

SUMMARY OF CONCLUSIONS

Management Board

Date: 28 January 2020
Time: 14h00 – 17h30
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. The Chair highlighted that the Management Board had adopted its revised Rules of Procedure by written procedure following the review of the ESMA Regulation. Sebastian Albella (ES) indicated that he would like to exchange views on the discussions planned with the Board of Supervisors on the MIFID II review (investor protection related) and the Common Supervisory Action (CSA) on liquidity of funds.

2. Report by Chair and Executive Director Oral Discussion

The Chair reported on the:

- Withdrawal of the United Kingdom from the Union and ESMA's activities in that respect;
- Upcoming appointment of standing committee chairs and the importance of Board Members coming forward to chair the committees; and
- Topical discussions on the implementation of the 2020-2022 strategic orientation.

The Executive Director reported on the:

- 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
- Activities related to ESMA's public cloud migration.

3. Activity Report

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| 1) Cover Note | Information |
| 2) Activity Report | Conclusion |

The Executive Director, the Head of the Resources Department and the Head of the Governance and External Affairs Department presented the activity report.

The Board discussed the activity report, in particular the:

- Implementation of the ESAs' and EMIR review in addition to the ongoing work;
- Confusion that might exist due to the ongoing work and upcoming consultations by both the European Commission and ESMA in relation to the MIFID review;
- Implementation of EMIR 2.2 and the set-up of the CCP Supervisory Committee; and
- Potential impact of the prejudicial question asked by a French Court to the Court of Justice of the European Union (EU) on Guidelines issued by the European Supervisory Authorities (ESAs).

Conclusion: The Management Board took note of the activity report.

4. Implementation of the ESA Review

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| 1) | Progress Report | Discussion |
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Conclusion: The Board took note of the progress report.

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| 2) | Conflicts of Interest | |
| | ○ Cover Note | Discussion |
| | ○ Conflict of Interest Policy | Discussion |

The Senior Cooperation Officer presented the proposed conflict of interest policy.

The Board discussed the conflict of interest policy, in particular:

- The scope of the proposed conflict of interest decision, in particular in relation to opinions and written procedures;
- The importance of the right to be heard for Board Members in case she/he must abstain from participating in the discussion and the voting; and
- The possibility for a Board Member to request from the Chair bilaterally to have a secret vote for a 'conflicted Board Member' to leave the meeting.

Conclusion: The Management Board supported the suggested conflict of interest policy by highlighting that Board Members need to identify when there might be a potential conflicts of interests, for example in relation to opinions. The Board agreed to clarify that the conflict of interest policy is also applicable to decisions adopted through written procedure and focuses on acts directed to an *individual* national competent authority. The Board took note of the suggestion that a Board Member can request from the Chair bilaterally to have a secret vote for a 'conflicted Board Member' to leave the meeting.

5. 2021-2023 Programming Document

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| 1) | Cover note | Discussion |
| 2) | Programming Document | Decision |

The Executive Director presented the 2021-2023 Programming Document.

The Board discussed the Programming Document, in particular the:

- Impact on the contributions by national competent authorities;
- Budget and resource impact of the delay in the adoption of the delegated acts under EMIR 2.2; and
- The envisaged recruitment of ESMA staff and the different types of contract in line with the establishment plan.

Decision: The Board approved the 2021-2023 Programming Document. The European Commission representative abstained due to the uncertainty surrounding the 2021-2027 multiannual financial framework.

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| 3) 2020-2023 IT Work Programme | Decision |
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Decision: The Board adopted the 2020-2023 IT Work Programme.

6. 2020 Planning Management Board

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| 1) Issues Note | Decision |
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Decision: The Management Board approved the 2020 planning for the Management Board.

7. Human Resources

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| 1) Cover Note | Discussion |
| 2) Decision on the non-application of the Commission Decision on dealing with professional incompetence | Decision |

The Head of the Resources Department presented the Decision.

The European Commission representative stated that the European Commission Services are of the opinion that ESMA should adopt the Decision.

The Board discussed the Decision, in particular the fact that ESMA does not and cannot employ permanent officials.

Decision: The Management Board adopted the Decision on the non-application of the Commission Decision on dealing with professional incompetence.

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| 3) Decision on the non-application of the Commission Decision C(2019)7822 on the duties of Commission drivers | Decision |
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The Head of the Resources Department presented the Decision.

The European Commission representative stated that the European Commission Services are of the opinion that ESMA should adopt the Decision.

The Board discussed the Decision, in particular the fact that ESMA does not have drivers and does not intend to recruit any in the future.

Decision: The Management Board adopted the Decision on the non-application of the Commission Decision C(2019)7822 on the duties of Commission drivers.

8. 2019 ESMA support functions report

1) Report

Information

The Head of the Resources Department presented the support functions report.

The Board discussed the support functions report, in particular the importance of aligning ESMA and national competent authorities' communication activities, especially directed to retail investors.

Conclusion: The Board took note of the support functions report.

9. A.O.B.

The Board discussed the material presented to the January 2020 Board of Supervisors, in relation to:

- (a) The MIFID II review related investor protection issues, where the Management Board highlighted that there is a need for a more fundamental discussion on the role of inducements based on further data and evidence collection. The Board stated that further steering might be provided by the co-legislators on inducements as part of the MIFID II review and that there is a need for further supervisory convergence work in relation to the application of the existing rules. The Board noted that, still in relation to inducements, there is a close link between the different sectors, in particular between the securities and the insurance sectors; and
- (b) CSA on fund liquidity, where the Board welcomed the common approach and the sharing of information and practices.

Participants list

	Members	Advisors
ESMA	Steven Maijoor (Chair)	
DE	Elisabeth Roegele	Marcus Hein
IE	Colm Kincaid (alternate)	Cormac Staunton
ES	Sebastian Albella	Antonio Mas
FR	Robert Ophele	Viet-Linh Nguyen
PT	Gabriela Figuerido Dias	Rita Oliveira Pinto
SE	Malin Omberg (alternate)	Fredrik Elmberg

Executive Director	Verena Ross
European Commission	Jorge Revilla-Garcia

Summary of Conclusions	Frederiek Vermeulen
Head of Resources Department	Nicolas Vasse
Head of Governance and External Affairs Department	Roxana De Carvalho
Senior Cooperation Officer	Frederiek Vermeulen



For the Management Board,

Done at Paris on 20 February 2020

Steven Maijoor
ESMA Chair