

Summary of Conclusions

Board of Supervisors

Date:	Wednesday 14 December 2022
Time:	09h00 – 17h00
Location:	MS Teams
Contact:	ESMABoard@esma.europa.eu

- 1. Adoption of agenda** Decision

Decision: The agenda was adopted.

- 2. Confirmation of absence of conflict of interests** Decision

Decision: The Board endorsed the ESMA Chair's statement:

- Recalling, in line with ESMA's conflict of interest policy, potential conflict of interests for Jean-Paul Servais (BE), Claude Marx (LU) and Santa Purgaile (LV) for agenda item 4.3 on the country reports on their respective Member States in the context of the peer review on supervision of central securities depositories providing cross-border services or participating in interoperable links, and
- Indicating not having 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 the:

- Recent interactions with the European Institutions, in particular her participation in the European Parliament's ECON Committee hearing on financial speculation and potential market manipulation in energy derivatives markets and the Head of Risk Analysis and Economics Department's participation in the ECON Committee hearing on the FTX collapse and implications for the EU. She also reported on her recent meetings with Members of the European Parliament to discuss the MiFIR Review, and her meetings with the President of the European Central Bank and the Chair of its Supervisory Board to discuss markets developments, the CMU and sustainability;
- The activities of the European Systemic Risk Board (ESRB), in particular the adoption by the ESRB General Board of a final report on systemic cyber risk and of a recommendation on Commercial Real Estate (CRE), which is addressed to all relevant authorities, including ESMA and national competent authorities;

- ESMA’s international activities, in particular her presentation at a meeting of the Financial Stability Board Standing Committee on Assessment of Vulnerabilities of the key developments and vulnerabilities of most concern from an ESMA perspective;
- The activities of the Joint Committee, in particular the scope of the legal mandate related to the draft regulatory technical standards on sustainability disclosures for STS securitisations;
- The December 2022 Management Board, in particular the discussion that took place on a proposal to review ESMA’s fee management system; and
- The activities of the Securities and markets Stakeholder Group (SMSG), in particular the finalisation of two pieces of SMSG Advice, one on SRD II and the other on Depository Receipts and Geopolitical Risks.

The Executive Director reported on the December 2022 Financial Services Committee meetings, in particular the risk updates provided by the European Supervisory Authorities, the European Commission’s presentation of its new Capital Market Union legislative proposals, and the discussion on micro-states.

The representative of the European Commission presented the European Commission’s legislative proposals under the Capital Markets Union (Listing Act and EMIR review). In relation to the ongoing discussions in the Council on energy markets, the Board discussed ESMA’s role with regards to assessing the potential impact of price caps on financial markets.

4. Peer review on supervision of central securities depositories providing cross-border services or participating in interoperable links

1) Presentation	Discussion
2) Report	Discussion
3) Country reports	Discussion
○ Belgium	Discussion
○ Luxembourg	Discussion
○ Latvia	Discussion

The Chair of the Peer Review Committee presented the peer review report on supervision of central securities depositories (CSDs) providing cross-border services or participating in interoperable links.

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

- Peer review methodology, with regard to the links between individual topic-by-topic observations and the final assessment made in the peer review report, as well as the organisation of workshops and calls with the relevant NCAs;
- Assessment of risk-based supervision elements;
- Variety in complexity and size of CSD undertakings;
- Complexity arising for NCAs from a legislative deadline for ESMA to produce a peer review report on supervisory convergence in a relatively novel area, and the possibility to further consider guidance for supervision; and
- Publication of peer reviews.

Conclusion: The Board discussed the peer review report on supervision of central securities depositories providing cross-border services or participating in interoperable links. The report will be finalised by the peer review committee and brought to the Board of Supervisors for approval by written procedure.

5. 2024-2026 Programming Document

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) Draft Programming Document 2024-2026 | Discussion |

The Executive Director presented the 2024-2026 Programming Document.

The Board discussed the draft Programming Document 2024-2026, in particular the:

- Impact for each NCA's financial contribution and the assumptions around the level of inflation;
- Need to further distinguish in the draft work plan strategic priorities and recurring activities; and
- Importance of finding the right balance between policy and supervisory convergence activities, notably to ensure adequate follow up on cross-border supervision and the home-host principle.

Conclusion: The Board discussed the draft Programming Document 2024-2026. Board Members were invited to provide any additional comments in writing.

6. CCP Resolution Committee

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) Terms of Reference | Decision |

The Independent Member of the CCP Supervisory Committee presented the Terms of Reference of the CCP Resolution Committee.

The Board discussed the terms of reference, and in particular the importance of ensuring that the Chair of the CCP Resolution Committee possesses the relevant experience and knowledge.

Decision: The Board adopted the Terms of Reference, with an amendment to specify the criteria for the selection of the Chair of the CCP Resolution Committee, namely the possession of the necessary experience and knowledge.

7. ESMA Groups

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

The Acting Head of the Governance and External Affairs Department presented the note on substructures of ESMA Groups.

The Board discussed the substructures, in particular the:

- Distribution of certain workstreams amongst groups, including the attribution of work on the implementation of the DLT Pilot regime and Markets in Crypto Assets Regulation (MiCA) to the Digital Finance Standing Committee (DFSC), and the importance of coordination with other relevant groups;
- Proposed substructure mergers;
- Pertinent NCA representation for subgroups, and the importance of developing a central document repository in order to ensure NCAs who do not take part in all substructures are kept informed;
- Distribution of substructure chairmanship responsibilities between NCA and ESMA staff and the importance of ensuring an adequate balance in terms of gender, geography, authorities etc.; and
- Importance of reviewing the efficiency of the group structure on a regular basis.

Decision: The Board adopted the substructures of ESMA Groups. The Board agreed that the transitional period should allow for flexibility based on each group’s work. The Board agreed that there should not be a quota for the distribution of chairmanships between NCA and ESMA staff, and that they should rather be identified jointly by the Standing Committee chair and the Executive Director to ensure balanced representation and coherence across groups. The Board agreed the new structure should be reviewed on a regular basis.

8. 2022 budget amendment and 2023 opening budget

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| 1) Cover note | Information |
| 2) 2022 budget amendment No. 2 | Decision |

Decision: The Board adopted the 2022 budget amendment No. 2.

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| 3) 2023 opening budget | Decision |
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Decision: The Board adopted the 2023 opening budget.

9. Data Standing Committee

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

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| 2) Money Market Funds Regulation (MMFR) Data Quality Engagement Framework | |
| o Note | Decision |
| o Technical document | Decision |

Decision: The Board adopted the Money Market Funds Regulation (MMFR) Data Quality Engagement Framework.

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| 3) Alternative Investment Funds Directive (AIFMD) Data Quality Engagement Framework | |
| o Note | Decision |
| o Technical document | Decision |

Decision: The Board adopted the Alternative Investment Funds Directive (AIFMD) Data Quality Engagement Framework.

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| 4) Report on Financial Instruments Transparency System (FITRS) Data Quality Engagement Framework | Decision |
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Decision: The Board adopted the report on Financial Instruments Transparency System (FITRS) Data Quality Engagement Framework.

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| 5) Report on Double Volume Cap (DVCAP) Data Quality Engagement Framework | Decision |
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Decision: The Board adopted the report on Double Volume Cap (DVCAP) Data Quality Engagement Framework.

10. 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 technical standards on the notification of cross-border activities under the UCITS Directive and AIFMD | Decision |
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Decision: The Board adopted the final report on technical standards on the notification of cross-border activities under the UCITS Directive and AIFMD.

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| 3) Additional templates for notifications and de-notification of cross-border activities under the AIFMD and the UCITS Directive | Decision |
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Decision: The Board adopted the additional templates for notifications and de-notification of cross-border activities under the AIFMD and the UCITS Directive.

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| 4) AIFMD Q&A | Decision |
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Decision: The Board adopted the AIFMD Q&A.

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| 5) Procedure for ESMA's intervention on leverage limits under Article 25(7) of AIFMD | Decision |
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Decision: The Board adopted the procedure for ESMA's intervention on leverage limits under Article 25(7) of AIFMD.

11. 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) Supervisory briefing on the supervision of cross-border activities of investment firms | Decision |
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Decision: The Board adopted the Supervisory briefing on the supervision of cross-border activities of investment firms.

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| 3) Statement on best execution reporting requirements | Decision |
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Decision: The Board adopted the statement on best execution reporting requirements.

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| 4) Crowdfunding Q&As | Decision |
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Decision: The Board adopted the crowdfunding Q&As.

12. Secondary Markets Standing Committee

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

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| 2) Opinion on review of RTS 1 and 2 on pre-trade and post-trade transparency requirements for equity instruments and non-equity instruments | Decision |
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Decision: The Board adopted the opinion on review of RTS 1 and 2 on pre-trade and post-trade transparency requirements for equity instruments and non-equity instruments.

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| 3) Consultation paper on manual on post-trade transparency reporting | Decision |
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Decision: The Board adopted the consultation paper on manual on post-trade transparency reporting.

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| 4) Review of the agreement on the operation of the double volume cap mechanism | Decision |
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Decision: The Board adopted the reviewed agreement on the operation of the double volume cap mechanism.

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| 5) MiFID Q&As | Decision |
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Decision: The Board adopted the MiFID Q&As.

13. Supervisory Convergence Standing Committee

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

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| 2) Enforcement Network 2023-2024 workplan | Decision |
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Decision: The Board adopted the Enforcement Network 2023-2024 workplan.

14. DLT Pilot Regime

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| 1) Cover note | Information |
| 2) Final report DLT Pilot Guidelines on standards to apply for permission | Decision |

Decision: The Board adopted the final report on the DLT Pilot Guidelines on standards to apply for permission.

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| 3) DLT Pilot Regime Q&As | Decision |
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Decision: The Board adopted the DLT Pilot Regime Q&As.

15. EMIR Refit Implementation

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| 1) Cover note | Information |
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Conclusion: The Board took note of the cover note on the EMIR Refit implementation.

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| 2) Final report on guidelines on reporting | Decision |
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Decision: The Board adopted the final report on guidelines on reporting.

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| 3) Validation rules | Decision |
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Decision: The Board adopted the validation rules.

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| 4) Reporting instructions | Decision |
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Decision: The Board adopted the reporting instructions.

16. Annual Statistical Reports

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| 1) Cover note | Information |
| 2) ESMA statistical report on EU prospectuses | Decision |

Decision: The Board adopted the ESMA statistical report on EU prospectuses.

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| 3) ESMA statistical report on Costs and Performance of EU Retail Investment Products | Decision |
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Decision: The Board adopted the ESMA statistical report on Costs and Performance of EU Retail Investment Products, subject to factual amendments to charts and annexes describing the methods used for inflation-related calculations.

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| 4) Annexes to ESMA statistical report on Costs and Performance of EU Retail Investment Products | Decision |
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Decision: The Board adopted the annexes to the ESMA statistical report on Costs and Performance of EU Retail Investment Products.

17. 2023-2026 IT Work Programme

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| 1) Cover note | Information |
| 2) IT Work Programme 2022-2026 | Decision |

Decision: The Board adopted the IT Work Programme 2022-2026.

18. TRV articles

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| 1) Cover note | Information |
| 2) TRV article on operational resilience of financial institutions | Decision |

Decision: The Board adopted the TRV article on operational resilience of financial institutions.

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| 3) TRV article on EU Ecolabel and calibrating green criteria for retail funds | Decision |
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Decision: The Board adopted the TRV article on EU Ecolabel and calibrating green criteria for retail funds.

19. Annual Report on Equivalence Monitoring

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| 1) Cover note | Information |
| 2) Report | Decision |

Decision: The Board adopted the annual report on equivalence monitoring.

20. Updated cooperation arrangements between ESMA and UK FCA

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| 1) Cover note | Information |
| 2) Revised Memorandum of Understanding on supervisory cooperation between ESMA and the UK FCA (to include a new annex for DRSPs) | Decision |

Decision: The Board adopted the revised Memorandum of Understanding on supervisory cooperation between ESMA and the UK FCA (to include a new annex for DRSPs).

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| 3) New Memorandum of Understanding between ESMA and the UK FCA concerning the recognition of third-country benchmark administrators | Decision |
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Decision: The Board adopted the new Memorandum of Understanding between ESMA and the UK FCA concerning the recognition of third-country benchmark administrators.

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| 4) New Memorandum of Understanding on supervisory cooperation between ESMA and the UK FCA concerning administrators of EU critical benchmarks | Decision |
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Decision: The Board adopted the new Memorandum of Understanding on supervisory cooperation between ESMA and the UK FCA concerning administrators of EU critical benchmarks.

21. Translation of Guidelines addressed to ESMA supervised entities and EU CCPs

1) Note

Decision

Decision: The Board adopted the note on the translation of Guidelines addressed to ESMA supervised entities and EU CCPs.

22. A.O.B.

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Participants list
Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais Antoine van Cauwenberge (alternate)	
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Vojtech Belling	
Denmark	Karen Dorte Abelskov	
Germany	Thorsten Pöttsch	
Estonia	Andre Nomm	
Ireland	Derville Rowland	
Greece	Vasiliki Lazarakou	
Spain	Rodrigo Buenaventura	
France	Marie-Anne Barbat-Layani	
Croatia	Ante Žigman	
Italy	Carlo Comporti	

Cyprus	George Theocharides	
Latvia	Kristaps Soms (alternate)	
Lithuania	Vaidas Cibas	
Luxembourg	Claude Marx	
Hungary	Gabor Laki (alternate)	
Malta	Christopher Butigieg	
Netherlands	Jos Heuvelman	
Austria	Eduard Müller	
Poland	Rafal Mikusiński	
Portugal	Luís Laginha de Sousa Jose Miguel Almeida (alternate)	
Romania	Ovidiu Petru (alternate)	
Slovenia	Anka Čadež	
Slovakia	Tomáš Ambra (alternate)	
Finland	Armi Taipale	
Sweden	Marie Jespersion (alternate)	

Chair	Verena Ross	
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Non-voting members

European Commission	Tilman Lueder (alternate)	
EBA	Francois-Louis Michaud	
EIOPA	Fausto Parente	
ESRB	Francesco Mazzaferro	
Iceland	Páll Friðriksson (alternate)	
Liechtenstein	Reto Degen	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marianne Moen (alternate)	

ESMA

Executive Director	Natasha Cazenave
Summary of Conclusions	Jakub Michalik Laura Weil
Chair of the CCP Supervisory Committee	Klaus Löber

Chair of the Peer Review Committee	Fabrizio Planta
Independent Member of the Supervisory Committee	Nicoletta Giusto
Acting Head of the Governance and External Affairs Department	Jakub Michalik

Done at Paris on 20 February 2023

Verena Ross

Chair

For the Board of Supervisors

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 15 November to 12 December 2022)

1. **ESMA Advice on proposed leverage limits by the Central Bank of Ireland under Article 25 of the Alternative Investment Fund Managers Directive (AIFMD)** 23 November 2022
 - 1) ESMA Advice Decision

Decision: The Board adopted the ESMA Advice on Proposed leverage limits by the Central Bank of Ireland under Article 25 of the Alternative Investment Fund Managers Directive (AIFMD). Derville Rowland (IE) abstained referring to ESMA's conflict-of-interest-policy.

2. **Peer Review into the NCAs' handling of relocation to the EU in the context of the UK's withdrawal from the EU** 5 December 2022
 - 1) Report Decision
 - 2) Country reports Decision
 - 3) Press release Information

Decision: The Board adopted the report on the Peer Review into the NCAs' handling of relocation to the EU in the context of the UK's withdrawal from the EU and the six country reports.

Derville Rowland (IE), Santa Purgaile (LV) and Claude Marx (LU) abstained from voting.

George Theocharides (CY), Thorsten Pöttsch (DE), Derville Rowland (IE), Marie-Anne Barbat-Layani (FR), Claude Marx (LU) and Jos Heuvelman (NL) abstained from voting on their respective country reports in line with ESMA's conflict of interest policy.

3. **Advice of the Joint Committee (JC) of the European Supervisory Authorities (ESAs) to the European Commission on the review of the securitisation prudential framework**
 - 1) Advice Decision

Decision: The Board adopted the Advice of the Joint Committee (JC) of the European Supervisory Authorities (ESAs) to the European Commission on the review of the securitisation prudential framework.