

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 25 May 2016
Time: 09h00 – 17h30
Location: ESMA, rue de Grenelle 103, 75007 Paris, France
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda BS/119re Decision
v1

Decision: The agenda was adopted.

2. Summary of Conclusions

— 23 March 2016 meeting BS/110re Decision
v1

Decision: The summary of conclusions of the 23 March 2016 meeting was adopted.

— 28 April 2016 meeting BS/117 Decision

Decision: The summary of conclusions of the 28 April 2016 meeting was adopted.

3. Report by Chair and Executive Director Oral Information

The Chair reported on:

- His meetings with Olivier Guersent, Director-General of the European Commission's Financial Stability, Financial Services and Capital Markets Union Directorate;
- The April 2016 Economic and Financial Committee (EFC) and the informal meeting of the Economics and Financial Affairs Council (ECOFIN) and in particular on the Joint Committee risk report and the discussions on sustainable finance;
- The activities of the Joint Committee and in particular the appointment of a new Chair of the sub-committee on consumer protection and financial innovation, the upcoming consumer day and the ongoing work in relation to the agreement with the Member States of the European Economic Area (EEA);
- The activities of the International Organization of Securities Commissions (IOSCO) and in particular, its new leadership and the May 2016 IOSCO board meeting;
- The May 2016 meeting of the Management Board and in particular the discussions on the 2017 work programme;
- The activities of the Securities and Markets Stakeholder Group (SMSG);

- The activities of the European Systemic Risk Board (ESRB) in particular those related to asset management;
- The risk of a reduction of panel banks participating in the Euro Interbank Offered Rate (euribor); and
- The activities related to the revised Markets in Financial Instruments Directive (MiFID) and in particular the opinions submitted to the European Commission, the agreement by the co-legislators on the delay and ESMA's upcoming publication on the implications of the delay on the reporting requirements in the Market Abuse Regulation (MAR).

The Executive Director reported on:

- ESMA's supervisory activities, including the supervisory measure the Board adopted earlier and the pending registrations of trade repository and credit rating agency;
- The positions of the Council of the European Union and the European Parliament on the audit of the European Court of Auditors on the supervision of credit rating agencies; and
- The April 2016 meeting of the Financial Services Committee and in particular on the presentation on ESMA's work on the benchmark regulation that took place.

The European Commission representative provided the Board with an update on the timetable for the adoption of the MiFID related acts.

4. Financial Innovation Standing Committee

- Report by Jean-Paul Servais BS/120 Information

Conclusion: The Head of Risk Analysis and Economics presented the report and the accompanying documents.

- Product Intervention Framework Annex 1 Decision

The Board discussed the supervisory briefing and procedures on MiFIR market monitoring and intervention powers, in particular the:

- Importance of co-operation with and between national competent authorities and the need to revise the document in light of supervisory experience; and
- Relationship with UCITS and AIFs and their management companies.

Decision: The Board adopted the supervisory briefing.

- Discussion Paper on Distributed Ledger Technology Annex 2 Discussion

Conclusion: The Board adopted the discussion paper on distributed ledger technology.

- Terms of Reference of the Distributed Ledger Technology Task Force Annex 3 Decision

Decision: The Board adopted the terms of reference of the distributed ledger technology task force.

5. Committee for Economics and Markets Analysis

- Report by Misu Negritou BS/121 Information

Conclusion: Misu Negritou presented the report and accompanying documents.

- CEMA Strategic Outlook Annex 1 Discussion

The Board discussed the strategic outlook and, in particular the work related to the Alternative Investment Fund Managers Directive (AIFMD) and its dependence on the upcoming data.

Conclusion: The Board took note of the strategic outlook.

- Report on High Frequency Trading Annexes Decision
2-3

The Team Leader Markets and Investors (RAE) presented the Report on high frequency trading by highlighting the related policy recommendations.

The Board discussed the report, in particular the:

- Need to continue the research in the area; and
- Communication aspects of the report and the interactions with the MiFID II work.

Decision: The Board adopted the report.

6. Market Integrity Standing Committee

- Report by Giuseppe Vegas BS/122 Information

Giuseppe Vegas presented the report and its accompanying documents by highlighting the need for EU Member-States to appoint in the shortest possible timeframe the competent authority under the Benchmark Regulation.

Conclusion: The Board took note of the report.

- Consultation Paper on ESMA technical advice on Benchmarks Regulation Annex 1 Decision

The Board discussed the consultation paper on technical advice on the Benchmarks Regulation and in particular the definition of a financial instrument.

The Head of Markets Department warned the Board that due to the short period ESMA has been provided with by the Council of the European Union and the European Parliament to submit its advice, the consultation period will need to be reduced.

Decision: The Board adopted the consultation paper on technical advice on the Benchmarks Regulation subject to minor drafting changes.

- MAR Q&A Annex 2 Decision

The Board discussed the Q&A, in particular the potential impact on firms managing undertakings for collective investment in transferable securities (UCITS).

Decision: The Board adopted the Q&A subject to a minor drafting change. Pavel Hollmann (CZ), Claude Marx (LU) and Marek Szuszkiewicz (PL) voted against.

7. Commodity Derivatives Task Force

- Report by Edwin Schooling Latter BS/123 Information

Conclusion: Edwin Schooling Latter presented the report and accompanying documents.

- Opinion on ancillary activity Annexes Decision
1-2

Decision: The Board adopted the opinion on ancillary activity subject to a minor drafting change.

8. Market Data Standing Committee

- Report by David Lawton BS/124 Information

Conclusion: David Lawton presented the report and the accompanying documents by highlighting the need to further improve the data quality.

- TR data quality Annex 1 Discussion

Conclusion: The Board took note of the presentation on TR data quality.

- Data quality action plan Annex 2 Decision

The Board discussed the data quality action plan, in particular the need to maintain the focus on data quality and for continued focus on supervision in this regard by national competent authorities.

The ESRB representative expressed concerns about TR data quality.

Decision: The Board endorsed the note and instructed the Market Data Standing Committee (MDSC) to continue its coordination role and to report to the Board of Supervisors by Q1 2017.

9. Supervisory Convergence Standing Committee

- Report by Lourdes Centeno BS/125 Information

Conclusion: Lourdes Centeno presented the report and the accompanying documents.

- Peer review on Prospectus Approval Annexes 1a-g Decision

The Board discussed the peer review on prospectus approval, in particular whether in addition to the proposed changes to EU legislation, further ESMA activities could contribute to supervisory convergence in relation to the prospectus approval.

Decision: Relevant national competent authorities visited will be invited to provide comments on their respective section in the report. The Board will adopt the amended peer review (including relevant drafting changes) by written procedure. The Board agreed that the executive summary should be further enhanced to reflect fully the underlying useful material in the peer review report.

- Terms of Reference of the Work Programme Working Group Annex 2 Decision

Decision: The Board adopted the terms of reference of the Work Programme Working Group.

10. Investor Protection and Intermediaries Standing Committee

- Report by David Lawton BS/126 Information

Conclusion: David Lawton presented the report and the accompanying documents.

- Contracts for difference and other speculative products – Q&As Annex 1 Decision

The Board discussed the Q&As on contracts for difference and other speculative products, in particular the need for a comprehensive discussion on existing speculative products offered to retail investors.

Decision: The Board adopted the Q&A and instructed the Investor Protection and Intermediaries Standing Committee (IPISC) and the Financial Innovation Standing Committee (FISC) to consider further initiatives that need to be taken in relation to speculative products offered to retail investors.

- Statement on MiFID practices for firms selling financial instruments subject to BRRD resolution regime Annex 2 Decision

The Board discussed the statement on MiFID practices for firms selling financial instruments subject to the BRRD resolution regime, in particular:

- Whether there is a need for further disclosure towards existing clients;
- Other initiatives needed for balanced communication towards retail investors; and
- The cross-sectoral nature of the work.

Decision: The Board adopted the statement including the alternative option to limit post-sale information to situations where there is an on-going client relationship. Sophie Degenne (SE) abstained.

11. Investment Management Standing Committee

- Report by Gareth Murphy BS/127 Information

Gareth Murphy presented the report and accompanying documents.

The Board discussed the report, in particular the request for advice from the European Commission on whether to extend the AIFMD passport to the Isle of Man and the Cayman Islands.

Conclusion: The Board took note of the report.

- Final Report on draft RTS under the ELTIF Regulation Annex 1 Decision

Decision: The Board adopted the final report on draft RTS under the ELTIF Regulation.

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

Decision: The Board adopted the Q&A on the application of the AIFMD.

- Q&A on the application of the EuSEF and EuVECA Regulations Annex 3 Decision

Decision: The Board adopted the Q&A on the application of the EuSEF and EuVECA Regulations.

12. Post-Trading Standing Committee

- Report by Giuseppe Vegas BS/128 Information

Conclusion: Giuseppe Vegas presented the report and accompanying documents.

- Final Report on RTS on indirect clients under MiFID and EMIR Annex 1 Decision

Decision: The Board adopted the final report on RTS on indirect clients under MiFID and EMIR.

- Consultation Paper on CSDR guidelines on participant default rules and procedures Annex 2 Decision

The Board discussed the consultation paper on CSDR guidelines on participants default rules, in particular whether the central securities depository should verify with the Settlement Finality Directive authority when informed about a participant's default by another source.

Decision: The Board adopted the consultation paper.

- Note on clearing obligation for small financial counterparties Annex 3 Discussion

The Board discussed the note on clearing obligation for small financial counterparties, in particular whether

- ESMA should propose the modification of the phase-in defined in the Regulation on the clearing obligation; and
- The calibration of small financial counterparties should be based on new thresholds at asset class level or use the existing categories.

Decision: The Board instructed the Post-Trading Standing Committee (PTSC) to prepare a consultation paper proposing the modification of the phase-in defined in the Regulation on the clearing obligation based on the basis of the existing categories.

- EMIR Q&A Annex 4 Decision

Decision: The Board adopted the EMIR Q&A.

13. ESMA organisation

- Fees under the EuVECA and EuSEF Regulations BS/129 Discussion

The Team Leader Investment Management introduced the note on EuVECA and EuSEF Regulations, in particular with respect to fees charged by some national competent authorities in the context of passporting.

Decision: The Board endorsed that there can be no fees according to the EuVECA and EuSEF Regulations and instructed ESMA staff to follow-up with the relevant national competent authorities.

- SMSG Renewal BS/130 & Decision
Annex 1

The Head of Corporate Affairs presented the proposed composition of the new SMSG.

Decision: The Board adopted the proposed composition of the SMSG.

- Delegation of CCP supervisory tasks
 - Cover Note
 - Service Level Agreement

BS/131 Discussion

BS/132 Decision

The Executive Director presented the note on the delegation of CCP supervisory tasks by the Hellenic Capital Markets Commission (HCMC).

The report discussed the proposed delegation, in particular the:

- Short-term nature of the delegation and how it fits within ESMA's budget and human resources; and

- Potential conflict that might exist between the tasks ESMA's is conducting for the delegating authority and its position within the college of supervisors for that particular CCP.

The Executive Director clarified that no extra staff will need to be recruited to accommodate the work.

Decision: The Board adopted the service level agreement. Pavel Hollmann (CZ) voted against. Tomas Ambra (SK) abstained. ESMA staff will provide further information to the Management Board on how it will deal with the potential conflict of interest. If the HCMC intends to extend the delegation, the Board will be invited to approve the agreement.

- Improving the organisation of Board meetings BS/133 Discussion

The Chair introduced the note on improving the practical functioning of Board meetings.

The Board discussed the note, in particular the:

- Emphasis on strategic discussions in addition to the on-going policy and supervisory work;
- Importance of individual Board Members being able to require to discuss a topic; and
- Involvement of the standing committee chairs in preparing the reports on the activities of the standing committee.

The Chair highlighted his responsibility for preparing the work of the Board of Supervisors.

Conclusion: The Board agreed with the suggested way forward on how to improve the practical functioning of the Board and ascertained that each Member will have the possibility to require discussion of any specific item tabled for decision. It was agreed to implement it from the September 2016 meeting onwards.

14. Corporate Reporting Standing Committee

- Report by Hannelore Lausch BS/134 Information

Conclusion: Hannelore Lausch presented the report and accompanying documents.

- Supervisory briefing on disclosures Annex 1 Decision

Decision: The Board adopted the supervisory briefing on disclosures.

- Comment Letter on Audit Quality Annex 2 Decision

Decision: The Board adopted the comment letter on audit quality.

15. Credit Rating Agencies Technical Committee

- Report by Verena Ross BS/135 Information

Conclusion: Verena Ross presented the report and accompanying documents.

- Endorsement assessment for the South African legal framework for CRAs Annex 1 Decision

Decision: The Board adopted the endorsement assessment for the South African legal framework for CRAs.

- Memorandum of Understanding on cooperation with the South African Financial Services Board (FSB) on CRA supervision BS/136 Decision

Decision: The Board adopted the memorandum of understanding on cooperation with the South African Financial Services Board (FSB) on CRA supervision.

- Task Force on Information to be Documented and Reported when Considering the Appointment of Multiple CRAs Annex 2 Decision

Decision: The Board adopted the terms of reference for the task force on information to be documented and reported when considering the appointment of multiple CRAs.

- Task Force on Securitisation Annex 3 Decision

Decision: The Board adopted the terms of reference for the task force on securitisation.

16. A.O.B.

Elisabeth Roegele (DE) mentioned the need to discuss how the co-operation between national competent authorities and the Single Supervisory Mechanism (SSM) could be improved, in relation to EMIR supervision.

Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Michel van Cottem	
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	Thomas Brennoe
Germany	Elisabeth Roegele	Hannelore Lausch Philipp Sudeck
Estonia	Andre Nomm	
Ireland	Cyril Roux	Gareth Murphy Cian Murphy
Greece	Charlampos Gotsis	Anastasia Maltoudi
Spain	Lourdes Centeno	Antonio Mas
France	Benoit de Juvigny	Dora Blanchet Antonio Ocana Alvarez
Croatia	Petar-Pierre Matek	Silvana Bozic
Italy	Giuseppe Vegas	Raffaella Pantano
Cyprus	Christiana Vovidou (alternate)	

Latvia	Sandis Andersmits (alternate)	
Lithuania	Vytautus Valvionis	
Luxembourg	Claude Marx	Francoise Kauthen
Hungary	Gergo Szeniczey (alternate)	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Merel van Vroonhoven	Ellen Boelema
Austria	Erich Schaffer	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	Gabriela Figueiredo Dias (alternate)	Cristina Dias
Romania	Misu Negritoiu	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Tomas Ambra (alternate)	Eva Svetlosakova
Finland	Jarmo Parkkonen (alternate)	Ville Kajala
Sweden	Sophie Degenne (alternate)	Oskar Ode
United Kingdom	David Lawton (alternate)	Edwin Schooling Latter Eleftheria Apostolidou

Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Ugo Bassi	
ESRB	Francesco Mazzaferro	
EBA	Adam Farkas	
EIOPA	Kai Kosik	

Observers

Iceland	Sigurveig Guðmundsdóttir	
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	Marianne Elind Skaanne

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Markets Department	Rodrigo Buenaventura
Head of Resources Department	Nicolas Vasse

Head of Risk Analysis and Economics	Steffen Kern
Head of Legal, Convergence and Enforcement	Sophie Vuarlot-Dignac
Head of Corporate Affairs Department	Mette Sicard Filtenborg
Team Leader Post-Trading	Fabrizio Planta
Team Leader Investor Protection	Salvatore Gnoni
Team Leader Investors and Markets	Christian Winkler
Team Leader Asset Management	Richard Stobo

Done at Paris on 12 July 2016

Steven Maijor

For the Board of Supervisors