

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

---

**Date:** 26 September 2018  
**Time:** 09h00 – 17h00  
**Location:** Wiener Börsesäle, Wipplingerstraße 34, 1010 Wien, Austria  
**Contact:** [frederiek.vermeulen@esma.europa.eu](mailto:frederiek.vermeulen@esma.europa.eu) Tel: +33 1 58 36 43 37

---

**1. Adoption of agenda** 22-106-1078 Decision

**Decision:** The agenda was adopted.

**2. Oral Report by Chair and Executive Director** Information

The Chair updated on:

- The September 2018 informal meeting of the ECOFIN Council, in particular the discussions on the risks of rising interest rates and crypto-assets;
- His meetings with Members of the European Parliament, in particular on the risks related to the UK's withdrawal from the Union and the review of the operations of the European Supervisory Authorities (ESAs);
- The activities of the Joint Committee, in particular the European Commission's activities in relation to Anti-Money Laundering;
- The activities of the Securities and Markets Stakeholder Group (SMSG), in particular the ongoing renewal and the call for candidates published in that context;
- His meeting with the Swiss Financial Market Supervisory Authority;
- The fact that the Euro RFR Working Group adopted the prospective Euro short-term rate (ESTER) as the preferred alternative risk-free rate; and
- The September 2018 Management Board meeting, in particular the discussion on the 2019 annual work programme and the 2020 planning.

The Executive Director reported on the:

- September 2018 meeting of the Financial Services Committee (FSC) focusing on Anti-Money Laundering and on an update from the ESAs on key technical standards and delegated acts; and
- Contacts with EU Institutions on ESMA's 2020 premises.

### 3. Commission request to develop guidance on facilitating the production and distribution of information on investment funds as of January 2020 (in the context of PRIIPS)

1) Cover Note	30-201-451	Discussion
2) Letters received from the European Commission		Information
3) Letter to the European Commission	30-201-450	Decision

The Acting Investment Management Team Leader presented the cover note and the letter received from the European Commission.

The Board discussed the note, in particular:

- The potential impact for (retail) investors and financial market participants if a UCITS had to prepare both a UCITS KIID (Key Investor Information Document) and a PRIIPS Key Information Document (KID);
- Whether the exemption for UCITS from preparing a PRIIPS KID should be extended or a legislative proposal should be made to prevent a period of duplicate disclosures; and
- The time frame of the PRIIPS review.

**Decision:** The Board endorsed the suggested letter by the three ESAs calling for legislative changes to prevent a period of duplicate disclosures, including a targeted review of the delegated regulation prior to an overall review of the PRIIPS Regulation that has now been deferred. Elisabeth Roegele (DE) abstained.

### 4. UK's withdrawal from the European Union

1) Memoranda of Understanding with UK authorities		
o Cover note	90-1-52	Discussion
o Memorandum of Understanding between national and UK competent authorities	90-1-73	Discussion
o Memorandum of Understanding between ESMA and UK competent authorities	90-1-74	Discussion

The Project Leader on the development of Memoranda of Understanding with UK competent authorities presented the draft memoranda.

The Board discussed the draft memoranda, in particular:

- The importance of the timely development of, and agreement on, memoranda of understanding with the UK authorities; and
- Whether information obtained through the memoranda could be further transferred.

The European Commission representative highlighted that technical preparatory work could continue but that at this stage the EU should not enter into negotiations with UK authorities on post-Brexit agreements.

To prepare for the risk of no deal, the Chair emphasized the need for having memoranda of understanding, similar to the ones with other non-EU jurisdictions, agreed early in Q1 2019 and the time needed to develop such memoranda.

**Conclusion:** The Board endorsed the suggested memoranda of understanding as a starting point for potential future discussions with UK authorities. It was agreed that the Board of Supervisors will discuss during its November 2018 meeting when such discussions should start.

- |    |   |             |            |
|----|---|-------------|------------|
| 2) | Note on the governance of the negotiation of the Memoranda of Understanding with UK competent authorities | 41-137-1156 | Discussion |
|----|---|-------------|------------|

The Head of Legal, Convergence and Enforcement presented the note on the governance of the negotiation of the Memoranda of Understanding with UK competent authorities.

The Board discussed the note, in particular the:

- Idea of a small negotiation team headed by the Executive Director; and
- Involvement of the Board of Supervisors and/or the Management Board.

**Decision:** The Board decided to entrust the day-to-day preparations of an agreement to the Executive Director who will report on a regular basis on the progress to the Board of Supervisors and seek steering on important directions where relevant.

- |    |  |            |            |
|----|--|------------|------------|
| 3) | Impact of Brexit on IT systems and data                |            |            |
|    | o Cover Note   | 65-8-5830  | Discussion |
|    | o Presentation   | 65-8-5814  | Discussion |
|    | o Note on management of legacy data                    | 65-11-1545 | Discussion |
|    | o Note on the Transaction Reporting Exchange Mechanism | 70-145-970 | Discussion |

The Head of Resources Department and the Market Data Policy Team Leader presented the impact of Brexit on IT systems and data.

The Board discussed the impact, in particular whether further data exchange between the UK and EU competent authorities should continue post-Brexit.

**Conclusion:** The Board endorsed the way forward as proposed in the notes on the impact of Brexit on IT systems by highlighting that the UK will become a third-country and the implications of such situation. In the context of no-deal Brexit, no consideration can be given to potential supplementary data exchange with the UK. The Secondary Markets Standing Committee (SMSC) was invited to further consider the impact on existing data-reliant MiFID requirements.

- |    |   |            |            |
|----|---|------------|------------|
| 4) | Possible amendments to MIFID/MIFIR in the area of investor protection   |            |            |
|    | o Cover Note  | 35-36-1426 | Discussion |
|    | o Letter to the European Commission on possible amendments to MIFID II/MIFIR in the area of investor protection | 35-36-1442 | Decision   |

The Investor Protection Team Leader presented the letter to the European Commission on possible amendments to MIFID II/MIFIR in the area of investor protection.

**Decision:** The Board adopted the letter subject to a drafting amendment. Elisabeth Roegele (DE) and Andrew Bailey (UK) disagreed.

## 5. Cross-border cooperation on issues with investor protection implications

- |                |           |            |
|----------------|-----------|------------|
| 1) Issues Note | 30-22-448 | Discussion |
|----------------|-----------|------------|

The Acting Investment Management Team Leader presented the note on cross-border cooperation on issues with investor protection implications.

The Board discussed the note, in particular:

- The importance of promoting supervisory convergence in this area, including bilaterally between national competent authorities;
- The potential resource implications for national competent authorities of the proposals; and
- How to stimulate the exchange of information between authorities.

**Conclusion:** The Board welcomed the proposals promoting cross-border cooperation and asked ESMA staff to prepare a proposal for information exchange between home and host NCAs, taking into account the information already available within national authorities and already exchanged bilaterally between authorities. The Board will decide at a later point whether there is a need to supplement the work with peer reviews.

## 6. MIFID II Implementation

- |                 |            |            |
|-----------------|------------|------------|
| 1) Presentation | 70-142-220 | Discussion |
|-----------------|------------|------------|

The Executive Director presented the update on various aspects related to the implementation of MIFID II.

The Board discussed the presentation, in particular:

- The importance of continuing to focus on the investor protection related parts of MIFID II;
- The merits of working on the assessment of the functioning of a consolidated tape for equity at this point in time; and
- Whether there is need to consider amendments to the RTS on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives.

**Conclusion:** The Board discussed the update and will continue to discuss aspects on the implementation of MIFID II on a case-by-case basis. The Board agreed to send a letter to the European Commission asking to delay the MIFID II report on the consolidated tape for equity.

## 7. FIRDS Data Quality Report

- |           |            |          |
|-----------|------------|----------|
| 1) Report | 70-145-994 | Decision |
|-----------|------------|----------|

The Market Data Policy Team Leader presented the Report.

**Decision:** The Board highlighted the importance of data quality and will be presented with an update of the Data Quality Report in Q1 2019.

## 8. Update opinion for ancillary activity calculations

- |  |            |            |
|--|------------|------------|
| 1) Cover Note                                  | 70-154-869 | Discussion |
| 2) Opinion for ancillary activity calculations | 70-154-884 | Decision   |

The Board took note of ESMA staff's position to correct the 2016 OTC figures following the detection of an error in the 2016 figures published (leading to a decline of the market size for most commodity derivatives asset classes).

**Decision:** The Board adopted the Opinion by deciding to maintain the currently published 2016 OTC figures and to publish new figures for 2017.

#### 9. Renewal of Product intervention measures on CFDs

- |                                |            |            |
|--------------------------------|------------|------------|
| 1) Issues Note                 | 35-36-1438 | Discussion |
| 2) Renewal of measures on CFDs | 35-36-1443 | Decision   |

Merel van Vroonhoven presented the renewal of product intervention measures on CFDs.

The Board discussed the renewal decisions, in particular:

- The need for measures at Member-State level; and
- The importance of continuing to promote supervisory convergence including exchanging best practices among national authorities.

**Decision:** The Board agreed to renew the decision of product intervention measures on CFDs. The Decision will be presented for approval in written procedure. Karel Juras (CZ) abstained.

- |  |            |          |
|--|------------|----------|
| 3) Q&As on Product Intervention Measures | 35-36-1431 | Decision |
|--|------------|----------|

**Decision:** The Board adopted the Q&A on product intervention measures.

#### 10. MiFID Q&A on strategies including equity components

- |                |            |          |
|----------------|------------|----------|
| 1) Issues Note | 70-154-795 | Decision |
|----------------|------------|----------|

**Decision:** The Board decided not to amend the MIFID Q&A on strategies including equity components. Elisabeth Roegele (DE) disagreed and stated to prefer to amend the Q&A.

#### 11. Q&A on dematerialisation under CSDR

- |                |             |          |
|----------------|-------------|----------|
| 1) Issues Note | 70-151-1772 | Decision |
|----------------|-------------|----------|

**Decision:** The Board adopted the Q&A.

#### 12. Development and status of Q&As

- |                |             |            |
|----------------|-------------|------------|
| 1) Issues Note | 42-110-1119 | Discussion |
|----------------|-------------|------------|

**Conclusion:** The discussion of the note was postponed to the November 2018 Board of Supervisors meeting.

#### 13. Terms of Reference Data Standing Committee

- |   |            |          |
|---|------------|----------|
| 1) Report on the working arrangements         | 70-145-940 | Decision |
| 2) Terms of Reference Data Standing Committee | 70-145-938 | Decision |

**Decision:** The Board adopted the Terms of Reference for the Data Standing Committee.

#### 14. 2019 Annual Work Programme

- |                   |            |            |
|-------------------|------------|------------|
| 1) Cover Note     | 20-95-1010 | Discussion |
| 2) Work Programme | 20-95-933  | Decision   |

The Executive Director presented the 2019 annual work programme.

The Board discussed the work programme, in particular:

- The uncertainties surrounding ESMA’s future planning in light of the UK’s withdrawal from the Union and the ongoing review of the operations of the ESAs;
- The Key Performance Indicators (KPIs) developed by ESMA;
- ESMA’s supervisory convergence activities in the area of corporate governance and
- The internalised settlement reporting under the CSDR”

**Conclusion:** The Board adopted the 2019 annual work programme.

#### 15. 2020 planning

- |   |            |             |
|---|------------|-------------|
| 1) Cover Note   | 63-43-1032 | Discussion  |
| 2) Activity Based Costing – 2017 results presentation | 63-43-1033 | Information |

**Conclusion:** The Board took note of the presentation on the 2017 results on Activity Based Costing.

- |                      |            |            |
|----------------------|------------|------------|
| 3) Orientation Paper | 20-95-1011 | Discussion |
|----------------------|------------|------------|

The Executive Director presented the orientation paper and the Management Board’s proposal to start the 2020 planning on the assumption of the European Commission’s legislative proposals going ahead as published.

**Conclusion:** The Board endorsed the suggested way forward. Jean-Paul Servais (BE), Karel Juras (CZ) and Elisabeth Roegele abstained.

#### 16. GDPR implementation: Update on the draft Administrative Arrangement and the Draft Oversight Mechanism

- |                                     |            |             |
|-------------------------------------|------------|-------------|
| 1) Issues note                      | 40-133-663 | Discussion  |
| 2) Draft Administrative Arrangement | 40-133-665 | Information |
| 3) Draft Oversight Mechanism        | 40-133-667 | Information |

**Conclusion:** The Board agreed with the suggested way forward.

#### 17. ESMA Annual Statistical Report on EU Derivatives Markets

- |                           |            |            |
|---------------------------|------------|------------|
| 1) Cover note             | 50-165-670 | Discussion |
| 2) Report (first edition) | 50-165-639 | Decision   |
| 3) Presentation           | 50-165-671 | Discussion |

**Decision:** The Board adopted the first Annual Statistical Report on EU Derivatives Markets.

#### 18. Commodity Derivatives Task Force

- |                |            |             |
|----------------|------------|-------------|
| 1) CDTF Report | 70-154-866 | Information |
|----------------|------------|-------------|

**Conclusion:** The Board took note of the CDTF Report.

- |  |  |          |
|--|--|----------|
| 2) Procedure and templates for position management under Article 44(2) MIFIR | 70-154-745<br>70-154-744<br>70-154-746 | Decision |
|--|--|----------|

**Decision:** The Board adopted the procedure and templates for position management under Article 44(2) MIFIR.

- |  |             |  |
|--|-------------|--|
| 3) Decision delegating assessments of third country venues to ESMA Chair – position limits | 70-155-5905 |  |
|--|-------------|--|

**Decision:** The Board adopted the Decision delegating assessments of third country venues to the ESMA Chair.

- |                  |            |          |
|------------------|------------|----------|
| 4) MIFID II Q&As | 70-154-875 | Decision |
|------------------|------------|----------|

**Decision:** The Board adopted the MIFID II Q&As.

## 19. Corporate Finance Standing Committee

- |                |            |             |
|----------------|------------|-------------|
| 1) CFSC Report | 31-59-1085 | Information |
|----------------|------------|-------------|

**Conclusion:** The Board took note of the CFSC Report.

- |  |            |          |
|--|------------|----------|
| 2) Update Terms of Reference of Prospectus Regulation Task Force | 31-59-1070 | Decision |
|--|------------|----------|

**Decision:** The Board adopted the update to the Terms of Reference of the Prospectus Regulation Task Force.

## 20. Investment Management Standing Committee

- |                |           |             |
|----------------|-----------|-------------|
| 1) IMSC Report | 34-39-727 | Information |
|----------------|-----------|-------------|

**Conclusion:** The Board took note of the IMSC Report.

- |   |           |          |
|---|-----------|----------|
| 2) Consultation Paper on Guidelines on MMF stress-testing | 34-49-131 | Decision |
|---|-----------|----------|

**Decision:** The Board adopted the consultation paper on Guidelines on MMF stress-testing.

- |              |           |          |
|--------------|-----------|----------|
| 3) AIFMD Q&A | 34-39-728 | Decision |
|--------------|-----------|----------|

**Decision:** The Board adopted the AIFMD Q&A.

## 21. Investor Protection and Intermediaries Standing Committee

- |                 |            |             |
|-----------------|------------|-------------|
| 1) IPISC Report | 35-36-1424 | Information |
|-----------------|------------|-------------|

**Conclusion:** The Board took note of the IPISC Report.

- |               |            |          |
|---------------|------------|----------|
| 2) MiFID Q&As | 35-36-1425 | Decision |
|---------------|------------|----------|

**Decision:** The Board adopted the MIFID Q&As.

## 22. Market Data Standing Committee

- |                |            |             |
|----------------|------------|-------------|
| 1) MDSC Report | 70-145-728 | Information |
|----------------|------------|-------------|

**Conclusion:** The Board took note of the MDSC Report.

- |               |            |          |
|---------------|------------|----------|
| 2) MiFID Q&As | 70-145-997 | Decision |
|---------------|------------|----------|

**Decision:** The Board adopted the MIFID Q&As.

- |             |            |          |
|-------------|------------|----------|
| 3) EMIR Q&A | 70-145-998 | Decision |
|-------------|------------|----------|

**Decision:** The Board adopted the EMIR Q&As.

- |                             |            |          |
|-----------------------------|------------|----------|
| 4) LEI Supervisory Briefing | 70-145-999 | Decision |
|-----------------------------|------------|----------|

**Decision:** The Board adopted the LEI Supervisory Briefing.

## 23. Market Integrity Standing Committee

- |                |            |             |
|----------------|------------|-------------|
| 1) MISC Report | 70-145-715 | Information |
|----------------|------------|-------------|

**Conclusion:** The Board took note of the MISC Report.

- |             |            |          |
|-------------|------------|----------|
| 2) BMR Q&As | 70-145-985 | Decision |
|-------------|------------|----------|

**Decision:** The Board adopted the BMR Q&A.

- |   |            |          |
|---|------------|----------|
| 3) MAR Q&As on the assessment of the relevant conditions for delayed disclosure of inside information | 70-145-977 | Decision |
|---|------------|----------|

**Decision:** The Board adopted the MAR Q&As on the assessment of the relevant conditions for delayed disclosure of inside information.

- |   |            |          |
|---|------------|----------|
| 4) SSR Supervisory Briefing on the update of the list of exempted shares under article 16 SSR | 70-145-978 | Decision |
|---|------------|----------|

**Decision:** The Board adopted the Supervisory Briefing on the update of the list of exempted shares.

## 24. Post-Trading Standing Committee

- |                |             |             |
|----------------|-------------|-------------|
| 1) PTSC Report | 70-151-1761 | Information |
|----------------|-------------|-------------|

**Conclusion:** The Board took note of the PTSC Report.

- |   |             |          |
|---|-------------|----------|
| 2) Final Report amending Technical Standards on the Clearing Obligation for Intragroup Transactions | 70-151-1768 | Decision |
|---|-------------|----------|

**Decision:** The Board adopted the Final Report amending Technical Standards on the Clearing Obligation for Intragroup Transactions.

- |             |             |          |
|-------------|-------------|----------|
| 3) EMIR Q&A | 70-148-2017 | Decision |
|-------------|-------------|----------|

**Decision:** The Board adopted the EMIR Q&A.

- |             |             |          |
|-------------|-------------|----------|
| 4) CSDR Q&A | 70-151-1702 | Decision |
|-------------|-------------|----------|



**Decision:** The Board adopted the CSDR Q&A.

## 25. Secondary Markets Standing Committee

- |                |            |             |
|----------------|------------|-------------|
| 1) SMSC Report | 70-154-834 | Information |
|----------------|------------|-------------|

**Conclusion:** The Board took note of the SMSC Report.

- |  |             |          |
|--|-------------|----------|
| 2) Measures to increase the submission performance of trading venues for the double volume cap | 70-155-5684 | Decision |
|--|-------------|----------|

**Decision:** The Board endorsed the measures to increase the submission performance of trading venues for the double volume cap.

- |  |             |          |
|--|-------------|----------|
| 3) Measures to increase the submission performance of trading venues for bond data | 70-155-5634 | Decision |
|--|-------------|----------|

**Decision:** The Board endorsed the measures to increase the submission performance of trading venues for the double volume cap.

- |  |             |          |
|--|-------------|----------|
| 4) Procedure for processing pre-trade transparency waivers | 70-155-4949 | Decision |
|--|-------------|----------|

**Decision:** The Board adopted the procedure for processing pre-trade transparency waivers.

- |                                       |             |          |
|---------------------------------------|-------------|----------|
| 5) CFI-MIFIR Identifier Mapping Table | 70-155-5009 | Decision |
|---------------------------------------|-------------|----------|

**Decision:** The Board adopted the CFI-MIFIR Identifier Mapping Table.

- |  |             |          |
|--|-------------|----------|
| 6) Data quality for transparency and the double volume cap |             | Decision |
| - DVC data quality tests methodology                       | 70-155-4993 |          |
| - FITRS: Transparency data quality tests methodology       | 70-155-4513 |          |
| - Transparency engagement framework                        | 70-155-5929 |          |
| - Cycle span   | 70-155-5930 |          |
| - TS-AS Transparency                                       | 70155-4510  |          |
| - TS-AS DVCM   | 70-155-4511 |          |

**Decision:** The Board adopted the FITRS and DVC data quality methodologies developed to monitor and ensure the quality of data submitted by market participants.

- |   |            |          |
|---|------------|----------|
| 7) Repeal of the Automated Trading Guidelines | 70-154-803 | Decision |
|---|------------|----------|

**Decision:** The Board repealed the Guidelines on Automated Trading as their content has been incorporated in EU law. A notice to that extent will be published on ESMA's website.

- |   |             |          |
|---|-------------|----------|
| 8) Decision delegating assessments of third country venues to ESMA Chair – transparency | 70-155-5775 | Decision |
|---|-------------|----------|

**Decision:** The Board adopted the Decision delegating assessments of third country venues for the purpose of post-trade transparency to the ESMA Chair.

- |                  |            |          |
|------------------|------------|----------|
| 9) MIFID II Q&As | 70-154-863 | Decision |
|------------------|------------|----------|

**Decision:** The Board adopted the MIFID II Q&As. Erik Thedéen (SE) abstained on the Q&A on SME Growth Markets.

## 26. Terms of Reference



- 1) AIFMD Task Force (CEMA) 50-167-1062 Decision

**Decision:** The Board adopted the Terms of Reference of the AIFMD Task Force.

- 2) EMIR Task Force (CEMA) 50-167-1063 Decision

**Decision:** The Board adopted the Terms of Reference of the EMIR Task Force.

- 3) MIFID II Task Force (CEMA) 50-167-1061 Decision

**Decision:** The Board adopted the Terms of Reference of the MIFID II Task Force.

**27. A.O.B.**

/

## Participants list

### Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Karina Karaivanova	
Czech Republic	Karel Juras (alternate)	
Denmark	Karen Dorte Abelskov	Anne Bruun
Germany	Elisabeth Roegele	Marcus Hein
Estonia	Stina Mander	
Ireland	Derville Rowland	Martin Moloney Cian Murphy
Greece	Charalampos Gotsis	Vasiliki Koularmani
Spain	Sebastian Albella	Ana Martinez-Pina Antonio Mas
France	Robert Ophele	Benoit de Juvigny Francoise Buisson
Croatia	Ante Žigman	Jurica Jednačak
Italy	Carmine di Noia (alternate)	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Andreas Andreou

Latvia	Gunta Razane	
Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Claude Marc (AM only) Françoise Kauthen (alternate)	
Hungary	Gergo Szeniczey	Krisztian Csaky
Malta	Marianne Scicluna	Christopher Buttigieg
Netherlands	Merel van Vroonhoven	Marit de Vrijer Fleur de Roos-Sombezi
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Marcin Pachucki	Joanna Kott
Portugal	Gabriela Figueiredo Dias	Joao Sousa Giao Susana Neto
Romania	Leonardo Badea (AM only) Mircea Ursache (alternate)	Raluca Tariuc
Slovenia	Milos Cas	Sabina Bešter
Slovakia	Tomas Ambra (alternate)	Adam Nadasky
Finland	Jarmo Parkkonen (alternate)	Ville Kajala
Sweden	Erik Thedéen	Fredrik Elmberg

United Kingdom	Andrew Bailey (not for items 4.1, 4.2, 4.3)	Cristina Frazer (not for items 4.1, 4.2, 4.3)
----------------	---	---

### Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Ugo Bassi	Peter Ohrlander Jorge Revilla Garcia
EBA	Adam Farkas	
EIOPA	Kai Kosik	
ESRB	Francesco Mazzaferro	
Iceland	Pall Fríðriksson	
Liechtenstein	Marcel Löttscher (alternate)	
Norway	Geir Holen	
EFTA Surveillance Authority	Marco Uccelli (alternate)	

### ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Investors and Issuers Department	Evert van Walsum

Team Leader Secondary Markets	Carsten Osterman
Team Leader Market Data Policy	Olga Petrenko
Acting Investment Management Team Leader	Antonio Baratelli
Project Leader on the development of memoranda of understanding with the UK	Nicoletta Giusto

Done at Paris on 16 November 2018

Steven Maijor

For the Board of Supervisors