

Summary of Conclusions

Board of Supervisors

Date:	Thursday 26 January 2023
Time:	09h00 – 18h00
Location:	ESMA, 201-203 rue de Bercy, 75012 Paris
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 not to have received any indication by a Board Member of any interest which might be considered prejudicial to her/his independence in relation to any items on the agenda.

- 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 recent meeting with Commissioner McGuinness, covering issues linked to sanctions, energy markets and the European Commission's legislative proposals, her exchanges with MEPs on EMIR 3.0, the Listing Package and the MiFIR review, and her participation in the Economic and Financial Committee – Financial Stability Table (EFC-FST) meeting;
- ESMA's international activities, including her continued contribution to the IOSCO Sustainability Task Force particularly on carbon markets, as well as her recent visit to the United Kingdom to meet representatives of the UK Financial Conduct Authority (FCA), the Bank of England and the industry to discuss recent market developments and international cooperation;
- The January 2023 Management Board meeting;
- The activities of the Securities and Markets Stakeholder Group, in particular the finalisation of a piece of SMSG Advice on Breach of Union Law; and
- The ongoing work on the Union-wide strategic supervisory priorities.

The Executive Director reported on the:

- January 2023 Financial Services Committee meetings, in particular discussions relating to recent developments in crypto asset markets and the future of the Market in Crypto Assets (MiCA)

Regulation framework, on the role of non-EU players in the EU financial system and on the framework for securitisation;

- Implementation of changes to ESMA's group structure, in particular the ongoing review of their Terms of Reference, and the finalisation of the membership and chairmanship of subgroups; and
- Launch of ESMA's new website and ESMA's new organisational structure, in line with ESMA's 2023-2028 Strategy.

The Chair of the CCP Supervisory Committee reported on the status of the recognition processes for Turkish CCPs, of the derecognition processes of Indian CCPs and updated on the situation related to UAE CCPs.

The Board discussed and reconfirmed ESMA's earlier decision to derecognise Indian CCPs, due to the conditions prescribed by EMIR for recognition no longer being fulfilled.

4. Trends, risks and vulnerabilities report

1) Presentation	Discussion
2) Cover note	Discussion
3) Trends, risks and vulnerabilities report – Risk monitor	Decision
4) Trends, risks and vulnerabilities report – Statistical annex	Decision
5) Trends, risks and vulnerabilities report – Structural market indicators (SMIs)	Decision

The Chair of the Risk Standing Committee and the Head of the Economics, Financial Stability and Risk Department presented the trends, risks and vulnerabilities report.

The Board discussed the trends, risks and vulnerabilities report, in particular the:

- Risks linked to the move of energy derivatives trading to over-the counter, and the concerns for certain counterparties should the central market become illiquid;
- Investors' search for yield being met by crypto assets, and the risk of further FTX-type events;
- Resilience of money market funds without public intervention;
- Assessment of environmental risks;
- Transmission of risks between the banking sector and other parts of the financial markets; and
- Trends in TRV risk levels over the years and how to reflect the slightly more positive data at start of 2023.

Decision: The Board adopted the trends, risks and vulnerabilities report.

5. Sustainable Finance

1) Sustainable Finance Disclosures Regulation	
○ Presentation	Discussion
○ Progress Report	Discussion

The Head of the Investor Protection and Sustainable Finance Department presented the European Supervisory Authorities (ESAs)’ Sustainable Finance Disclosures Regulation (SFDR) Delegated Regulation review progress report.

The Board discussed the SFDR Delegated Regulation review progress report, in particular the:

- Scope of the ESAs’ mandate and the complexity arising from the fact that there is a need for Level 1 change, which is outside that scope;
- Expansion of the principal adverse impact indicators;
- Proposals to consult stakeholders with regards to do no significant harm (DNSH) rules; and
- National competent authorities (NCAs)’ respective supervisory and enforcement plans and timelines with regards to the amended SFDR financial product templates including nuclear and gas disclosures, in the absence of a transition period/very short entry into force period, and the importance of coordination.

Conclusion: The Board discussed the SFDR Delegated Regulation review progress report. The Board agreed to consult on the different options with regards to DNSH rules. The consultation paper will be submitted to the Board of Supervisors for approval via written procedure.

2) European Sustainability Reporting Standards

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| ○ Presentation | Discussion |
| ○ Cover note | Discussion |
| ○ Opinion | Decision |

The Head of the Corporate Finance and Reporting Unit presented the Opinion on the European Sustainability Reporting Standards (ESRS).

The Board discussed the Opinion on the ESRS, in particular the:

- Possible mapping to international standards, and
- Next steps from ESMA’s side once the ESRS are finalised.

Decision: The Board adopted the Opinion on the European Sustainability Reporting Standards.

6. Market Correction Mechanism (MCM)

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| 1) Presentation | Discussion |
| 2) Council text | Information |

The Chair of the CCP Supervisory Committee and the Acting Head of the Markets and Digital Innovation Department presented the next steps on the Market Correction Mechanism (MCM).

The Board discussed the MCM, in particular the:

- Definition of the term “imminent” for the purpose of the trigger of the MCM;
- Importance of collecting industry data and input; and
- Setting up of internal procedures to be applied in case of activation of the MCM.

Conclusion: The Board discussed the MCM and agreed on the need to put operational arrangements in place ahead of its entry into application.

7. CCP Stress Test

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

The Independent Member of the CCP Supervisory Committee presented the CCP Stress Test proposal.

The Board discussed the CCP Stress Test proposal, in particular the:

- Inclusion for the first time of a climate risk component in the CCP stress test;
- Importance of reverse stress testing for credit risk;
- Importance of operational risks and foreseen inclusion in a future stress test; and
- Dependence of interoperable CCPs on one another's liquid resources.

Conclusion: The Board discussed the CCP Stress Test proposal. The methodology for the 5th CCP stress test will be finalised and brought to the Board of Supervisors for approval in Q2 2023 before the exercise is launched.

8. European Commission legislative proposals

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| 1) Listing Act | Discussion |
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The Acting Head of the Governance and External Affairs Department presented the European Commission legislative proposals on the Listing Act.

The Board discussed the legislative proposal on the Listing Act, in particular the:

- Need for balance between investor protection and facilitating access to funding via capital markets;
- Need for a level playing field between the accessibility of bank-based and capital markets-based finance to ensure a strong Capital Markets Union;
- Concerns that the proposed alleviation of the Market Abuse Regulation requirements on insider lists will significantly complicate supervision and enforcement;
- Threshold for the requirement of the preparation of prospectuses; and
- Proportionality of free float requirements.

Conclusion: The Board discussed the legislative proposal on the Listing Act and took note of next steps in the legislative process. The Board agreed that ESMA staff should assess how to best communicate to the EU Institutions ESMA's concerns on the proposals for changes to the Insider Lists Regime.

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| 2) EMIR 3 | Discussion |
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The Acting Head of the Governance and External Affairs Department presented the European Commission legislative proposals on EMIR 3.

The Board discussed the legislative proposal on EMIR 3, in particular the:

- Objectives of the proposal, namely ensuring financial stability, serving the Capital Markets Union and EU strategic autonomy;

- Balance to achieve between strategic autonomy and competitiveness of EU market participants;
- Governance, including the proposed chairmanship of the CCP colleges and the importance of clarity about distribution of responsibilities to avoid duplications;
- Importance of conducting a cost benefit analysis when setting the perimeter of the implementation measures in order to be mindful of creating additional costs ; and
- Need to consider an extension of the scope of clearing to include transactions concerning crypto assets.

Conclusion: The Board discussed the legislative proposal on EMIR 3 and took note of next steps in the legislative process.

9. DORA – Update on the ESAs Implementation

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

The Executive Director presented the update on the joint ESAs' DORA implementation.

Conclusion: The Board took note of the update on the joint ESAs' DORA implementation.

10. 2024-2026 Programming Document

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

The Executive Director presented the Programming Document 2024-2026.

Decision: The Board adopted the Programming Document 2024-2026.

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| 4) IT Work Programme 2023-2026 | Information |
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Conclusion: The Board took note of the IT Work Programme 2023-2026.

11. Issuers Standing Committee (Corporate Finance)

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| 1) CFSC Report | Information |
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Conclusion: The Board took note of the ISC (CFSC) Report.

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| 2) Prospectus Q&A | Decision |
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Decision: The Board adopted the Prospectus Q&A.

12. 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) Consultation paper on revised methodology in MMF stress testing guidelines | Decision |
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Decision: The Board adopted the consultation paper on the review of the methodology in MMF stress testing guidelines.

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| 3) UCITS Q&A | Decision |
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Decision: The Board adopted the UCITS Q&A.

13. Markets Standing Committee

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

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| 2) Revised regulatory technical standards for the clearing and derivative trading obligations for risk-free rates | Decision |
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Decision: The Board adopted the revised regulatory technical standards for the clearing and derivative trading obligations for risk-free rates.

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| 3) Opinion on the perimeter of multilateral systems | Decision |
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Decision: The Board adopted the opinion on the perimeter of multilateral systems.

14. DLT Pilot Regime

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| 1) Cover note | Information |
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| 2) DLT Q&As | Decision |
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Decision: The Board adopted the DLT Q&As.

15. TRV Risk Articles

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| 1) Cover note | Information |
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| 2) Use of artificial intelligence in securities markets | Decision |
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Decision: The Board adopted the TRV Risk Article on the use of artificial intelligence in securities markets.

16. ESMA Statistical Reports

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| 1) Cover note | Information |
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| 2) ESMA statistical report on the EU Money Market Funds market | Decision |
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Decision: The Board adopted the ESMA statistical report on the EU Money Market Funds market.

17. Breach of Union Law

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| 1) 2022 update on Breach of Union Law and complaints handling | Information |
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Conclusion: The Board took note of the 2022 update on Breach of Union Law and complaints handling.

18. Delegations

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| 1) Annual update on overview of delegations | Decision |
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Decision: The Board adopted the annual update on overview of delegations.

19. A.O.B.

The ESMA Chair presented the request received from an NCA to consider the question of the publication of the peer review on the supervision of CSDs providing cross-border services or participating in interoperable links in line with article 30.7 of the ESMA Regulation.

The Board discussed the publication of the CSD peer review report, in particular:

- Whether the publication of certain extracts would cause risks to financial stability;
- The importance of upholding the agreed peer review methodology; and
- The objectives of peer reviews, including the identification of areas for further improvement.

Decision: The Board agreed to publish the CSD peer review report in full as adopted by the Board of Supervisors.

Participants list
Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Karel Juráš (alternate)	
Denmark	Henrik Brarup Damgaard	Astrid Hviid Villadsen
Germany	Thorsten Pöttsch	Jens Fürhoff (alternate) Jan-Ole Wagner
Estonia	Andre Nõmm	
Ireland	Derville Rowland	Patricia Dunne (alternate) Laura Murtagh
Greece	Vassiliki Lazarakou	Vasiliki Koularmani
Spain	Rodrigo Buenaventura	Antonio Mas
France	Marie-Anne Barbat-Layani	Benoit de Juvigny (alternate) Françoise Buisson
Croatia	Ante Žigman	Jurica Jednačak (alternate)

Italy	Carlo Comporti	Martina Tambucci
Cyprus	George Theocharides	George Karatzias (alternate)
Latvia	Kristaps Soms (alternate)	
Lithuania	Audrius Šilgalis (alternate)	
Luxembourg	Claude Marx	Françoise Kauthen (alternate)
Hungary	Krisztián Csáky (alternate)	
Malta	Christopher Buttigieg	Ivan Carl Saliba
Netherlands	Jos Heuvelman	Barbara Antonides Quirine Hoogeveen
Austria	Eduard Müller	Andrea Kuras-Goldman
Poland	Rafał Mikusiński	Dominika Szymańska
Portugal	Luís Laginha de Sousa	Tiago dos Santos Matias
Romania	Ovidiu Petru (alternate)	Anca Ioacă
Slovenia	Sabina Bešter (alternate)	
Slovakia	Peter Tkáč	Marek Beňo
Finland	Armi Taipale	Maria Rekola

Sweden	Susanna Grufman	Fredrik Elmberg Gabriel Bladh
Chair	Verena Ross	

Non-voting members

European Commission	Ugo Bassi	Cesare Posti
EBA	Francois-Louis Michaud Anne Tiedemann (alternate)	
EIOPA	Kai Kosik (alternate)	
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	Tomas Borovsky

	Laura Weil
Chair of the CCP Supervisory Committee	Klaus Loeber
Independent Member of the CCP Supervisory Committee	Froukelien Wendt
Head of the Economics, Financial Stability and Risk Department	Steffen Kern
Head of the Investor Protection and Sustainable Finance Department	Evert van Walsum
Acting Head of the Market and Digital Innovation Department	Carsten Ostermann
Acting Head of the Governance and External Affairs Department	Jakub Michalik
Head of the Corporate Finance and Reporting Unit	Isabelle Grauer-Gaynor

Done at Paris on 27 February 2023

Verena Ross

Chair

For the Board of Supervisors

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 20 to 24 January 2023)

1. Peer Review on supervision of CSDs providing cross-border services or participating in interoperable links

23 January 2023

1) Report on the Peer Review on supervision of CSDs providing cross-border services or participating in interoperable links

Decision

2) Country reports

Decision

Decision: The Board adopted the peer review on supervision of CSDs providing cross-border services or participating in interoperable links and the three country reports. In line with article 30.7 of the ESMA Regulation, the specifics regarding the publication of the report will be discussed at the January 2023 Board of Supervisors.

	Approval	Objection	Abstain
Jean-Paul Servais (BE)			x*
Maria Filipova (BG)	x		
Vojtech Belling (CZ)			x
Karen Dorte Abelskov (DK)	x		
Thorsten Pöttsch (DE)	x		
Andre Nõmm (EE)			x
Derville Rowland (IE)	x		
Vasiliki Lazarakou (EL)	x		
Rodrigo Buenaventura (ES)	x		
Marie-Anne Barbat-Layani (FR)			x*
Ante Žigman (HR)			x
Carlo Comporti (IT)	x		
George Theocharides (CY)	x		
Santa Purgaile (LV)			x*
Vaidas Cibas (LT)		x	
Claude Marx (LU)			x*
Gergő Szeniczey (HU)	x		
Christopher P. Buttigieg (MT)	x		
Jos Heuvelman (NL)	x		
Eduard Müller (AT)	x		

Rafał Mikusiński (PL)			x
Luis Laginha de Sousa (PT)			x
Gabriel Gradinescu (RO)	x		
Peter Tkáč (SK)			x
Sabina Bešter (SI)	x		
Armi Taipale (FI)	x		
Susanna Grufman (SE)	x		
Verena Ross (SE)	x		

*referring to ESMA's conflict of interest policy

- 2. Draft consultation paper on joint guidelines on the use of the system established by the European Supervisory Authorities (ESAs) for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities (JC 2022 76)**

24 January 2023

- 1) Consultation paper

Decision

Decision: The Board adopted the draft consultation paper on joint guidelines on the use of the system established by the ESAs for the exchange of information.