA will send to the European Commission on structured deposits identifying potential overlap between the work done by EBA and ESMA;
- The January 2016 meeting of the Management Board which was mainly dedicated to the 2015 and 2016 budget and work programme;
- His participation in the Asia Financial Forum in Hong Kong and the meetings with the Hong Kong Financial Secretary, the Chief of the Hong Kong Monetary Authority, the Chair of the Securities and Futures Commission, as well as representatives of the EU financial industry in Hong Kong;
- The meeting of the Economic and Financial Committee (Financial Stability) that took place on 16 January 2015; and
- The activities of the European Systemic Risk Board (ESRB), in particular on market liquidity and the work on conduct risk.

The Executive Director Reported on:

- The co-operation with the European Central Bank (ECB) highlighting that ESMA staff will enter into discussions with the ECB to develop a memorandum of understanding and that a note will be presented to the Board of Supervisors for discussion during its March 2015 meeting;

- The hearing in front of the European Parliament’s Budgetary Control Committee;
- The implementation of the Conflicts of Interest Policy and the need for Board members to sign the Declaration of Interest and the Declaration of Intent;
- The January 2015 meeting of the Financial Services Committee (FSC) which focused on the development of a Capital Markets Union and the preparation of a meeting with authorities of the United States of America;
- The letter ESMA will send to the co-legislators on the Regulation on benchmarks and European Long-Term Investment Funds highlighting the need for sufficiently long deadlines allowing the Authority to deliver high-quality work and consult market participants properly;
- The Financial Markets Regulatory Dialogue with the United States that took place on 12 January 2015;
- The vacant positions for Second National Experts (SNEs); and
- The ongoing work on establishing cost estimates for in-house development and running of the website for the Structured Finance Instruments (SFI) and the related discussions with the ECB and Commission.

The European Commission representative mentioned that, though different alternatives could be explored including co-operation with other authorities, the requirement for a SFI website to be developed by ESMA is set out in EU law.

#### 4. Post-Trading Standing Committee

- Report by Giuseppe Vegas BS/5 information

**Conclusion:** Giuseppe Vegas presented the report and the accompanying documents.

- Opinion on the amended RTS on the clearing obligation for Interest-Rate Swaps Annex 1-2 decision

The European Commission representative presented the letter ESMA received from the European Commission introducing changes to the Regulatory Technical Standard on the clearing obligation for Interest-Rate Swaps in relation to the treatment of non-EU intragroup transactions, the application date of the frontloading obligations and the calculation of the threshold for investment funds. He added that it is the Commission’s opinion that ESMA has the legal right to further specify how the intragroup exemption provided for in Article 4(2) of EMIR should apply. Finally, he anticipated that ESMA would receive a second letter from the Commission clarifying some of the issues in the original letter.

The Board discussed the Opinion, and in particular:

- The Commission’s proposal to deem any third country equivalent (within the meaning of Article 13(2) of EMIR);
- The legal implications of such decision on the activities of the national competent authorities; and
- How the co-operation between ESMA and the European Commission could be improved, given the participation of the Commission in all the stages of development of the technical standards and the significant changes introduced by the Commission following submission of the draft RTS by ESMA.

**Decision:** The Board agreed with the submission of the Opinion to the European Commission.

- Feedback from the consultation on the clearing obligation of Non-Deliverable Forwards (NDF) Annex 3 decision

**Decision:** The Board approved the Feedback Statement on the clearing obligation for non-deliverable forwards

- Consultation Paper Bilateral Margins Under EMIR Annex 4 discussion

The Board discussed the consultation paper on bilateral margins under EMIR and in particular the

treatment between internal models and external ratings.

**Conclusion:** The Board indicated its preference for an equivalent treatment of both internal models and ECAI ratings. A consultation paper will be developed and presented to the Board for adoption in written procedure.

## 5. Market Integrity Standing Committee

- Report by Konstantinos Botopoulos BS/6 information

**Conclusion:** Konstantinos Botopoulos presented the report and accompanying documents.

- Final Technical Advice on the Market Abuse Regulation Annex 1 decision

The Board discussed the Technical advice, and in particular:

- The minimum thresholds for the purpose of the exemption for certain participants in the emission allowance market from the requirement to publicly disclose inside information;
- The application of the weighting criterion with respect to investments in investment funds (for the types of transactions triggering notification and disclosure duties); and
- The determination of the competent authority to which to notify ex ante delays in disclosure of inside information in the particular case of non-equity instruments issued by a credit institution and admitted to trading on a trading venue(s) located in a different Member State(s) than the one of registration of that credit institution.

**Decision:** The Board approved the Technical Advice.

## 6. Review Panel

- Report by Jean Guill BS/7 information

**Conclusion:** Jean Guill presented the report and accompanying documents. The Board took note of the changes in the composition of the assessment group

- Peer Review report on Automated Trading Annexes 1(a-g) decision

**Decision:** The Board approved the Peer Review report on Automated Trading subject to drafting changes to the Executive Summary which will continue to reflect the outcome of the review. The Peer Review will be published in line with the Review Panel Methodology.

## 7. ESMA Strategy and Finance for Growth

- Capital Markets Union BS/8 & discussion  
Annex 1

The Chair introduced the session on the European Commission's initiative to bring about a well-regulated and integrated Capital Markets Union, encompassing all Member States, by 2019, with a view to maximising the benefits of capital markets and non-banking financial institutions for the real economy.

The Head of the Economic Research and Financial Stability Unit presented the note.

The Board discussed the idea of a Capital Markets Union and the note, in particular:

- ESMA's contribution to the debate and the need for prioritisation, particularly the role of securitisation, SME growth markets, private placements, disclosure requirements and further aligning investor protection across sectors and Member States;
- The interaction with ESMA's core mandate to enhance investor protection and promote stable and

- orderly financial markets;
- How ESMA’s supervisory convergence activities could add to a Capital Markets Union;
- The role of retail investors; and
- Existing tax incentives in some Member States favouring loan instruments.

**Conclusion:** ESMA staff will prepare a note prioritising areas for discussion during the March 2015 meeting of the Board of Supervisors on the basis of the views expressed during the meeting, which will support the development of ESMA’s response to the green paper.

- Strategic Orientation 2016-2020 BS/9 discussion
  - o Presentation Annex 1
  - o Strategic Orientation 2016-2020 Annex 2

The Chair introduced the strategic orientations paper and the presentation on how ESMA could promote supervisory convergence.

The Board discussed the presentation and the strategic orientation note, in particular the:

- Assignment of new competences to ESMA, especially in relation to new direct supervision mandates;
- Enhanced focus on peer reviews following the revised Peer Review Methodology and the possibility to improve the identification of best practices;
- Benefits of coordinating supervisory activities (such as the European Enforcers Coordination Sessions); and
- Need to allocate sufficient and appropriate resources.

The Executive Director stated that once the strategic orientation is finalised, the strategy for the years ahead will need to be translated into a multi-annual work programme including prioritisation.

**Conclusion:** The strategic orientation will be further developed taking into account the views from the Board and will be presented at a future meeting together with a multi-annual work programme.

- Discussion Note on Securitisation BS/10 discussion

The Executive Director presented the note.

The Board discussed the note, and in particular:

- The need to identify the impediments to the emergence of a robust securitisation market; and
- The need to harmonise disclosure requirements including those found in the Prospectus Directive, the Capital Requirements Regulation, the Alternative Investment Fund Managers Directive, CRA3, Solvency II and existing central banks’ collateral frameworks without hampering investor protection.

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

## 8. Financial Innovation Standing Committee

- Report by Anneli Tuominen BS/11 discussion

Anneli Tuominen presented the report highlighting the improvement to the financial innovation scoreboard, the warnings issued, the data collection on investor trends and complaints and the policy work undertaken by FISC, particularly in relation to product governance arrangements for structured retail products and on product intervention.

The Board discussed the report, and in particular the ongoing activities in the area of virtual currencies, financial technology and foreign exchange investments.

The Head of Investment and Reporting informed the Board that a discussion note on the financial innovation scoreboard and on product intervention will be presented to the Board of Supervisors during its March 2015 meeting.

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

## 9. ESMA organisation

—	2015 Budget		decision
	○ Cover Note	BS/12	
	○ 2015 Budget	Annexes 1-4	
	○ 2015 Revised Work Programme	Annex 5	
	○ 2015 Regulatory Work Programme	Annex 6	
	○ Risk Assessment	Annex 7	

The Executive Director presented the proposed revised 2015 budget following the decision by the budget authority, comprised of the European Parliament and the Council of the European Union. She clarified that in relation to Title II and III, whilst not impacting the overall budget, different figures were presented between the Cover Note and the Annexes due to a transfer between two IT lines that was not presented in the cover note. The Board was invited to approve the budget as set out in the annexes.

The European Commission representative expressed concerns on the impact of the potential delay in delivering Technical Advice and Technical Standards, especially in relation to the Central Securities Depositories Regulation and the revised Markets in Financial Instruments Directive (MiFID).

**Decision:** The Board approved the 2015 budget as set out in the annexes.

—	2016 Budget	BS/13	decision
	○ 2016 Budget	Annex 1-2	
	○ High-Level Work Programme 2016	Annex 3	
	○ Multi-annual Staff Policy Plan 2016-2018	Annex 4	

The Executive Director introduced the draft 2016 budget and work programme. She particularly highlighted that the proposal builds further on the 2015 budget proposal approved by the Board of Supervisors in January 2014 and included the effect of the pension contribution ESMA has to cater for following a decision of the co-legislators.

The Chair presented the proposal from the Management Board revising the budget downwards by limiting staff and budget, particularly by cutting activities to reach a contribution level by NCAs similar to the 2015 contributions as approved by the Board in February 2014 whereas the suggested increase stemming from the pension contribution would be partially absorbed by ESMA, and partially covered by NCAs' contributions (50/50). The IT delegated projects would be considered separately.

The Board discussed the 2016 budget, in particular:

— The changed budgetary and macro-economic situation since the approval of the 2015 budget

proposal and the significant impact of the proposed increase on national competent authorities who also face budget restrictions;

- The decision of the co-legislators that ESMA shall pay the part of the employer's contributions which corresponds to the proportion between the Authority's revenues with subsidy from the general budget of the Union and its total revenues and the impact this will have on the 40/60 budget key
- The risk of non-delivery of certain projects due to repeated delays from one year to the next;
- The importance of planning and prioritisation; and
- The possibility to charge fees for training organised by ESMA.

The European Commission representative expressed his disagreement with the proposed budget. He referred to the EU subsidy and establishment plan as foreseen in the Multi-annual Financial Framework.

The Chair highlighted that ESMA needs to submit a budget request to the European Commission by 31 January 2015 which will serve as an input for the negotiations within the Commission and later on with the budget authority.

**Decision:** The Board decided that ESMA staff should develop a proposal on the basis of NCA contributions at the same level for the proposed 2015 budget to which the Board agreed in February 2014, for adoption by Qualified Majority Voting by written procedure. A failure to vote will not be considered a vote in favor or the budget.

- Report on IT delegated projects BS/14 & information  
Annex 1

**Conclusion:** The Board took note of the report on IT delegated projects.

- ESMA validation of significant changes to CCP risk models and parameters BS/15      decision

The Head of Markets Division presented the note on the validation of significant changes to CCP risk models and parameters.

The Board discussed the note, and in particular:

- Whether validation by ESMA is needed before a CCP can introduce the proposed changes to its models and parameters; and
- The mechanisms in place to appeal ESMA's decision.

**Decision:** The Board confirmed the legal analysis that the risk model changes should be both validated by the national competent authority and ESMA before a CCP can introduce the proposed changes. David Lawton (UK) and Karl-Burkhard Caspari (DE) disagreed with that interpretation. The Board decided to delegate the validation decision to a panel for which Rules of Procedure were provided in the annex. In case the panel decides not to validate the risk model changes, such a decision will have to be endorsed by the Board of Supervisors before adoption.

- Memorandum of Understanding between ESMA and RBA regarding cooperation arrangements for the access to information on derivatives contracts held in EU trade repositories BS/16 & decision  
Annex 1

**Decision:** The Board approved the Memorandum of Understanding between ESMA and RBA.

- Memoranda of Understanding regarding co-operation arrangements for the recognition of third-country CCPs under EMIR BS/17      decision
  - Between ESMA and JFSA Annex 1-2

- Between ESMA and MAS

Annex 3-4

**Decision:** The Board approved the memoranda of understanding between ESMA and the Japan GSA and MAS.

#### **10. Investment Management Standing Committee**

- Report by Gareth Murphy BS/18 information
- Final Report on Technical Advice on EuSEF and EuVECA Annex 1 decision

**Decision:** The Board approved the Technical Advice on EuSEF and EuVECA.

#### **11. Credit Rating Agencies**

- Report by Verena Ross BS/19 information
- Call for Evidence on CRA Regulation Technical Advice Annex 2 information

**Conclusion:** The Board took note of the report and the Call for Evidence.

#### **12. A.O.B.**

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#### **13. Future meetings**

- **19 March 2015 (Paris)**
- **6-7 May 2015 (Riga) [incl. Away Day]**
- **24-25 June 2015 (Paris)**
- **24 September 2015 (Luxembourg)**
- **5 November 2015 (Paris)**
- **10 December 2015 (Paris)**

## Participants list

### Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Michel van Cottem	Antoine Van Cauwenberge
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	Hanne Rae Larsen
Germany	Karl-Burkhard Caspari	Philipp Sudeck
Estonia	Andre Nomm	
Ireland	Cyril Roux	Gareth Murphy Niamh Mulholland
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Lourdes Centeno	Antonio Mas
Croatia	Silvana Bozic (alternate)	
France	Gerard Rameix	Françoise Buisson Patrice Aguesse
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Liana Ioannidou (alternate)	
Latvia	Sandis Andersmits (alternate)	



Lithuania	Vilius Sapoka (alternate)	
Luxembourg	Jean Guill	
Hungary	Richard Vegh (alternate)	
Malta	Christopher Buttigieg	
Netherlands	Merel van Vroonhoven	Pim de Wild
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Anna Skrzypek
Portugal	Carlos Alves (alternate)	Maria Gabriela Fernandes
Romania	Miso Negritoiu	
Slovenia	Sabina Bešter (alternate)	
Slovakia	Ivan Barri	Slavomir Stastny
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Aino Bunge (alternate)	Oskar Ode
United Kingdom	David Lawton (alternate)	Mark Aruliah

#### **Non-voting members**

ESMA Chair	Steven Maijor	
European Commission	Martin Merlin	Peter Ohrlander

ESRB	Francesco Mazzaferro	
EIOPA	Katja Wuertz	
EBA	Adam Farkas	

### Observers

Iceland	Sigurveig Guomundsdottir	
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	

### ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Markets Division	Rodrigo Buenaventura
Markets Division	Fabrizio Planta
Head of Investment and Reporting Division	Laurent Degabriel
Head of Operations Division	Nicolas Vasse
Head of Economic Research and Financial Stability Unit	Steffen Kern
Head of Legal Cooperation and Convergence	Sophie Vuarlot Dignac



Done at Paris on 19 March 2015

Steven Majoor

Chair

For the Board of Supervisors