

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 7 May 2015
Time: 10h15 – 17h30
Location: Hotel Avalon, 13 Janvara Street 19, 1050 Riga, Latvia
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

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| 1. Adoption of agenda | BS/69 | Decision |
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Decision: The agenda was approved.

2. Summary of Conclusions

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| — 19 March 2015 meeting | BS/59 | Decision |
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Decision: The summary of conclusions of the 19 March 2015 meeting was approved.

3. Report by Chair and Executive Director

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| — Report by Chair and Executive Director | Oral | Information |
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The Chair reported on:

- The informal meeting of the Economic and Financial Affairs Council (ECOFIN) that took place in Riga on 25 April 2015;
- The meeting of the Economic and Financial Committee (EFC) that took place on 9 April 2015 in Brussels;
- The activities of the Joint Committee and in particular the Joint Report on Risks and Vulnerabilities in the EU Financial System and the self-initiative Joint Report of the Task Force on Securitisation;
- The ongoing negotiations between the European Commission and the Member States of the European Economic Area (EEA) on the incorporation of EU law into the EEA Agreement;
- The hearing by the European Parliament on ESMA's work on level 2 measures under the revised

- Markets in Financial Instruments Directive (MiFID);
- The letter received by the European Commission confirming that the MiFID regulatory framework applies to structured deposits; and
- The activities of the European Systemic Risk Board (ESRB), in particular the activities of the working group on macro-prudential instruments beyond the banking sector.

The Executive Director reported on:

- The working arrangement with the European Commission Services on the development of technical standards ESMA staff concluded together with the other European Supervisory Authorities (ESAs) and the Commission services, and specifically the proposed arrangements for early legal review which might have an impact on the timing of the submission of technical standards by ESMA;
- The work ESMA is carrying out as part of the IT delegated projects, in particular the alignment with the EMIR data reporting requirements, the interaction with the existing SARIS system and the recruitment of seconded national experts (SNEs).
- The implementation of the European Rating Platform (ERP);
- ESMA's supervisory activities and the fact that three registration applications are pending;
- The March 2015 meeting of the Financial Services Committee (FSC) mainly dedicated to a dialogue with US supervisory and regulatory authorities and to discuss the European Commission's initiative to establish a Capital Markets Union (CMU).
- The November 2015 meeting of the Board of Supervisors which will take place in Luxembourg instead of the September 2015 meeting; and
- The implementation of the Conflict of Interest Policy for non-staff. She reminded the Board members that had not returned the signed declarations to do so as soon as possible.

— Cover Note Opinion on the composition of CCP colleges	BS/86	Decision
— Draft Opinion On the composition of CCP colleges under EMIR	2015/BS/ 41rev Annex 1	Decision
— Letter from ECM to ESMA re: ESMA Opinion on the composition of CCP colleges under EMIR	2015-04- 22	Information

The Chair introduced the session by reminding the Board of its decision of the March 2015 meeting that for the participation in CCP colleges the vote of the European Central Bank (ECB) in its supervisory function and on behalf of the Eurosystem as the central bank of issue are taken by the same decision-making body and that therefore, in line with EMIR, each college member shall have one vote irrespective of the number of functions performed.

The Executive Director presented the letter ESMA received from the ECB president inviting ESMA to reconsider its Opinion in view of the establishment of the Single Supervisory Mechanism (SSM).

Decision: The Board discussed the ECB position and approved the Opinion as it was decided during its last meeting, without amendments.

4. Post-Trading Standing Committee

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| — Report by Giuseppe Vegas | BS/70 | Information |
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Nicoletta Giusto presented the report and accompanying documents. She particularly highlighted the ongoing work on the treatment of transactions with third-country entities in relation to the clearing obligation of which the Board took note.

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| — Consultation Paper on the clearing obligation for IRS in other EEA currencies | Annex 1 | Decision |
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The Board discussed the consultation paper in particular:

- The identification and prioritisation of further classes of OTC derivatives within the IRD categories that should be subject to mandatory clearing and the supporting data used for that purpose; and
- The importance of stakeholders' feedback to understand the potential impact.

The ESRB representative warned of the systemic risk and potential impact on financial stability that the clearing obligation on these instruments would help mitigate.

Decision: The Board approved the consultation paper.

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| — CSDR Technical Standards | Annex 2 | Decision |
| — CSDR Technical Advice | Annex 3 | Decision |
| — Letter from ECON to ESMA – CSDR Settlement Discipline | Annex 4 | Information |

The Board discussed the Technical Advice and Technical Standards related to the Central Securities Depositories Regulation in particular:

- The entity responsible for executing the buy-in for non-cleared OTC transactions (i.e. the trading party or the CSD participant) and the need for further cost-benefit analysis to evidence the policy options;
- Whether financial instruments traded on a SME growth market should be considered as a particular category and the impact on the definition of the delivery period in a buy-in process and the level of penalties
- The determination of 'most relevant currencies' for the consultation of the relevant competent authorities; and
- The time needed to allow the industry to perform all necessary adaptations to their systems to be in line with the CSDR level 2 measures and whether at least 24 months are needed considering the interaction with the T2S migration of which the last one is currently scheduled for February 2017;

Decision: The Board asked the Post-Trading Standing Committee (PTSC) to consider the policy options regarding the responsible entity for executing the buy-in further and prepare a detailed cost-benefit analysis allowing a decision during a future meeting of the Board of Supervisors. The Board agreed to treat SME growth market instruments as two categories (equity and bonds), applying different penalty rates, and decided to opt for a minimum of 24 months transition period.

5. Market Integrity Standing Committee

- Report by Konstantinos Botopoulos BS/71 Information

Conclusion: Konstantinos Botopoulos presented the report and accompanying documents.

- MAR Technical Standards Annexes Decision
1a-d

The Board discussed the Technical Standards in particular the interaction with the standards for dissemination of inside information to emission allowance market participants (EAMP) under the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT).

The European Commission representative expressed strong reservations regarding the decision to apply the same requirements to EAMPs for public disclosure of inside information as the requirements applicable to other entities. The Commission representative stated that this would not be in line with the text of Recital 51 of MAR which should be read as demanding to not impose disclosure obligations on top of the ones provided for by REMIT. He added that should the Commission early legal review confirm this reading, this could lead to a rejection of the Technical Standard by the European Commission.

Decision: The Board took note of the concerns expressed by the European Commission representative and approved the policies embedded in the Technical Standards as presented.

6. Secondary Markets Standing Committee and Commodity Derivatives Task Force

- Update Report BS/72 Decision

David Lawton presented the update report by highlighting the concept of ‘liquid markets’ in the new MiFID transparency framework and the criteria to be considered for the assessment of the existence of a liquid market for non-equity instruments.

The Board discussed the report, in particular:

- The potential high percentage of bonds classified as liquid under the Class of Instruments Approach (COFIA) which would have been classified as illiquid on an individual basis; and
- The difficulties around the implementation of the Instruments by Instruments Approach (IBIA).

Decision: The Board decided that the Secondary Markets Standing Committee (SMSC) should continue to work on the COFIA-approach if the number of false positives can be reduced and the overall approach made to ensure the right balance between liquidity and transparency in the market. If that would not be possible the Standing Committee should consider recommending implementing a variant of the IBIA-approach. National competent authorities were invited to gather relevant data which could support a further discussion during the June 2015 meeting of the Board of Supervisors.

7. Capital Markets Union

- Cover Note BS/73 Information

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| — Response to the European Commission consultation paper ‘Building a Capital Markets Union’ | Annex 1 | Decision |
| — Crowdfunding Survey | 2015/ES
MA/531 | Information |

The Chair introduced the session by summarising the comments received from the members of the Board of Supervisors during the written procedure and earlier discussion that took place on the topic. He particularly mentioned the consensus to:

- Focus on securities markets related issues and how ESMA could contribute to the establishment of a Capital Markets Union;
- Not to allow the marketing of EuSEF and EuVECA to retail investors;
- Indicate in the response that the proposals linked to the governance, powers and mandate of the ESAs will also be discussed as part of the review of the European System of Financial Supervision (ESFS);
- Align the collection of information from national competent authorities under Article 35 of the ESMA Regulation in line with the process and data that can be obtained as part of a Breach of Union Law procedure.; and
- Mention that ESMA stands ready to accept new areas of direct supervision.

The Board discussed the revised proposal and in particular:

- The development of common EU level accounting standards for SMEs listed on Multilateral Trading Facilities (MTFs); and
- The proposed clarification that the Breach of Union Law powers under Article 17 of the ESMA Regulation also relate to provisions of Directives that establish unconditional obligations that are sufficiently clear and precise to be directly effective.

Decision: The Board approved the draft response as suggested by the Chair, amended to allow the use of International Financial Reporting Standards (IFRS) for companies listed on MTFs for their consolidated accounts as an alternative to national accounting standards. At a later stage, improvement in access to cross-border financing might be facilitated by developing a common specific EU level accounting standard for SMEs listed on MTFs. Pavel Hollmann (CZ) voted against ESMA’s response to the European Commission consultation paper.

8. Credit Rating Agencies

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| — Cover Note | BS/74 | Information |
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Conclusion: The Executive Director presented the Cover Note and accompanying documents.

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| — ESMA Response to the European Commission consultation paper ‘A Framework for Simple, Transparent and Standardised Securitisation’ | Annex 1 | Decision |
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The Board discussed the response to the European Commission consultation and in particular:

- The need to identify the impediments to the emergence of a robust securitisation market and the role of securities regulators in that context; and
- The important role that the European Commission should give to investor protection, if it would put forward a legislative proposal, and the role disclosure requirements in that context.

Decision: The Board approved ESMA's response to the European Commission.

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| <ul style="list-style-type: none"> — Joint Committee resport to the European Commission consultation paper 'A Framework for Simple, Transparent and Standardised Securitisation' | <p>Annex 2 Decision</p> |
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The Board discussed the Joint Committee response to the European Commission consultation paper and in particular the granularity of the loan-by-loan data that should be provided to investors (as suggested in recommendation five).

Decision: The Board approved the Joint Committee resport to the European Commission consultation.

9. Corporate Finance Standing Committee

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| <ul style="list-style-type: none"> — Cover Note | <p>BS/75 Information</p> |
| <ul style="list-style-type: none"> — Response to the European Commission consultation paper 'Review of the Prospectus Directive' | <p>Annex 1 Decision</p> |

Gérard Rameix presented the draft response to the European Commission.

The Board discussed the draft response, in particular:

- Whether a comprehensive debate on the role of prospectuses should be triggered;
- The existing thresholds for the minimum size of offer to which the obligation to produce a prospectus applies; and
- The interaction between the requirements in the Prospectus Directive and the development of Key Information Documents (KID);

Decision: The Board approved the response to the European Commission consultation paper and decided that the Corporate Finance Standing Committee should further examine how the role of prospectus should evolve as well as the thresholds identified in the Prospectus Directive.

10. ESMA organisation

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| <ul style="list-style-type: none"> — ESMA Strategy <ul style="list-style-type: none"> ○ Cover Note ○ Strategic Orientation 2016-2020 | <p>BS/76 Information</p> <p>Annex 1 Decision</p> |
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The Chair started the session by summarizing the amendments that have been introduced to the 2016-2020 Strategic Orientation Note following the discussion during the January 2015 meeting of the Board of Supervisors. He also highlighted the main strategic orientations and the importance of the accompanying Implementation Plan to achieve them.

The Executive Director then introduced the Implementation Plan highlighting the focus on supervisory convergence and the clear shift of resources made available to the different activities whilst broadly staying in line with the budget framework provided by earlier agreed Multi-Annual Financial Framework.

The Board welcomed the Strategic Orientation and the Implementation Plan for 2016-2020 and discussed in particular:

- The need for additional resources and whether ESMA should stand ready to accept new areas of direct supervision;
- The proposed shift of resources towards supervisory convergence including the need to attract and maintain experienced high quality staff in that area;
- The importance of stakeholder engagement and impact assessments when developing Technical Standards;
- The European Commission's ongoing review of the European System of Financial Supervision;
- The need to focus further on pan-European risk analysis rather than increasing data collection;
- The potential benefits of peer reviews as part of ESMA's supervisory convergence work; and
- The benefits of developing an annual and detailed supervisory convergence work programme.

The Executive Director emphasized that ESMA will closely look at its ongoing activities and whether additional resources are needed as part of the shift of its strategic priorities to supervisory convergence. She also mentioned that the budget and staff figures provided in the paper were indicative and, though based on the multi-annual financial framework, they will need to be approved by the Board every year.

In relation to the Implementation Plan some Board members expressed concerns about the in their opinion significant increase of staff allocated to assess risks to investors, markets and financial stability.

Decision: The Board approved the Strategic Orientations 2016-2020 document with the adjustment that the risk section will be updated and that regarding the potential allocation of new powers wording will be used similar to the CMU response. Karel Juras (CZ) abstained. The Strategic Orientation note will be made public.

- Election of Standing Committee Chairs (process)

BS/77

Discussion

The Chair introduced the Note on Election of Standing Committee Chairs.

The Board discussed the paper in particular:

- The need to keep the activities of the Financial Innovation Standing Committee (FISC) and the Committee for Economic Analysis (CEMA) separate;
- The proposed Regulation on Financial Benchmarks; and
- Whether ESMA staff should chair (some of) the Standing Committees.

Conclusion: The Board endorsed the Note and in particular the proposed (minor) changes to the

Standing Committees and the suggested way forward on the election of Standing Committees. A call for candidates will be circulated to organise an election during the June 2015 meeting of the Board of Supervisors. The new Chairs will assume their responsibilities as of 1 October 2015. The Board also concluded that Standing Committees should in principle be chaired by a member of the Board of Supervisors. In case sufficient candidates do not come forward the Board can consider asking a senior ESMA staff member to chair a Standing Committee.

- Memorandum of Understanding with the European Central Bank BS/78 Discussion
& Annex
1

The Head of Legal, Cooperation and Convergence presented the Cover Note and draft Memorandum of Understanding between ESMA and the European Central Bank.

The Board discussed the draft Memorandum, in particular:

- The potential synergies between the ECB's activities and ESMA's mandate; and
- The importance of good co-operation between the ECB and national competent authorities which need to be evidenced by bilateral Memoranda of Understanding.

Conclusion: The Board took note of the ongoing negotiations and will be updated during the June 2015 meeting on the progress made.

11. Investment Management Standing Committee

- Report by Gareth Murphy BS/79 Discussion

Gareth Murphy presented the report and accompanying documents. He highlighted the work the Standing Committee is doing in relation to the Opinion and Advice ESMA has to deliver on the AIFMD third country passport of which the Board took note. The Board endorsed the proposed approach to the Advice, particularly the assessment methodology and the sequencing of the assessments of non-EU countries.

- Feedback Statement on discussion paper on the impact of EMIR on the calculation of counterparty risk for OTC financial derivative transactions by UCITS Annex 1 Decision

Decision: The Feedback Statement was approved.

- Q&A on application of the AIFMD Annex 2 Decision

Gareth Murphy presented the Q&As and clarified that they were presented for approval by the Board without the proposed answer to the question whether alternative investment funds should include short non-derivative positions for the calculation of the total value of assets under management.

Decision: The Board approved the Q&A on the application of the AIFMD with the exception of Question 2 under Section IX.

- Consultation Paper on Remuneration Guidelines under UCITS V Annexes Discussion
3a-e

The Board discussed the Consultation Paper and in particular whether UCITS V would allow the disapplication of certain remuneration requirements in the UCITS V guidelines with the aim of aligning them with the proportionality approach followed under the AIFMD guidelines.

Conclusion: The Board decided to discuss the Consultation Paper further during its June 2015 meeting.

- Consultation Paper on RTS under ELTIFs Regulation Annex 4 Discussion

Conclusion: The Board approved the policy approach set out in the consultation paper on the draft regulatory technical standards. The consultation paper will be submitted to the Board for approval in written procedure.

12. Joint Committee Report on Conduct Risk in the banking and insurance sectors BS/80 & Decision Annex 1

Decision: Following the approval of the report by written procedure the Board decided to propose to the other ESAs that the JC Conduct Risk report should only be shared with the Economic and Financial Committee (EFC).

13. Review Panel

- Report by Jean Guill BS/81 Decision

Decision: The Board endorsed the suggestion to carry out on-site visits to the national competent authorities identified in the note. The Board however not being any longer in quorum, the proposal will be adopted by written procedure following the meeting.

14. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine Van Cauwenberge
Bulgaria	Vladimir Savov	
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	Hanne Rae Larsen
Germany	Elisabeth Roegele	Hannelore Lausch Philipp Sudeck
Estonia	Andre Nomm (alternate)	Kilvar Kessler
Ireland	Cyril Roux	Gareth Murphy Oliver Gilvarry
Greece	Konstantinos Botopoulos	Anastasia Maltoudi
Spain	Lourdes Centeno	Antonio Mas
Croatia	Petar-Pierre Matek	
France	Gerard Rameix	Françoise Buisson
Italy	Nicoletta Giusto (alternate)	
Cyprus	Demetra Kalogerou	Andreou Andreas

Latvia	Kristaps Zakulis	Sandis Andersmits
Lithuania	Vilius Sapoka (alternate)	
Luxembourg	Jean Guill	
Hungary	Richard Vegh	
Malta	Marianne Scicluna	
Netherlands	Merel van Vroonhoven	Ellen Boelema
Austria	Klaus KumpfmueLLer	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Anna Skrzypek
Portugal	Carlos Alves	Gabrielle Figueiredo Dias
Romania	Misu Negritoiu	Mirela Ciuvat
Slovenia	Sabina Bešter (alternate)	
Slovakia	Slavomir Stastny (alternate)	Tomas Ambra
Finland	Jarmo Parkkonen (alternate)	Ville Kajala
Sweden	Aino Bunge (alternate)	Oskar Ode
United Kingdom	David Lawton (alternate)	Eleftheria Apostolidou

Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Martin Merlin	Peter Ohrlander
ESRB	Francesco Mazzaferro	
EIOPA	Manuela Zweimüller	
EBA	Corinne Kaufman	

Observers

Iceland	Unnur Gunnarsdottir	
Liechtenstein	Reto Degan	
Norway	Kristin Lund	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Investment and Reporting Division	Laurent Degabriel
Head of Legal Cooperation and Convergence	Sophie Vuarlot Dignac
Team Leader Investment Management	Richard Stobo
Team Leader Post-Trading	Fabrizio Planta



Done at Paris on 24 June 2015

Steven Maijoor

Chair

For the Board of Supervisors