

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: Tuesday 15 and Wednesday 16 November 2022
Time: 14h00 – 18h00 (Tuesday) and 9h00 – 13h00 (Wednesday)
Location: Czech National Bank, Prague
Contact: ESMABoard@esma.europa.eu

1. Adoption of agenda Decision

Decision: The agenda was adopted. Item 13.2 on the CCP Resolution Committee Terms of Reference was removed from the agenda. It will be brought to the December 2022 Board of Supervisors.

2. Confirmation of absence of conflict of interests Decision

Decision: The Board endorsed the ESMA Chair's statement recalling potential conflict of interests for George Theocharides (CY), Patricia Dunne (IE), Thorsten Pötzsch (DE), Marie-Anne Barbat-Layani (FR), Claude Marx (LU) and Jos Heuvelman (NL) for agenda item 5.3 on the country reports on their respective Member States in the context of the peer review on NCAs' handling of relocation to EU27 in the context of the United Kingdom (UK)'s withdrawal from the European Union (EU). She noted that she had not received any other indications by a Board Member of any interest which might be considered prejudicial to her/his independence in relation to any items on the agenda. The Board Members listed above will abstain from participating in the discussion on their respective country reports.

3. Report by ESMA Chair, Executive Director and Chair of the CCP Supervisory Committee Discussion

The ESMA Chair reported on:

- Recent interactions with the European Institutions, in particular her participation in the annual ECON Committee public hearing of the Chairs of the European Supervisory Authorities (ESAs);
- The activities of the European Systemic Risk Board (ESRB);
- ESMA's international activities, in particular her participation in the IOSCO annual meetings, her visit to the US during the IMF annual meetings for bilateral meetings with US stakeholders, and her participation in a COP27 roundtable on sustainable finance;
- The activities of the Joint Committee, in particular the election of Gerry Cross as Chair of the Joint Committee Subgroup on the Digital Operational Resilience Act (DORA) (JC SC DOR), and the publication by the three ESAs of a joint call for evidence on greenwashing;

- The November 2022 Management Board, in particular the discussion that took place on the peer review on the supervision of central securities depositories providing cross-border services or participating in interoperable links; and
- The activities of the Securities and Markets Stakeholder Group (SMSG), in particular the finalisation of SMSG advice on MiFID II Product Governance Guidelines.

The Executive Director reported on the October and November 2022 Financial Services Committee meetings, in particular the discussions on ESMA's work on sustainable finance and on proportionality.

4. Recent market developments

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| 1) Presentation | Discussion |
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The Head of the Risk Analysis and Economics Department presented the update on recent market developments.

The Board discussed the recent market developments, in particular the:

- Downfall of FTX, including the public information available on its causes and potential implications;
- Risks to investors related to crypto assets, including what steps to take ahead of the entry into force of Markets in Crypto-Assets Regulation (MiCA);
- The increasing shift to OTC transactions in commodity derivatives markets;
- Importance of clearly differentiating within the non-bank sector the different types of risks and potential to impact the rest of the financial system; and
- Cooperation between ESMA and the Agency for the Cooperation of Energy Regulators (ACER) in relation to energy markets.

Conclusion: The Board discussed the recent market developments.

4b. Central Bank of Ireland notification of a leverage limit under Article 25 AIFMD

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| 1) Presentation | Information |
| ○ ESMA | |
| ○ Central Bank of Ireland | |
| 1) Notification | Information |
| 2) Procedure | Information |

The Head of the Investment Management Unit and Patricia Dunne (IE) presented the Central Bank of Ireland's notification to ESMA of a leverage limit under article 25 of the Alternative Investment Funds Managers Directive.

Conclusion: The Board took note of the notification. A draft ESMA Opinion on the leverage limit will be brought to the Board of Supervisors for approval by written procedure.

5. Peer review on NCAs' handling of relocation to EU27 in the context of the UK's withdrawal from the EU

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| 1) Presentation | Discussion |
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2) Report	Discussion
3) Country reports	
o Cyprus	Discussion
o Germany	Discussion
o Ireland	Discussion
o France	Discussion
o Luxembourg	Discussion
o Netherlands	Discussion

The Chair of the Peer Review Committee presented the peer review report on NCAs' handling of relocation to EU27 in the context of the UK's withdrawal from the EU.

The Board discussed the peer review report, in particular the:

- Lessons to be learnt on the overall authorisation process and related policies, and how to best make use of the conclusions of a peer review that concerns a one-time event in the past;
- Residual risks stemming from any – as of yet – unfulfilled conditions of phase-in authorisations and corresponding expectations for remediation plans where necessary, as well as risks related to any future regulatory divergence with the United Kingdom;
- Balance between the need for firms to be autonomous and the benefits of firms being able to rely on group support through outsourcing;
- Relevance of the findings and recommendations for all NCAs; and
- Importance of publishing the results of the peer review and of putting its conclusions back into the context of uncertainties linked to Brexit and the extensive work performed at the time in ESMA's Supervisory Coordination Network.

Conclusion: The Board discussed the peer review on NCAs' handling of relocation to EU27 in the context of the UK's withdrawal from the EU. It will be brought to the Board of Supervisors for approval by written procedure.

6. Sustainable Finance

1) Guidelines on funds' names	
o Presentation	Discussion
o Cover note	Discussion
o Consultation paper on the guidelines on funds' names using ESG or sustainability-related terms	Decision

The Head of the Investment Management Unit presented the consultation paper on the guidelines on funds' names.

The Board discussed the guidelines on funds' names, in particular the:

- Need for clear and measurable criteria to assess the appropriateness of ESG or sustainability-related fund names, to prevent risks of greenwashing and the marketing to end-investors of funds with misleading and divergent sustainability claims;
- Fact that the current legislation lacks such criteria and the absence of plans to review the legislation to tackle this issue in the near future;
- Need for harmonisation of requirements applying to each type of market participant;
- Tools available to ESMA to link ESG or sustainability-related terms in fund names to the investments made by the funds, including the issue of enforceability;
- Proposed legal basis for the issuance of the guidelines;
- Appropriate thresholds(s) and need to leave room for transition activities; and
- Importance of consulting the market on this matter and of doing so rapidly.

Decision: The Board adopted the consultation paper on the guidelines on funds' names using ESG or sustainability-related terms, with the addition of a supplementary question.

2) Sustainable Finance Training Plan 2022-2024

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| ○ Presentation | Discussion |
| ○ Training Plan | Discussion |

The Chair of the Coordination Network on Sustainability presented the Sustainable Finance Training Plan 2022-2024.

The Board discussed the Sustainable Finance Training Plan 2022-2024, in particular the:

- Potential initiatives such as cross-NCA educational sessions, including workshops analysing supervisory tools and practices; and
- Monitoring of its implementation to ensure trainings are fit for purpose.

Conclusion: The Board discussed and supported the Sustainable Finance Training Plan 2022-2024.

7. Update from Crypto-Assets Task Force

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| 1) Cover note | Discussion |
| 2) Presentation | Discussion |
| 3) Joint ESAs' note on crypto monitoring survey | Information |
| 4) Interim report on the activities of the Task Force | Information |

The Chair of the Crypto-Assets Task Force (CATF) presented the update from the CATF.

The Board discussed the update from the CATF, in particular the:

- Relevance of the FTX case for a supervisory case discussion at the task force;
- Interlinkages between traditional and non-traditional financial sectors;
- Lack of supervisory data regarding investments in crypto-assets by funds;
- Difficulty created by the absence of regulation and supervisory competence in areas where investor protection is at stake until MICA comes into force; and
- Focus on financial innovation in ESMA's new strategy, and the fact that the work of the CATF will therefore be intensified by a structurally permanent Digital Finance Standing Committee.

Conclusion: The Board discussed the update from the Crypto-Assets Task Force.

8. ESRS Assessment Framework

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) ESRS Assessment Framework | Decision |

The Chair of the Corporate Reporting Standing Committee presented ESMA's European Sustainability Reporting Standards (ESRS) Assessment Framework.

The Board discussed the ESRS Assessment Framework, in particular the interoperability with global standards.

Decision: The Board adopted the ESRS Assessment Framework, which will be used for the development of ESMA opinions on any new or revised ESRS.

9. Implementation of the ESMA Strategy 2023-2028 – Structure of ESMA Groups

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| 1) Presentation | Discussion |
| 2) Note | Decision |

The Acting Head of the Governance and External Affairs Department presented the proposal for a new structure of ESMA Groups.

The Board discussed the structure of ESMA Groups, in particular the:

- Importance of having an overall picture of ESMA's internal governance (Standing Committees and substructures and their scope) to ensure efficiency and consistency;
- Principle whereby NCA staff appointed to Standing Committees should be sufficiently senior and have a clear mandate to take decisions at Standing Committee level on behalf of their Authority;
- Proposed mergers of existing groups, and the importance of those mergers serving efficiency rather than adding an extra layer to the decision-making process;
- Planned interaction between the Senior Supervisors' Forum and sectoral Standing Committees;
- Timeline for the remainder of the process, and importance to plan for a review in two years; and
- Work relating to financial education and whether to include it in the Communications Network.

Decision: The Board approved the proposed structure of the groups reporting to the Board of Supervisors, and in particular agreed that the prudential aspects of the supervision of investment firms under IFR/IFD should be within the scope of the Investor Protection Standing Committee, that a new Proportionality and Coordination Committee should take over the tasks of the Advisory Committee on Proportionality, International Relations Network (IRN) and some coordination tasks of the Supervisory Convergence Standing Committee (SCSC). The Board agreed that the structure should be reviewed in two years to ensure it works as intended. The Board agreed to extend the mandates of current Standing Committee Chairs to 31 December 2022. A new note on substructures will be brought to the December 2022 Board of Supervisors.

10. Enforcement Panel

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |

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| 3) Decision to repeal the Enforcement Panel | Decision |
| 4) Delegation to the ESMA Chair on the adoption of completeness decisions | Decision |

The Executive Director presented the note on the Enforcement Panel.

The Board discussed the note on the Enforcement Panel, in particular:

- The disbandment of the Enforcement Panel; and
- The possibility to delegate the adoption of completeness decisions to the ESMA Chair or to retain that responsibility.

Decision: The Board adopted the decision to repeal the Enforcement Panel and the delegation to the ESMA Chair of the adoption of completeness decisions.

11. Update on 2023 draft budget and high-level discussion on 2024 planning

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| 1) Presentation | Discussion |
| 2) Note | Discussion |

The Head of the Finance Unit presented the update on the 2023 draft budget.

The Board discussed the update on the 2023 draft budget, in particular the:

- Possible reductions in expenditure considered for 2023 to face budgetary constraints and potential impact on the 2024 budget; and
- Possibility of asking the European Institutions to consider increasing the share of the EU subsidy in light of the current context.

Conclusion: The Board discussed the update on the 2023 draft budget and had a high-level discussion on 2024 planning. The opening budget and the programming document for 2024-2026 will be brought to the December Board of Supervisors for approval.

12. Benchmarks Network

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| 1) BMR Network Report | Information |
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Conclusion: The Board took note of the BMR Network report.

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| 2) Final report on the review of the regulatory technical standards on the recognition of third-country benchmark administrators | Decision |
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Decision: The Board adopted the final report on the review of the regulatory technical standards on the recognition of third-country benchmark administrators.

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| 3) Consultation paper on the review of regulatory technical standards on the authorisation and registration of benchmark administrators | Decision |
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Decision: The Board adopted the consultation paper on the review of regulatory technical standards on the authorisation and registration of benchmark administrators.

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| 4) Annual report on sanctions under BMR | Decision |
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Decision: The Board adopted the annual report on sanctions under BMR.

13. CCP Policy Committee

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| 1) CCP PC Report | Information |
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Conclusion: The Board took note of the CCP Policy Committee report.

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| 2) CCP Resolution Committee Terms of Reference | Decision |
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Decision: The item was removed from the agenda.

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| 3) Final reports under the CCP Resolution and Recovery Regulation | |
| o Final report on guidelines on the types and content of the provisions of cooperation arrangements | Decision |
| o Final report on guidelines on the assessment of resolvability | Decision |

Decision: The Board adopted the final report on guidelines on the types and content of the provisions of cooperation arrangements and the final report on guidelines on the assessment of resolvability.

14. Investment Management Standing Committee

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| 1) IMSC Report | Information |
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Conclusion: The Board took note of the IMSC report.

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| 2) Final report on annual update of the guidelines on stress test scenarios under the MMFR | Decision |
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Decision: The Board adopted the final report on the annual update of the guidelines on stress test scenarios under the Money Market Funds Regulation (MMFR).

15. Investor Protection and Intermediaries Standing Committee

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| 1) IPISC Report | Information |
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Conclusion: The Board took note of the IPISC Report.

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| 2) Consultation paper on the review of technical standards on passporting | Decision |
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Decision: The Board adopted the consultation paper on the review of technical standards on passporting.

16. Market Integrity Standing Committee

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| 1) MISC Report | Information |
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Conclusion: The Board took note of the MISC report.

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| 2) Annual report on administrative and criminal sanctions under MAR | Decision |
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Decision: The Board adopted the annual report on administrative and criminal sanctions under the Market Abuse Regulation (MAR).

- 3) MAR Q&A Decision

Decision: The Board adopted the MAR Q&A.

17. Post-Trading Standing Committee

- 1) PTSC Report Information

Conclusion: The Board took note of the PTSC report.

- 2) Final Report on regulatory technical standards on the cash penalty processes for cleared transactions under CSDR Decision

Decision: The Board adopted the final report on regulatory technical standards on the cash penalty processes for cleared transactions under the Central Securities Depositories Regulation (CSDR).

- 3) CSDR Q&A Decision

Decision: The Board adopted the CSDR Q&A.

18. Secondary Markets Standing Committee

- 1) SMSC Report Information

Conclusion: The Board took note of the SMSC report.

- 2) 2022 annual report on waivers and deferrals Decision

Decision: The Board adopted the 2022 annual report on waivers and deferrals.

19. Supervisory Convergence Standing Committee

- 1) SCSC Report Information

Conclusion: The Board took note of the SCSC report.

- 2) Enforcement Network thematic study on efficiencies Decision

Decision: The Board adopted the Enforcement Network thematic study on efficiencies.

- 3) Enforcement Network thematic study on referral criteria Decision

Decision: The Board adopted the Enforcement Network thematic study on referral criteria.

20. Digital Operational Resilience Act implementation

- 1) Presentation Information

Conclusion: The Board took note of the presentation on the implementation of the Digital Operational Resilience Act (DORA).

21. TRV articles

- 1) Cover note Information

- 2) TRV article: "Parsing prospectuses: a text-mining approach" Decision

Decision: The Board adopted the TRV article: “Parsing prospectuses: a text-mining approach”.

22. Securities and Market Stakeholder Group – enlargement of the reserve list and appointment of one member

1) Note

Decision

Decision: The Board adopted the enlargement of the Securities and Market Stakeholder Group (SMSG) reserve list and appointed François Masquelier to the SMSG in the financial markets’ participants category for a period until 30 June 2024.

23. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais Antoine van Cauwenberge (alternate) Annemie Rombouts (ad-hoc alternate)	
Bulgaria	Mariya Filipova	
Czech Republic	Vojtech Belling Karel Juras (alternate)	
Denmark	Karen Dorte Abelskov Henrik Brarup Damgaard (alternate)	
Germany	Thorsten Pötzsch Jens Fürhoff (alternate)	Jan-Ole Wagner
Estonia	Andre Nomm	
Ireland	Patricia Dunne (alternate)	Laura Murtagh
Greece	Vasiliki Lazarakou	Vasiliki Koularmani
Spain	Rodrigo Buenaventura Montserrat Martinez (alternate)	Antonio Mas
France	Marie-Anne Barbat-Layani Benoit de Juvigny (alternate)	Martin Chudej

Croatia	Ante Žigman Jurica Jednačak (alternate)	
Italy	Carlo Comporti (alternate)	Martina Tambucci
Cyprus	George Theocharides George Karatzias (alternate)	
Latvia	Santa Purgaile	
Lithuania	Vaidas Cibas	
Luxembourg	Francoise Kauthen (alternate)	
Hungary	Gabor Laki (alternate)	
Malta	Lorraine Vella (alternate)	
Netherlands	Jos Heuvelman	Quirine Hoogeveen Deirdre Westgeest
Austria	Eduard Müller Birgit Puck (alternate)	Andrea Kuras-Goldman
Poland	Rafal Mikusiński Agata Gawin (alternate)	Dominika Szymańska Anna Skrzypek
Portugal	José Miguel Almeida	Tiago dos Santos Matias
Romania	Ovidiu Petru (alternate)	
Slovenia	Anka Čadež	

	Sabina Bester (alternate)	
Slovakia	Peter Tkáč Tomáš Ambra (alternate)	Adam Nádaský
Finland	Armi Taipale	
Sweden	Marie Jespersen (alternate)	Fredrik Elmberg
Chair	Verena Ross	

Non-voting members

European Commission	Ugo Bassi	Jorge Revilla Garcia
EBA	Anne Tiedemann (alternate)	
EIOPA	Kai Kosik (alternate)	
ESRB	Francesco Mazzaferro	
Iceland	Páll Friðriksson (alternate)	
Liechtenstein	Reto Degen	
Norway	Geir Holen (alternate)	Marianne Elind Skaane
EFTA Surveillance Authority	Marco Uccelli	

ESMA

Executive Director	Natasha Cazenave
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Summary of Conclusions	Jakub Michalik Laura Weil
Chair of the Coordination Network on Sustainable Finance	Montserrat Martinez
Chair of the Corporate Reporting Standing Committee	Annemie Rombouts
Chair of the Crypto Assets Task Force	Birgit Puck
Chair of the Peer Review Committee on NCAs' handling of relocation to EU27 in the context of the UK's withdrawal from the EU	Iliana Lani
Head of the Risk Analysis and Economics Department	Steffen Kern
Acting Head of the Governance and External Affairs Department	Jakub Michalik
Head of the Innovation, Products and Technology Unit	Claudia Guagliano
Head of the Investment Management Unit	Antonio Barattelli
Head of the Finance Unit	Veronica Magrini

Done at Paris on 20 February 2023

Verena Ross

Chair

For the Board of Supervisors

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 14 October to 14 November 2022)

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| <p>1. European Common Enforcement Priorities for 2022 for annual financial reports</p> | <p>27 October 2022</p> |
| <p>2. 1) Public Statement</p> <p>Decision: The Board adopted the Public Statement on the European Common Enforcement Priorities for 2022 for annual financial reports.</p> | |
| <p>3. Joint Questions and Answers (Q&As) under Regulation (EU) No 1286/2014 (“PRIIPs Regulation”) (JC 2022 51) setting the framework for Key Information Documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs)</p> | <p>31 October 2022</p> |
| <p>1) Joint Q&As</p> <p>Decision: The Board adopted the joint Q&As under Regulation (EU) No 1286/2014 (“PRIIPs Regulation”) (JC 2022 51) setting the framework for Key Information Documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs).</p> | <p>Decision</p> |
| <p>4. Summary of conclusions – 20-21 September 2022 Board of Supervisor</p> | <p>2 November 2022</p> |
| <p>1) Summary of conclusions</p> <p>Decision: The Board adopted the summary of conclusions of the Board of Supervisors meeting that took place on 20-21 September 2022.</p> | <p>Decision</p> |
| <p>5. Summary of conclusions – 7 July 2022 Board of Supervisor</p> | <p>7 November 2022</p> |
| <p>1) Summary of conclusions</p> <p>Decision: The Board adopted the summary of conclusions of the Board of Supervisors meeting that took place on 7 July 2022.</p> | <p>Decision</p> |
| <p>6. Joint ESA Q&As (JC 2022 62) under the Sustainable Finance Disclosure Regulation (SFDR) Delegated Regulation (Commission Delegated Regulation (EU) 2022/1288)</p> | <p>11 November 2022</p> |
| <p>1) Joint Q&As</p> <p>Decision: The Board adopted the joint Q&As under the Sustainable Finance Disclosure Regulation (SFDR) Delegated Regulation (Commission Delegated Regulation (EU) 2022/1288)</p> | <p>Decision</p> |