



SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 3 and 4 December 2019

Time: 14 – 18h30 (3 December 2019) and 9 – 12h30 (4 December 2019)

Location: ESMA, rue de Bercy 201, 75012 Paris, France

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1. Adoption of agenda

Decision

Decision: The Board adopted the agenda.

2. Summary of Conclusions October 2019 Board of Supervisors

Decision

Decision: The Board adopted the October 2019 Board of Supervisors Summary of Conclusions subject to a drafting change.

3. Oral Report by Chair and Executive Director

Information

The Chair reported on:

- His meeting with European Commission Vice-President Valdis Dombrovskis, in particular the discussions on the priorities for the 2019-2024 European Commission;
- His participation in the European Commission's High-Level Forum on the Capital Markets Union initiative, in particular in the subgroup on investment choice and accessibility to capital markets services to promote retail investors' participation;
- His interaction with the European Parliament, in particular the annual hearing by the ECON Committee;
- The activities of the Joint Committee of the European Supervisory Authorities (ESAs), in particular the discussions on the risk outlook and the fact that following the ESA review the Anti-Money Laundering activities will be entrusted to the European Banking Authority;
- The activities of the European Systemic Risk Board (ESRB), in particular the ongoing work relating to cyber risks and the macroprudential policy issues arising from low interest rates and structural changes in the EU financial system;
- The activities of the International Organization for Securities Commissions (IOSCO), in particular the outcome of the October 2019 Board meeting;
- The number of national competent authorities within the European Economic Area (EEA) that have signed the administrative arrangement for transferring personal data;
- ESMA's contribution to the European Commission's consultation on the Benchmark Regulation Review (BMR) and the fact that the authorisation of Euro OverNight Index Average (EONIA) has taken place under the BMR;



- The December 2019 Management Board meeting, in particular the presentation by the European Commission Internal Audit Service (IAS) on information security and the related information technology governance process; and
- The fact that Andrea Enria, chair of the Single Supervisory Mechanism (SSM), will participate in the January 2020 Board of Supervisors for a discussion on the interaction between the Market Abuse Regulation (MAR) and prudential supervision frameworks.

The Executive Director reported on the:

- November 2019 meeting of the Financial Services Committee (FSC), in particular the discussions on stable coins and the initiatives related to the Capital Markets Union; and
- Upcoming internal reorganisation in the context of readying the ESMA for implementing EMIR 2.2 and the revised ESMA Regulation.

4. Strategic Orientation

1) Cover Note Discussion

2) Strategic orientation Decision

The Chair presented the 2020-2022 strategic orientation, including the feedback received during the December 2019 Management Board.

The Board discussed the 2020-2022 strategic orientation, in particular:

- ESMA's contribution to the European Commission's initiative to establish a Capital Markets Union and the role of retail investors in that respect;
- ESMA's international activities and how to enhance the EU's influence together with national authorities and other EU bodies;
- ESMA's coordination role in relation to financial literacy and education activities within the Member-States; and
- Information sharing between competent authorities within the EU Single Market.

Decision: The Board adopted the 2020-2022 strategic orientation subject to amendments highlighting the need for the financial services industry to enhance the trust in financial markets and editorial improvements. The Board indicated that it would like to have more in-depth discussions on specific parts of the 2020-2022 strategic orientation for example in relation to ESMA's international activities, on how to promote supervisory convergence, the development of digital finance and financial stability. ESMA staff was invited to prepare a list of topics for further discussion and an accompanying time table for a future Board meeting.

5. ESMA Standing Committees

1) Issues Note Decision

The Executive Director presented the note on the ESMA Standing Committees.

The Board discussed the note, in particular:

- Whether the CCP Policy Committee should be chaired by the chairman of the CCP Supervisory Committee;
- Whether the activities of the Commodity Derivatives Task Force (CDTF) should be merged with the Secondary Markets Standing Committee (SMSC); and
- The scope of action of the Post-Trading Standing Committee (PTSC) following the creation of a CCP Policy Committee.

Decision: The Board decided (i) that the CCP Policy Committee will be chaired by the Chair of the CCP Supervisory Committee, (ii) to continue with the Commodity Derivatives Task Force reporting to the



Board of Supervisors, and (iii) to maintain the Post-Trading Standing Committee (noting that the CCP related competences will be allocated to the CCP Supervisory Committee and/or CCP Policy Committee). The Board of Supervisors will appoint the chairs of the standing committees during its January 2020 meeting.

6. Implementation of the revised ESMA Regulation

1) Cover Note Information

2) Supervisory Convergence

Overall direction on supervisory convergence
 ESMA's risk-based approach to supervisory convergence
 Union strategic supervisory priorities
 Discussion
 Peer reviews
 Discussion
 Q&As

The Team Leader Supervisory Convergence presented the implementation of the supervisory convergence related activities following the revised ESMA Regulation.

The Board discussed the proposed changes linked to ESMA's supervisory convergence activities, in particular the:

- Importance of promoting supervisory convergence for the EU Single Market, in particular how to prioritise ESMA's activities in co-operation with national competent authorities;
- Development of clear methodologies on how to set and conduct peer reviews and how to derive the Union supervisory priorities;
- Importance of balancing the timely contribution of Q&As to consistent application of EU law with feedback from market participants and national authorities; and
- Role of proportionality in ESMA's supervisory convergence activities, and how to enhance transparency on Q&As.

Conclusion: The Board expressed support for the proposed risk/problem based convergence heatmap (covering both market risk and risk resulting from inconsistent application of EU law) contributing to a prioritised agenda-setting and indicated a preference for strong involvement in setting the Union supervisory priorities as these impact NCA resources allocated to supervision. In relation to the supervisory priorities the Board noted a wish to cater for the possibility to focus certain priorities to a subset of national authorities depending on the risks/problems identified. In relation to Q&As, the Board highlighted their practical contribution to convergence, and supported the proposed approach for splitting responsibilities between ESMA and the Commission. The Board highlighted the need to balance providing feedback to market participants by national competent authorities and a Q&A to be adopted by ESMA. Finally, the Board asked ESMA staff to look – together with the European Banking Authority (EBA) and the European Insurance and Occupational Pension Authority (EIOPA) – how to align as much as possible the enhanced transparency requirements for Q&As.

3) Governance

o Cover Note Discussion



Rules of Procedure Board of Supervisors
 Discussion

Rules of Procedure Management Board
 Discussion

 Decision on the election of Management Board Discussion Members

The Senior Cooperation Officer presented the proposed amendments to the Rules of Procedure for the Board of Supervisors and Management Board as well as the Decision on the Election of Management Board Members.

The Board discussed the Rules of Procedures for the Board of Supervisors, the Management Board and the Decision on the election of Management Board Members, in particular:

- The interaction between the Rules of Procedure of the Board of Supervisors and the discussion on conflict of interests; and
- Whether the vice-Chairperson can cast a vote when replacing the Chairperson.

Conclusion: The Board discussed the proposed Rules of Procedure for the Board of Supervisors and Management Board and was invited to share further suggestions in writing, if any. It was noted that the vice-Chairperson will only be able to cast a vote when clearly instructed by the Chairperson. When replacing the Chairperson, the vice-Chairperson will be replaced by his/her alternate in the Board of Supervisors.

4) Conflicts of Interest

Discussion

The Senior Cooperation Officer presented the proposed implementation of the conflict of interest provisions in the revised ESMA Regulation.

The Board discussed the suggested approach, in particular:

- The importance of having strong conflict of interest requirements in place in line with the revised ESMA Regulation;
- Highlighting, where an act is addressed to an individually named competent authority, such as Breach of Union Law or mediation decisions, the right to be heard for that competent authority;
- Whether a conflicted Board of Supervisors Member can remain present during the discussion and voting of the agenda item; and
- The need for further guidance from the European Commission

The European Commission representative highlighted that in the Commission's view the conflict of interest requirements in the revised ESMA Regulation cover any interest which might be considered prejudicial to the Member's independence include both interests a person may have in its capacity as employee or function holder of an authority and those linked to the person's activities outside such capacity.

Conclusion: The Board discussed the implementation of the conflict of interest requirements in the revised ESMA Regulation and instructed staff to prepare a concrete proposal for the January 2020 Board of Supervisors, in close co-operation with EBA and EIOPA.

5) Proportionality Committee

Discussion

The Team Leader Investment Management presented the proposed approach for the Proportionality Advisory Committee (PAC).

The Board discussed the proposed approach, in particular:

The need to embed proportionality in all ESMA's activities;



- The membership composition of the Advisory Committee, in particular the engagement with national competent authorities and market participants; and
- The focus of the Advisory Committee's activities and whether it should engage in ex ante assessments.

Conclusion: The Board discussed the suggested set-up of the Proportionality Advisory Committee and agreed that ESMA staff should develop terms of reference for the Committee, also taking into account the developments at EBA and EIOPA level. The Board was of the view that the Committee could have a limited number of members and should be chaired by a Board Member. The Chair of the Securities and Markets Stakeholder Group (SMSG) should not be involved in the work of the Advisory Committee.

7. Common Supervisory Action on UCITS liquidity management

1) Issues Note on Common Supervisory Action

Discussion

Gabriela Figueiredo Dias presented the issues not on the common supervisory action on UCITS liquidity management.

The Board discussed the common supervisory action, in particular the need to obtain both qualitative and quantitative information from UCITS managers within the Union and the resource implications when doing so.

Conclusion: The Board welcomed the initiative to launch a common supervisory action by supporting a full coverage quantitative approach in Stage 1 which will be followed by a detailed follow-up with quantitative and qualitative questions in Stage 2. The Board instructed the Investment Management Standing Committee (IMSC) to implement this by applying a high coverage threshold of close to 100% in terms of both number of UCITS managers and Assets Under Management (AuM) for the first stage of the exercise. Moreover, the IMSC was instructed to further calibrate the threshold for the second stage whereby the 30% in terms of the number of UCITS managers and 50% in terms of the AuM, as envisaged under the mixed approach, should be used as points of reference.

8. Update on UK withdrawal - EU27

1) Update note Discussion

Conclusion: The Board took note of the update note on the impact of and ESMA's activities related to the UK withdrawal.

2) EMIR Q&As on OTC requirements

Discussion

Robert Ophele presented an issue note on two EMIR Q&As on OTC requirements.

The Board discussed the Q&As, in particular the timing of the publication.

Conclusion: The Board adopted the Q&As and delegated the decision on the timing of their publication to the Chair, in light of the ongoing negotiations with the UK authorities. The Board decided not to amend the Q&A on third country pension schemes.

Colm Kincaid (IE) noted that, in relation to ESMA's activities preparing for the United Kingdom's (UK) withdrawal from the Union, in his opinion further work on the trading obligation for shares was needed.

3) MMoU on Cooperation for Information Sharing Regarding Participants in a Clearing or Settlement System

Decision



Decision: The Board adopted the Multilateral Memorandum of Understanding (MMoU) on Cooperation for Information Sharing Regarding Participants in a Clearing or Settlement System.

9. Implementation of EMIR 2.2

1) Note on European Commission Delegated Acts

Discussion

Robert Ophele presented the note on the delegated acts stemming from EMIR 2.2. to be adopted by the European Commission.

The Board discussed the note, in particular whether ESMA should follow-up with a letter to the European Commission setting out its views.

Conclusion: The Board will continue to monitor the developments and agreed that ESMA may need to react given the importance for ESMA.

10. Sustainable finance

1) Cover Note Discussion

2) Final Report on the advice on undue short-termism

Decision

The Senior Policy Officer presented the final report on the advice on undue short-termism.

The Board discussed the advice, in particular the need to consider a proportionate approach towards the implementation of the non-financial reporting directive.

Decision: The Board adopted the Final Report on the advice on undue short-termism including an amendment to consider a proportionate approach in relation to the implementation of the non-financial reporting directive.

11. Calculation of open interest for position limits

1) Issues Note Decision

Elisabeth Roegele presented the note on the calculation of open interest for position limits.

The Board discussed the note, in particular whether position reporting data for the calculation of open interest should be used for all commodity derivative contracts or whether competent authorities could continue to use open interest and position data as produced by trading venues and CCPs.

Decision: The Board discussed the note and decided that competent authorities should use position reporting data for the calculation of open interest for all commodity derivative contracts.

Option 1	Option 2	Abstain
(use of	(selected	
position	measures	
reporting	to address	
for all	competing	
contracts)	contracts)	



Jean-Paul Servais (BE)	Х		
Vladimir Savov (BG)		Х	
Karel Juras (CZ)	Х		
Karen Dortea Abelskov (DK)	Х		
Elisabeth Roegele (DE)	Х		
Colm Kincaid (IE)	Х		
Andre Nõmm (EE)	Х		
Vasiliki Lazarakou (EL)	Х		
Sebastian Albella (ES)	Х		
Robert Ophéle (FR)		Х	
Jurica Jednacak (HR)	Х		
Carmine Di Noia (IT)			
Christiana Vovidou (CY)			Х
leva Ose (LV)			Х
Vaidas Cibas (LT)	Х		
Claude Marx (LU)			Х
Gergo Szeniczey (HU)		Х	
Marianne Scicluna (MT)		Х	
Jos Heuvelman (NL)	Х		
Klaus Kumpfmüller (AT)	Х		
Magdalena Łapsa-Parczewska (PL)			Х
Gabriela Figueiredo Dias (PT)		X	
Gabriel Grădinescu RO)	Х		
Peter Tkáč (SK)	Х		
Sabina Bester (SI)			X



Armi Taipale (FI)	Х		
Erik Thedeen (SE)	X		
Edwin Schooling Latter (UK)		Х	

12. Cost of market data Consolidated Tape

1)	Cover Note	Discussion
2)	Final Report on cost of market data and consolidated tape	Decision

Elisabeth Roegele presented the Final Report on cost of market data and consolidated tape.

The Board discussed the Final Report, in particular whether:

- Trading venues, approved publication arrangements (APAs), consolidated tape providers (CTPs) and systematic internalisers (SIs) should share information on the cost of market data with competent authorities and ESMA; and
- To remove the current legal possibility to charge fees for data based on the value of the data to users.

Decision: The Board adopted the Final Report on the cost of market data and consolidated tape deciding that trading venues, (APAs), CTPs and SIs should share information on the cost of market data with competent authorities and ESMA and to remove the possibility to charge fees for market data on the basis of the value of the data to users.

13. STOR Peer Review Report

1)) Cover Note		Discussion
2)	STOR	R Peer Review Report	Decision
	0	Germany	Decision
	0	Ireland	Decision
	0	Greece	Decision
	0	Italy	Decision
	0	Romania	Decision
	0	Sweden	Decision

Decision: The Board adopted the STOR Peer Review Report and the country-specific reports subject to drafting amendments. Christiana Vovidou (CY) disagreed with the STOR peer review report.

14. Transparency and Double Volume Cap data quality

Presentation: 2020 derivatives transparency calculations – Discussion status and way forward



Conclusion: The Board took note of the presentation on the 2020 derivatives transparency calculations.

15. Annual Statistical Reports (ASRs) – AIFMD and EMIR Reports

1) Cover Note Discussion

2) Presentation ASR – AIFMD Discussion

3) ASR – AIFMD Report Decision

Decision: The Board adopted the Annual Statistical Report on AIFMD.

4) Presentation ASR – EMIR Discussion

5) ASR – EMIR Report Decision

Decision: The Board adopted the Annual Statistical Report on EMIR.

16. 2019 Budget Amendment and 2020 Opening budget

1) Cover Note Decision

Decision: The Board endorsed the cover note and approved the amendment to the 2019 Budget and the 2020 Opening Budget.

2) 2019 Budget amendment n. 2 (Revenue) Decision

Decision: The Board adopted Amendment n.2 (Revenue) of the 2019 Budget.

3) 2019 Budget amendment n. 2 (Expenditure) Decision

Decision: The Board adopted Amendment n.2 (Expenditure) of the 2019 Budget.

4) 2020 Budget revenue Decision

Decision: The Board adopted the 2020 Budget as regards revenue.

5) 2020 Budget expenditure Decision

Decision: The Board adopted the 2020 Budget as regards expenditure.

6) 2020 NCAs contributions Decision

Decision: The Board adopted the 2020 NCA contributions.

17. Programming Document 2021-2023

1) Cover note Discussion

2) Draft Programming Document Discussion



3) IT Work Programme 2020-2023

Discussion

4) Relevant Legislative Financial Statements

Information

Conclusion: The Board was invited to share comments on the draft programming document in writing.

18. Credit Ratings Technical Committee

1) CRA TC Progress Report

Information

Conclusion: The Board took note of the Report.

2) Consultation Paper on internal controls for CRAs

Decision

Decision: The Board adopted the Consultation Paper on internal controls for CRAs.

3) Thematic Report on fees charged by CRAs and TRs

Decision

Decision: The Board adopted the Thematic Report on fees charged by CRAs and TRs.

4) MoU with FINMA (Switzerland)

Decision

Decision: The Board adopted the MoU with FINMA.

19. Committee for Economics and Markets Analysis

1) CEMA Report

Information

Conclusion: The Board took note of the Report.

20. Corporate Finance Standing Committee

1) CFSC Report

Information

Conclusion: The Board took note of the Report.

2) Final Report on the draft RTS amending Delegated Regulation (EU) 2019/979 containing regulatory technical standards under the Prospectus Regulation

Decision

Decision: The Board adopted the Final Report on the draft RTS amending Delegated Regulation (EU) 2019/979 containing regulatory technical standards under the Prospectus Regulation.

3) Prospectus Q&As

Decision

Decision: The Board adopted the Prospectus Q&As.

21. Data Standing Committee

1) DSC Report

Information

Conclusion: The Board took note of the Report.

2) AIFMD Data Quality Engagement Framework (governance and scope)

Decision



Decision: The Board adopted the AIFMD Data Quality Engagement Framework as regards governance and scope.

1) AIFMD Data Quality Engagement Framework (technical)

Decision

Decision: The Board adopted the technical aspects of the AIFMD Data Quality Engagement Framework.

1) FIRDS data quality methodology review

Decision

Decision: The Board adopted the FIRDS data quality methodology review.

 FIRDS Engagement Framework – 2020 data quality calendar Decision

Decision: The Board adopted the FIRDS Engagement Framework 2020 data quality calendar.

3) MIFIR Q&A

Decision

Decision: The Board adopted the Q&A.

22. Investment Management Standing Committee

1) IMSC Report

Information

Conclusion: The Board took note of the Report.

2) Final report on draft RTS on ELTIF cost disclosure

Decision

Decision: The Board adopted the Final report on the draft RTS on ELTIF cost disclosure.

3) Annual Report on UCITS sanctions

Decision

Decision: The Board adopted the Annual Report on UCITS sanctions.

4) AIFMD Q&A

Decision

Decision: The Board adopted the Q&A.

23. Investor Protection and Intermediaries Standing Committee

1) IPISC Report

Information

Conclusion: The Board took note of the Report.

2) Cross-border activities – reporting template

Decision

Decision: The Board adopted the reporting template for cross-border activities.

3) MIFID Q&As

Decision

Decision: The Board adopted the Q&As.

24. Market Integrity Standing Committee

1) MISC Report

Information



Conclusion: The Board took note of the Report.

2) Annual report on accepted market practices

Decision

Decision: The Board adopted the Annual report on accepted market practices.

3) Annual report on sanctions under MAR

Decision

Decision: The Board adopted the Annual report on sanctions under MAR.

4) BMR – End of transitional period for EU administrators

Decision

Decision: The Board adopted the end of the transitional period for EU administrators under BMR.

5) Public briefing on benchmark recognition

Decision

Decision: The Board adopted the Public briefing on benchmark recognition.

6) Supervisory briefing on Benchmark recognition

Decision

Decision: The Board adopted the supervisory briefing on Benchmark recognition.

7) BMR Q&As

Decision

Decision: The Board adopted the Q&As.

25. Post-Trading Standing Committee

1) PTSC Report

Information

Conclusion: The Board took note of the Report.

2) Report on EMIR penalties and supervisory measures

Decision

Decision: The Board adopted the Report on EMIR penalties and supervisory measures.

3) CSDR Q&As

Decision

Decision: The Board adopted the CSDR Q&As.

26. Secondary Markets Standing Committee

1) SMSC Report

Information

Conclusion: The Board took note of the Report.

2) Final report on the CRR technical standard concerning main indices and recognised exchanges

Decision

Decision: The Board adopted the Final report on the CRR technical standard concerning main indices and recognised exchanges.

 Assessment of third-country venues for transparency and position limits – way forward Decision

Decision: The Board adopted the Assessment of third-country venues for transparency and position limits and the corresponding way forward.



4) MIFID Q&As Decision

Decision: The Board adopted the MiFID Q&As.

27. Implementation of EMIR 2.2 (governance)

1) Cover Note Information

2) Decision to revoke the delegation to the Validation Panel Decision

3) Decision establishing the delegation to a Validation Panel Information

Decision: The Board adopted the Decision to revoke the delegation to the Validation Panel.

28. Penalties imposed on third-country CCPs and TRs

1) Cover Note Information

2) Consultation paper on Rules of procedure on Penalties imposed on third country CCPs and TRs

Decision

Decision: The Board adopted the Consultation paper on Rules of procedure on Penalties imposed on third-country CCPs and TRs noting its relevance for credit rating agencies which will also be highlighted in the title.

29. Update on ESMA data strategy

1) Cover Note Information

2) Presentation Information

Conclusion: The Board took note of the update on the ESMA data strategy.

A.O.B.

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Participants list Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Vladimir Savov (alternate)	
Croatia	Jurica Jednacak (alternate)	
Czech Republic	Karel Juras (alternate)	
Denmark	Karen Dortea Abelskov	Theodor Joachim Christensen
Germany	Elisabeth Roegele	Marcus Hein
Estonia	Andre Nõmm	
Ireland	Colm Kincaid (alternate)	Cormac Staunton
		Emma McMullan
Greece	Vasiliki Lazarakou	Vasiliki Koularmani
Spain	Sebastian Albella	Antonio Mas
		Fatima Cerdan de la Cruz
France	Robert Ophèle	Benoit de Juvigny
		Françoise Buisson
Italy	Carmine Di Noia (alternate)	Nicoletta Giusto
Cyprus	Christiana Vovidou (alternate)	



Latvia	leva Ose (alternate)	
Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Claude Marx	Françoise Kauthen
Hungary	Gergo Szeniczey (day 2 only)	
Malta	Marianne Scicluna	Jonathan Sammut
Netherlands	Jos Heuvelman	Fleur de Roos
		Michel van den Akker
Austria	Klaus Kumpfmueller	Andrea Kuras-Goldmann
Poland	Magdalena Łapsa-Parczewska	Joanna Kott
Portugal	Gabriela Figueiredo Dias	Susana Neto
Romania	Gabriel Grădinescu	Raluca Alina Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Peter Tkáč (alternate)	Adam Nadasky
Finland	Armi Taipale (alternate)	Maria Rekola
Sweden	Erik Thedeen	Fredrik Elmberg
United Kingdom	Edwin Schooling Latter (alternate) (not for item 8 and 9)	Max Lyssewski (not for item 8 and 9)



Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Ugo Bassi	Ellen Boelema Jorge Revilla-Garcia
EBA	Anne Tiedemann	
EIOPA	Ivo Karshev	
ESRB		
Iceland	Pall Fridriksson (alternate)	
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Gunnar Þór Pétursson	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Risk Analysis and Economics	Steffen Kern
Team Leader Investment Management	Antonio Barattelli
Team Leader Supervisory Convergence	Dora Blanchet



Senior Policy Officer	Angeliki Vogiatzi
Senior Cooperation Officer	Frederiek Vermeulen

Done at Paris on 29 January 2020

Steven Maijoor

For the Board of Supervisors