

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 29 January 2020
Time: 09h00 – 17h00
Location: ESMA, rue de Bercy 201, 75012 Paris, France
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda Decision

Decision: The agenda was adopted noting that a discussion on (i) the summary of conclusions of the December 2019 Board of Supervisors meeting and on (ii) the cooperation with the European Commission Services on the development of Q&As will take place.

2. Confirmation of absence of conflict of interests Decision

Decision: The Board endorsed the 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. Oral Report by Chair and Executive Director Information

The Chair reported on:

- The implementation of the 2020-2022 ESMA Strategic Orientation and the topical discussions that will take place on ESMA's approach to sustainable finance, to the development of the Capital Markets Union (CMU), to digital finance, to the request for proportionality, to ESMA's activities in relation to investor protection and financial education, to ESMA's international role and to EU securities markets regulators activities in relation to financial stability;
- His participation in the European Commission's High-Level Forum on CMU, in particular the subgroup on investment choice and accessibility to capital markets services to promote retail investors' participation.
- The set-up of the CCP Supervisory Committee and its first meeting which took place on 14 January 2020;
- The upcoming call for candidates for the Securities and Markets Stakeholder Group (SMSG);
- The activities of the Joint Committee, in particular the fact that the competence for all Anti-Money Laundering (AML) matters between the European Supervisory Authorities (ESAs) has moved away from the Joint Committee environment and is now the direct responsibility of the European Banking Authority (EBA). He also informed the Board on the ongoing review of the Rules of Procedure of the Joint Committee;
- The activities of the European Systemic Risk Board (ESRB), in particular the ongoing work in relation to low-level interest rates and cyber risks;

- The postponement of the workshop ESMA is organising on the supervision of cross-border management and marketing activities of fund managers and the importance of national competent authorities to contribute to that work;
- The January 2020 Management Board meeting, in particular the 2021-2023 Programming Document and the implementation of the revised conflict of interest requirements; and
- The leakage of draft ESMA documents creating confusion within the market and an unlevel playing field among stakeholders to comment on ESMA's activities.

The Executive Director reported on the:

- Meetings of the Financial Services Committee (FSC), in particular the discussions on (i) ESMA's work in relation to sustainable finance and the report on short-termism and (ii) ESMA's report on derivatives;
- Implementation of the changes to the organisational structure in line with the 2020-2022 strategic orientation and the expected additional responsibilities and increase of staff, following the revised ESMA and EMIR Regulation; and
- Need for Board Members and their officially appointed high-level alternates to complete the annual declaration of interests.

The Executive Director also updated the Board of Supervisors on the ongoing discussion with the European Commission on the criteria on how to allocate the questions to be answered by the European Commission and by ESMA in light of the revised ES(M)A Regulation.

The Board discussed the revised Q&A process, in particular the

- Need for a comprehensive debate on the proposed criteria between the European Commission and the European Supervisory Authorities (ESAs) on how to allocate the questions to be answered;
- Fact that ultimately it is up to the Court of Justice of the European Union to interpret EU law; and
- Need for ESMA to inform stakeholders of the revised process and its implications.

Conclusion: The Board discussed the implications of the changes in relation to questions to be answered by the European Commission and ESMA by highlighting the practical importance of this convergence tool. It was agreed that the adoption of 5 Q&As that were proposed for adoption and that might fall in the remit of the European Commission should be postponed pending further feedback from the Commission and that ESMA should reflect the revised process (following the revised ESMA Regulation) on its website including the fact that it is ultimately up to the Court of Justice to interpret EU law. Finally, it was agreed that the Board should have a comprehensive debate on the criteria on how to allocate the questions between the Commission and ESMA during a future meeting.

4. Summary of Conclusions December 2019 meeting

Decision

The Chair presented the comments received following the written procedure to adopt the summary of conclusions of the December 2019 Board of Supervisors.

Decision: The Board agreed with the suggestion of the ESMA Chair to amend the draft summary of conclusions that no decision had been taken regarding the coverage thresholds of UCITS managers and Assets Under Management but that an anchor point was provided for further discussion within the Investment Management Standing Committee (IMSC). With that amendment, the Board adopted the summary of conclusions.

5. Implementation of the ESA Review

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| 1) Cover Note | Discussion |
| 2) Progress Report | Discussion |

Conclusion: The Board took note of the progress report.

3) Conflict of Interests

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| ○ Cover Note | Discussion |
| ○ Revised Conflict of Interest Policy for non-ESMA staff | Decision |
| ○ Letter from the European Commission | Information |

The Senior Cooperation Officer (Governance and Strategy Team) presented the revised Conflict of Interest Policy for non-ESMA staff.

The Board discussed the Conflict of Interest Policy, in particular:

- The potential conflict of interest for the representatives of an individual competent authority in the context of the adoption of a decision or measure addressed to that national competent authority by highlighting that this should not affect the right to be heard for that particular authority;
- That a vote on the request to ask a conflicted Board Member not to remain present during the discussions and decisions could be asked by any Board Member, including the ESMA Chair;
- The application of the Conflict of Interest Policy to written procedures; and
- The importance of aligning the Conflict of Interest Policy between the ESAs

Decision: The Board adopted the Revised Conflict of Interest Policy for non-ESMA staff by highlighting the potential conflict of interest when a decision or measure is addressed to an *individual* national competent authority and that there is no conflict of interest when measures such as general peer review reports or recommendations are addressed to a large number of national competent authorities. ESMA staff will reflect the changes in the revised Conflict of Interest Policy which will be shared with the Board for a short written comment period on a non-objection basis. The Board highlighted the importance of the right to be heard for decisions or measures addressed to national competent authorities and to provide the Board of Supervisors with the opportunity to ask questions to the relevant national authority. Finally, regarding the vote to ask a conflicted Board Member not to remain present during the discussions and decisions the Board highlighted that Board Members could also approach the ESMA Chair bilaterally who then could ask the vote to take place. Vojtech Belling (CZ) noted to disagree with the revised Conflict of Interest Policy.

4) Supervisory Convergence

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| ○ Presentation | Discussion |
| ○ Supervisory Handbook | Discussion |

The Team Leader Convergence presented the broader governance framework around ESMA's supervisory convergence activities and the approach to the development of a Supervisory Handbook.

The Board discussed the presentation and the approach to the Supervisory Handbook, in particular the:

- Governance framework, including the role of the Supervisory Convergence Standing Committee and the Senior Supervisors Forum; and
- Importance of the Supervisory Handbook to also contain high-level principles for supervision.

Conclusion: The Board discussed the governance framework around ESMA's supervisory convergence activities by highlighting (i) that the Supervisory Convergence Standing Committee should meet at least twice a year and (ii) the need to evaluate the new structure put in place, ideally mid-2021. Regarding the development of the Supervisory Handbook the Board expressed a preference to continue its development along the lines of the suggested options A and C (i.e. principles-based combined with targeted topics on a risk-basis).

5) Advisory Committee on Proportionality

- Cover Note Discussion
- Terms of Reference Decision

The Team Leader Investment Management presented the cover note and the terms of reference for the Advisory Committee on Proportionality.

The Board discussed the terms of reference, in particular:

- Whether the Chair of the Securities and Markets Stakeholder Group (SMSG) should be participating in the activities of the group and how to maintain confidentiality of the group's proceedings;
- How the Members of the group will be elected whilst highlighting the importance of ensuring a gender and geographical balanced composition; and
- How the Committee could best contribute to ESMA's activities.

Decision: The Board adopted the Advisory Committee on Proportionality's Terms of Reference as proposed by deciding (i) that the SMSG Chair should not be part of the Committee and (ii) to include a possibility for other ESMA groups to pro-actively seek advice from the Committee.

- 6) Issues Note on No-Action Letters Discussion

The Team Leader Investment Management presented the issues note on the use of No-Action Letters.

The Board discussed the issues note, in particular:

- ESMA's coordination role in deprioritising supervisory action in particular cases, whilst EU law remains in place;
- Whether there is a need to develop further guidance on how to assess exceptional circumstances and conflicts between different legal acts; and
- The sequence of the opinions set out in the ESMA Regulation.

Decision: The Board discussed the analysis of Article 9a of the amended ESMA Regulation as described in the Issues Note on No-Action letters. It was agreed that ESMA staff should work on further internal guidance on criteria how to assess exceptional circumstances and should report back on that to the Board.

6. ESMA's international engagement

- 1) Issues Note on ESMA's equivalence work following ESAs review Discussion
- 2) Issues Note on ESMA's role in international cooperation Discussion

The Senior Cooperation Officer (International and Institutional Affairs Team) presented the note on ESMA's equivalence work and the note on ESMA's role in international cooperation.

The Board discussed the notes, in particular:

- The importance of seeking a coordinated position between ESMA, the EU Institutions and national competent authorities in the context of international work;
- The need to have a clear understanding on the split of tasks and responsibilities in relation to equivalence decisions, preparatory work and equivalence monitoring between ESMA and the European Commission;
- Whether and how ESMA could become a signatory to the International Organization for Securities Commission's (IOSCO) Multilateral Memorandum of Understanding (MMoU); and
- The need to reactivate the ESMA's International Relations Network in view of the new tasks for ESMA in the area of equivalence and international cooperation.

Conclusion: The Board endorsed the note on ESMA's equivalence work including new tasks and competences stemming from the revised ESMA Regulation by highlighting the need for strong co-operation and clear delineation of tasks between ESMA and the European Commission. The Board also endorsed the note on ESMA's role in international cooperation and asked ESMA staff to analyse all detailed requirements for and take the necessary steps to become a signatory to the IOSCO MMoU. Finally, it was agreed to reactivate the Internal Relations Network.

7. Update on UK withdrawal

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| 1) Update note | Discussion |
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The Head of Governance and External Affairs updated the Board on ESMA's activities in relation to the withdrawal of the United Kingdom (UK) from the European Union (EU).

The Board discussed the update, in particular:

- The implications of the EMIR 2.2 delegated acts not yet being adopted by the European Commission; and
- How the concept of equivalence between the EU and UK after the UK withdrawal will be developed in the coming months.

Conclusion: The Board took note of the update.

8. Sustainable Finance

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| 1) Sustainable Finance strategy | Decision |
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Ana Martinez-Pina presented the Sustainable Finance Strategy.

The Board discussed the sustainable finance strategy, in particular:

- Whether ESMA should step-up its activities in relation to social responsibility and corporate governance;
- The importance of strong non-financial reporting disclosure requirements and for ESMA to take an active role in that area; and
- How to ensure strong co-operation between ESMA and national competent authorities in relation to sustainable finance.

Decision: The Board adopted ESMA's Sustainable Finance Strategy. Vojtech Belling (CZ) abstained from voting on the Sustainable Finance Strategy.

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| 2) Update on Joint ESAs work on Sustainable Finance Disclosures | Discussion |
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The Head of Investors and Issuers Department presented the Joint Committee work on ESG disclosures.

The Board discussed this work, in particular:

- The importance of striking the right balance between pre-contractual and website disclosures;
- The implications for the Key Information Document to be prepared in line with the pan-European Personal Pension Product Regulation (PEPP KID).

Conclusion: The Board discussed the update on joint ESAs work on Sustainable Finance Disclosures.

9. Interactions between Market Abuse Regulation and prudential supervision frameworks

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| 1) Issues Note | Discussion |
| 2) Presentation by Andrea Enria (Chair of the SSM) | Discussion |

Andrea Enria presented some of the Single Supervisory Mechanism's activities, as part of promoting transparency as a key objective.

Nicoletta Giusto presented the ongoing activities within the Market Integrity Standing Committee (MISC) relevant to the interactions between the Market Abuse Regulation and prudential supervision frameworks.

The Board discussed the presentations, in particular:

- The publication of the impact of Pillar 2 requirements and whether further ESMA initiatives are needed to promote supervisory convergence;
- The status of the yearly Single Review and Evaluation Process (SREP); and
- The publication of Pillar 2 guidance by market participants.

Conclusion: The Board took note of the presentation and instructed the Market Integrity Standing Committee (MISC) to continue working on promoting supervisory convergence on how national competent authorities deal with the interaction between MAR and prudential frameworks. It was agreed to continue discussion at staff level between ESMA and the SSM on the status and market impact of the SREP letter and Pillar 2 guidance.

10. MIFID II review

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| 1) Equity transparency | |
| o Cover Note | Discussion |
| o Consultation Paper on Equity Transparency | Decision |

Elisabeth Roegele presented the consultation paper on equity transparency.

Decision: The Board adopted the Consultation Paper on Equity Transparency.

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| 2) Investor Protection and Intermediaries Report | |
| o Cover Note | Discussion |
| o Presentation | Discussion |

The Head of Investors and Issuers Department presented the ongoing work in relation to ESMA's Technical Advice to the Commission on the impact of inducements and costs and charges disclosures.

The Board discussed the presentation, in particular:

- The need to continue sharing experiences between Member-States that have and do not have a ban on inducements in place, including in a low interest rate environment;
- Whether further information on the impact of introducing a ban on inducements should be considered; and
- The fact that the mandate received from the European Commission focused on disclosure requirements.

Conclusion: The Board discussed the update and instructed the Investor Protection and Intermediaries Standing Committee (IPISC) to prepare the Technical Advice for discussion at a future Board of

Supervisors meeting. The Board agreed to continue sharing experiences at Board level between Member-States that have and do not have a ban on inducements in place.

11. Trends, Risks and Vulnerabilities

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| 1) Cover Note | Discussion |
| 2) Report | Discussion |
| 3) Statistical annex | Discussion |
| 4) Presentation | Discussion |

Conclusion: Due to time constraints it was agreed that the Board will be provided with the opportunity to comment on the Trends, Risks and Vulnerabilities Report by written procedure.

12. Benchmark Regulation

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| 1) Cover Note | Discussion |
| 2) ESMA's response to the European Commission consultation | Decision |

Decision: Due to time constraints the item will be presented to the Board for adoption by written procedure.

13. 2021-2023 Programming Document

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| 1) Cover Note | Discussion |
| 2) Programming Document | Decision |
| 3) 2020-2023 IT Work Programme | Decision |

The Executive Director presented the Programming Document and the IT Work Programme.

The Board discussed the Programming Document and the IT Work Programme, in particular the:

- Increased envisaged contribution by national competent authorities to ESMA's budget as agreed by the EU Institutions;
- Overview of IT-projects stemming from the revised ESMA Regulation.

Decision: The Board adopted the 2021-2023 Programming Document and the Board adopted the 2020-2023 IT Work Programme.

14. Implementation revised ESMA Regulation

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| 1) Election of Management Board Members | |
| o Decision | Decision |

Decision: The Board adopted the Decision on the Election of Management Board Members.

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| 2) Procedure for Developing and Adopting Technical Standards, Guidelines and Recommendations | |
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- Cover Note Information
- Repeal of the decision of the Board of Supervisors on "Procedure for Developing and Adopting Draft Technical Standards and Guidelines and Recommendations" Decision

Decision: The Board repealed its Decision on Procedures for Developing and Adopting Draft Technical Standards and Guidelines and Recommendations.

15. Credit Ratings Technical Committee

- 1) CRA TC Report Information

Conclusion: The Board took note of the report.

- 2) CRAR Q&A Decision

Decision: The Board adopted the CRAR Q&As.

16. Corporate Finance Standing Committee

- 1) CFSC Report Information

Conclusion: The Board took note of the CFSC Report.

- 2) Prospectus Q&As Decision

Decision: The Board adopted the Prospectus Q&As with the exception of the Q&A on the qualification of shares that are offered to the public under shareholders' agreement as 'transferable' securities.

- 3) Letter to the European Commission on Technical Advice on Prospectus Equivalence Decision

Decision: The Board adopted the Letter to the European Commission on Technical Advice on Prospectus Equivalence.

17. Corporate Reporting Standing Committee

- 1) CRSC Report Information
- 2) Enforcement of financial information
 - Report on the Guidelines of Enforcement of Financial Information Information
 - Amendments to Guidelines of Enforcement of Financial Information Decision
 - Supervisory briefing on selection methods Decision
 - Supervisory briefing on examination procedures Decision

Decision: The Board adopted the Amendments to the Guidelines of Enforcement of Financial Information, the Supervisory briefing on selection methods and the Supervisory briefing on examination procedures.

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| 3) Terms of Reference Task Force on Review of IFRS 10-11-12 | Decision |
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Decision: The Board adopted the Terms of Reference for the Task Force on Review of IFRS 10-11-12.

18. 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) EMIR quality report | Decision |
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Decision: The Board adopted the EMIR quality report.

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| 3) TREM data quality report | Decision |
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Decision: The Board adopted the TREM data quality report.

19. Investment Management Standing Committee

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| 1) IMSC Report | Information |
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The Board discussed the IMSC report, in particular the coverage thresholds for the number of UCITS managers and of the Assets under Management (AuM) that should be investigated in the Common Supervisory Action (CSA) on UCITS liquidity risk management.

Conclusion:

With respect to Stage 1 of the CSA, the Board agreed on a minimum coverage of 80% in terms of number of UCITS managers and 95% in terms of AuM. With regard to Stage 2, the Board agreed on a minimum coverage of 50% in terms of AuM. The IMSC was instructed to set the number of UCITS managers to be investigated in Stage 2. It was concluded that a low threshold of only 10-15% in terms of number of UCITS managers would not be acceptable. Robert Ophele (FR) noted the practical difficulties that some national competent authorities might experience in contributing to the CSA.

20. Investor Protection and Intermediaries Standing Committee

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| 1) IPISC Report | Information |
| 2) Consultation paper on technical standards on third country firms | Decision |

Decision: The Board adopted the Consultation paper on technical standards on third country firms.

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| 3) MIFID II Q&A | Decision |
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Decision: The Board adopted the MIFID Q&As

21. Post-Trading Standing Committee

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| 1) PTSC Report | Information |
| 2) Report on C6 energy derivatives and EMIR obligations | Decision |

Decision: The Board adopted the report on C6 energy derivatives and EMIR obligations.

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| 3) | Final Report on RTS on the date of entry into force of settlement discipline | Decision |
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Decision: The Board adopted the Final Report on RTS on the date of entry into force of settlement discipline.

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| 4) | CSDR supervisory briefing on transmission of information to ESMA | Decision |
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Decision: The Board adopted the CSDR supervisory briefing on transmission of information to ESMA.

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| 5) | CSDR Q&As | Decision |
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Decision: The Board adopted the CSDR Q&A except the ones on (i) the application of Article 23 CSDR to all types of securities, (ii) on the procedure to passport cross-border services and (iii) settlement fails involving CCPs.

22. 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) | EMIR Final Report on alignment of clearing and trading obligations | Decision |
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Decision: The Board adopted the EMIR Final Report on alignment of clearing and trading obligations.

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| 3) | MiFID II report on systematic internalisers | Decision |
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Decision: The Board adopted the Consultation Paper on the MiFIR report on systematic internalisers.

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| 4) | MIFID Q&As | Decision |
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Decision: The Board adopted the MiFID Q&As except the Q&A on transparency topics.

23. Annual update on Breach of Union Law

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| 1) | Issues note | Information |
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Conclusion: The Board took note of the update.

24. Product Intervention

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| 1) | Cover Note | Information |
| 2) | Technical Advice to the European Commission | Decision |

The Board discussed the technical advice to the European Commission, in particular the fact that it will be up to the European Commission to decide on extending time validity of ESMA's temporary product intervention powers.

Decision: The Board adopted the Technical Advice to the European Commission. Vojtech Belling (CZ) disagreed with the technical advice.

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| 3) | Supervisory Briefing | Decision |
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Decision: The Board adopted the Supervisory Briefing and Procedures on MiFIR market monitoring and intervention powers arising from articles 39-43.

25. Update on ESMA financial innovation work and focus areas

Information

Conclusion: The Board took note of the update.

26. A.O.B.

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Participant list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Mariyan Ivanov (alternate)	
Croatia	Jurica Jednacak (alternate)	
Czech Republic	Vojtech Belling	Karel Juras
Denmark	Karen Dorteab Abelskov	
Germany	Elisabeth Roegele	Marcus Hein
Estonia	Stina Mander (alternate)	
Ireland	Colm Kincaid (alternate)	Cormac Staunton
Greece	Vasiliki Lazarakou	Vasiliki Koularmani Nikos Kontaroudis
Spain	Sebastian Albella	Antonio Mas Ana Martinez-Pina
France	Robert Ophèle	Benoit de Juvigny Viet-Linh Nguyen
Italy	Carmine Di Noia (alternate)	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Andreas Andreou

Latvia	Ieva Ose (alternate)	
Lithuania	Mindaugas Salcius	
Luxembourg	Claude Marx	Françoise Kauthen
Hungary	Krisztian Csaky (alternate)	
Malta	Christopher P. Buttigieg	
Netherlands	Gerben Everts	Michel van den Akker Ebbe Rogge
Austria	Birgit Puck (alternate)	Christoph Kapfer
Poland	Magdalena Łapsa-Parczewska	Joanna Kott
Portugal	Gabriela Figueiredo Dias	Rita Oliveira Pinto
Romania	Florentina Boboc (alternate)	
Slovenia	Sabina Bešter (alternate)	
Slovakia	Tomas Ambra (alternate)	Peter Tkáč
Finland	Anneli Tuominen	Armi Taipale
Sweden	Malin Omberg (alternate)	Fredrik Elmberg
United Kingdom	Andrew Bailey (except for items 5 and 6)	Max Lyssewski (except for items 5 and 6)
ESMA	Steven Maijoor	

Non-voting members

European Commission	Ugo Bassi	
EBA	Anne Tiedemann Isabelle Vaillant (only for item 9)	
EIOPA	Ivo Karshev	
ESRB	Francesco Mazzaferro	
Iceland	Páll Friðriksson (alternate)	
Liechtenstein	Marcel Lotscher (alternate)	
Norway	Geir Holen (alternate)	
EFTA Surveillance Authority	Gunnar Thor Petursson (alternate)	

Observer

Chair of the Single Supervisory Mechanism (European Central Bank)	Andrea Enria (only for item 9)
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ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Governance and External Affairs Department	Roxana De Carvalho
Head of Investors and Issuers Department	Evert van Walsum

Team Leader Convergence	Dora Blanchet
Team Leader Investment Management	Antonio Barattelli
Senior Cooperation Officer (Governance and Strategy)	Frederiek Vermeulen
Senior Cooperation Officer (International and Institutional Affairs)	Jakub Michalik

Done at Paris on 18 May 2020

Steven Maijor

For the Board of Supervisors