

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** 26 March 2020  
**Time:** 14h30 – 17h00  
**Location:** Conference call  
**Contact:** [frederiek.vermeulen@esma.europa.eu](mailto:frederiek.vermeulen@esma.europa.eu) Tel: +33 1 58 36 43 37

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**1. Adoption of agenda** Decision

**Decision:** The Board adopted the agenda.

**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

- His upcoming meeting with European Commission Executive Vice-President for an Economy that Works for People, Valdis Dombrovskis;
- His meeting with Christine Lagarde, president of the European Central Bank (ECB), in particular the discussions on ESMA's and the ECB's work in relation to the asset management industry and sustainable finance;
- Activities of the ESRB, in particular the recent discussions in relation to the financial market developments linked to COVID19;
- The discussions during the March 2020 Management Board meeting, in particular in relation to the upcoming Away Day of the Board of Supervisors; and
- The leakage of draft ESMA documents and the importance of respecting the existing professional secrecy requirements.

The Executive Director reported on

- ESMA's operations, in particular on the fact that since 16 March 2020 all ESMA staff members are working remotely;
- The fact that all Board Members had submitted the annual declaration of interests; and
- The March 2020 Financial Services Committee (FSC) meeting and the recent ad-hoc call of the FSC in the context of the COVID19 situation.

#### 4. European Commission CMU High-Level Forum

- 1) Presentation Discussion

**Conclusion:** The agenda item was postponed to a future meeting.

#### 5. MIFID review

- 1) Cover note Discussion
- 2) Commodity Derivatives
- o Cover Note Discussion
  - o Final report on MiFID review on position limits Decision
  - o Technical advice to the EC on weekly position reports Decision

The Head of Markets and Data Reporting Department presented the Final Report on MIFID review on position limits and the technical advice to the European Commission on weekly position reports.

The Board discussed the Final Report and the Technical Advice, in particular whether wholesale energy contracts that must be physically settled qualify as financial instruments when traded on an organised trading facility (the so called C(6) carve-out).

The European Commission representative highlighted to support maintaining the existing C(6) carve-out.

**Decision:** The Board adopted the Technical advice on weekly position reports. The Board adopted the Final Report on the MIFID review on position limits. Following a vote it was agreed to recommend to maintain the C(6) carve-out.

	Consider removing carve-out	Maintain carve-out	Abstain
Jean-Paul Servais (BE)			X
Mariya Filipova (BG)			X
Jurica Jednacak (HR)		X	
Vojtech Belling CZ)		X	
Karen Dorte Abelskov (DK)		X	
Elisabeth Roegele (DE)		X	
Andre Nõmm (EE)		X	
Derville Rowland (IE)	X		

Vasiliki Lazarakou (EL)		X	
Sebastian Albella (ES)	X		
Robert Ophèle (FR)		X	
Carmine Di Noia (IT)		X	
Demetra Kalogirou (CY)			
Ieva Ose (LV)		X	
Vaidas Cibas (LT)		X	
Claude Marx (LU)			X
Gergő Szeniczey (HU)	X		
Christopher Buttigieg (MT)		X	
Jos Heuvelman (NL)	X		
Birgit Puck (AT)		X	
Magdalena Łapsa-Parczewska (PL)		X	
Gabriela Figueiredo Dias (PT)	X		
Florentina Boboc (RO)	X		
Milos Čas (SL)		X	
Peter Tkáč (SK)		X	
Armi Taipale (SU)			X
Malin Omberg (SE)		X	
Steven Maijor (ESMA)	X		

### 3) Inducements

- Cover Note

Discussion

- Technical Advice to the EC on impact of inducements and cost & charges under MIFID II

Decision

Sebastian Albella presented the Technical Advice to the European Commission on the impact of inducements and cost and charges under MIFID II.

The Board discussed the Technical Advice, in particular:

- The different approaches within EU Member States and the need for a more fundamental discussion on the role of inducements based on further data and evidence collection;
- The need for further supervisory convergence work in relation to the application of the existing rules; and
- Whether ex-ante and ex-post disclosures (where applicable) should, at all times, be made at an ISIN-by-ISIN level.

**Decision:** Following a vote the Board adopted the Technical Advice to the European Commission on the impact of inducements and cost and charges under MIFID II. The Board instructed the Investor Protection and Intermediaries Standing Committee (IPISC) to work on further supervisory convergence measures in the area of inducements.

	Adopt the report	Reject the report	Abstain
Jean-Paul Servais (BE)	X		
Mariya Filipova (BG)	X		
Jurica Jednacak (HR)	X		
Vojtech Belling CZ)			X
Karen Dorte Abelskov (DK)	X		
Elisabeth Roegele (DE)			X
Andre Nõmm (EE)	X		
Derville Rowland (IE)	X		
Vasiliki Lazarakou (EL)	X		
Sebastian Albella (ES)	X		
Robert Ophèle (FR)	X		
Carmine Di Noia (IT)	X		
Demetra Kalogirou (CY)			X
Ieva Ose (LV)	X		

Vaidas Cibas (LT)	X		
Claude Marx (LU)		X	
Gergő Szeniczey (HU)			X
Christopher Buttigieg (MT)			X
Jos Heuvelman (NL)	X		
Birgit Puck (AT)	X		
Magdalena Łapsa-Parczewska (PL)	X		
Gabriela Figueiredo Dias (PT)			X
Florentina Boboc (RO)	X		
Milos Čas (SL)	X		
Peter Tkáč (SK)		X	
Armi Taipale (SU)	X		
Malin Omberg (SE)	X		
Steven Maijoor (ESMA)	X		

## 6. Implementation of new Q&A provision

### 1) Issues note

Discussion

The Senior Policy Officer presented the note on the implementation of the new Q&A provision in the revised ESMA Regulation.

The Board discussed the implementation, in particular:

- The criteria discussed with the European Commission Services and the European Supervisory Authorities (ESAs) on how to allocate the questions to be answered by the European Commission and by ESMA, in particular technical questions;
- Whether ESMA should support the Commission Services by systematically preparing a draft answer for the questions to be answered by the European Commission; and
- To ensure clarity for stakeholders on which questions are being addressed by the Commission and which ones by ESMA.

**Conclusion:** The Board took note of the criteria agreed between the ESAs and the Commission Services and agreed that ESMA should not add further criteria to those. Whilst highlighting the need for good co-operation between the Commission Services and ESMA along the process, the Board noted that

ultimately it is up to the Board of Supervisors to decide on the Q&As to adopt in line with the criteria established. Finally, it was agreed that the ESMA Chair should discuss with the European Commission Services whether and how to support the Commission in the preparation of answers to be given by the Commission.

**7. Terms of Reference Supervisory Convergence Standing Committee**

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| 1) Issues note   | Discussion |
| 2) Terms of Reference Supervisory Convergence Standing Committee | Decision   |

Joao Giao presented the issues note on the terms of reference of the Supervisory Convergence Standing Committee (SCSC).

The Board discussed the terms of reference, in particular the involvement of the SCSC in the development of (i) the peer review methodology and (ii) individual peer reviews.

**Decision:** The Board adopted the Terms of Reference of SCSC by deciding that the Committee will assist the Management Board in the peer review methodology. There will be no role for the SCSC in relation to individual peer reviews. Elisabeth Roegele (DE) indicated to disagree by stating that she favoured an approach where the SCSC would have a role to play also with respect to individual peer reviews in the future. She noted that the SCSC has high expertise in terms of peer reviews and should help to safeguard and improve the quality of peer reviews and their outcomes in the future.

**8. Guidelines on performance fees**

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| 1) Cover Note                                     | Discussion |
| 2) Final report on Guidelines on performance fees | Decision   |

Gabriela Figueredo Dias presented the Final Report on the Guidelines on performance fees.

The Board discussed the Final Report, in particular:

- Whether certain AIFs marketed to retail investors should be included in the scope of the Guidelines;
- The length of the performance reference period for the benchmark model;
- The date of application of the Guidelines to existing funds.

**Decision:** Following a vote the Board approved the Final report on the Guidelines on performance fees confirming (i) the inclusion of certain AIFs marketed to retail investors in the scope of the Guidelines, (ii) the use of 5 years for the performance reference period for the benchmark model and (iii) the date of application.

	Adopt the Guidelines	Reject the Guidelines	Abstain
Jean-Paul Servais (BE)	X		
Mariya Filipova (BG)	X		

Jurica Jednacak (HR)	X		
Vojtech Belling (CZ)			X
Karen Dorte Abelskov (DK)	X		
Elisabeth Roegele (DE)	X		
Andre Nõmm (EE)	X		
Derville Rowland (IE)	X		
Vasiliki Lazarakou (EL)	X		
Sebastian Albella (ES)			X
Robert Ophèle (FR)		X	
Carmine Di Noia (IT)	X		
Demetra Kalogirou (CY)	X		
Ieva Ose (LV)	X		
Vaidas Cibas (LT)	X		
Claude Marx (LU)		X	
Gergő Szeniczey (HU)			X
Christopher Buttigieg (MT)			
Jos Heuvelman (NL)	X		
Birgit Puck (AT)	X		
Magdalena Łapsa-Parczewska (PL)	X		
Gabriela Figueiredo Dias (PT)			X
Florentina Boboc (RO)	X		
Milos Čas (SL)			X
Peter Tkáč (SK)			X

Armi Taipale (SU)	X		
Malin Omberg (SE)	X		

#### 9. Amendments to PRIIPs

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|---|------------|
| 1) Cover Note                           | Discussion |
| 2) Final Report on amendments to PRIIPs | Discussion |

**Conclusion:** The agenda item was postponed to a future meeting.

#### 10. Joint consultation on ESG disclosures

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| 1) Cover Note  | Discussion |
| 2) Consultation paper on RTS under the Disclosure Regulation | Discussion |

**Conclusion:** The agenda item was postponed to a future meeting.

#### 11. Report on follow-up of data quality peer review

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| 1) Issues Note | Discussion |
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**Conclusion:** The agenda item was postponed to a future meeting.

#### 12. Performance and Cost Report

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| 1) Cover Note                  | Information |
| 2) Performance and cost report | Decision    |

**Decision:** The Board approved the Performance and cost report.

#### 13. UK withdrawal from the EU

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| 1) Update note | Information |
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The Board discussed the note on the UK's withdrawal from the EU, in particular the support provided by ESMA to the European Commission Services.

**Conclusion:** The Board took note of the update. It was agreed that a more comprehensive discussion will take place during the May 2020 Board of Supervisors.

#### 14. Convergence work on NCAs' approaches to financial penalties and transparency of enforcement decisions

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| 1) Cover Note | Decision |
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**Decision:** The Board endorsed the suggested way forward.



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| 2) Report on mapping of European Legal Framework and national implementation on financial penalties | Decision |
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**Decision:** The Board adopted the Report on mapping of European Legal Framework and national implementation on financial penalties.

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| 3) Supervisory briefing on financial penalties | Decision |
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**Decision:** The Board adopted the Supervisory briefing on financial penalties.

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| 4) Report on NCA practices for publication of enforcement outcomes | Decision |
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**Decision:** The Board adopted the Report on NCA practices for publication of enforcement outcomes.

## 15. ESA review

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| 1) Cover Note   | Information |
| 2) Amendments to the Public Statement of Consultation Practices | Decision    |

**Decision:** The Board adopted the revised Public Statement of Consultation Practices.

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| 3) Mystery shopping | Information |
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**Conclusion:** The Board took note of the overview on the operationalisation of the new ESMA tasks on mystery shopping.

## 16. Terms of Reference Standing Committees and Taskforces

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| 1) Cover Note | Information |
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**Conclusion:** The Board took note of the report.

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| 2) CCP Policy Committee | Decision |
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**Decision:** The Board adopted the Terms of Reference of the CCP Policy Committee.

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| 3) CCP Stress Test Task Force | Decision |
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**Decision:** The Board adopted the Terms of Reference of the CCP Stress Test Task Force.

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| 4) CCP Supervisory Committee | Decision |
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**Decision:** The Board adopted the Terms of Reference of the CCP Supervisory Committee.

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| 5) CEMA | Decision |
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**Decision:** The Board adopted the Terms of Reference of the Committee of Economic and Markets' Analysis.

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| 6) Commodities Derivatives Task Force | Decision |
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**Decision:** The Board adopted the Terms of Reference of the Commodities Derivatives Task Force.

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| 7) Financial Innovation Standing Committee | Decision |
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**Decision:** The Board adopted the Terms of Reference of the Financial Innovation Standing Committee.

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| 8) IPISC | Decision |
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**Decision:** The Board adopted the Terms of Reference of the Investor Protection and Intermediaries Standing Committee (IPISC).

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| 9) Market Integrity Standing Committee | Decision |
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**Decision:** The Board adopted the Terms of Reference of the Market Integrity Standing Committee.

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| 10) Post-Trading Standing Committee | Decision |
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**Decision:** The Board adopted the Terms of Reference of the Post-Trading Standing Committee.

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| 11) Secondary Markets Standing Committee | Decision |
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**Decision:** The Board adopted the Terms of Reference of the Secondary Markets Standing Committee.

#### 17. CCP Policy Committee

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| 1) CCP PC Report | Information |
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**Conclusion:** The Board took note of the report.

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| 2) Final Report on RTS on colleges | Decision |
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**Decision:** The Board adopted the Final Report on RTS on colleges.

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| 3) Final Report on Guidelines on colleges | Decision |
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**Decision:** The Board adopted the Final Report on Guidelines on colleges.

#### 18. Credit Rating Agencies Technical Committee

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| 1) Cover note  | Information |
| 2) Call for evidence on access and use of credit ratings | Decision    |

**Decision:** The Board adopted the Call for evidence on access and use of credit ratings.

#### 19. Corporate Reporting Standing Committee

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| 1) CRSC Report | Information |
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**Conclusion:** The Board took note of the report.

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| 2) Report on enforcement and regulatory activities of European enforcers in 2019 | Decision |
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**Decision:** The Board adopted the Report on enforcement and regulatory activities of European enforcers in 2019.

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| 3) 24th extract from EECS database of enforcement | Decision |
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**Decision:** The Board adopted the 24<sup>th</sup> extract from the EECS database of enforcement.

## 20. 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) Consultation Paper on technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT | Decision |
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**Decision:** The Board adopted the Consultation paper on technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR Refit.

## 21. Investment Management Standing Committee

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| 1) IMSC Report | Information |
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**Conclusion:** The Board took note of the report.

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| 2) Consultation paper on guidelines on leverage under art. 25 AIFMD | Decision |
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**Decision:** The Board adopted the Consultation paper on guidelines on leverage under Article 25 Alternative Investment Fund Managers Directive (AIFMD).

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| 3) Consultation paper on ITS under the Regulation on cross-border distribution of funds | Decision |
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**Decision:** The Board adopted the Consultation paper on the ITS under the Regulation on cross-border distribution of funds.

## 22. Market Integrity Standing Committee

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| 1) MISC Report | Information |
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**Conclusion:** The Board took note of the MISC report.

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| 2) Benchmark Regulation – MoU with MAS (Singapore) | Decision |
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**Decision:** The Board adopted the Memorandum of Understanding with the Monetary Authority of Singapore (MAS) under the Benchmark Regulation.

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| 3) Benchmark Regulation – Supervisory briefing on the implementation of Article 28(2) BMR | Decision |
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**Decision:** The Board adopted the Supervisory briefing on the implementation of Article 28(2) of the Benchmark Regulation.

## 23. Post-Trading Standing Committee

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

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| 2) Consultation paper on the clearing solutions for PSAs | Decision |
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**Decision:** The Board adopted the consultation paper on the clearing solutions for PSAs.

- 3) Consultation paper on post trade risk reduction services Decision

**Decision:** The Board adopted the consultation paper on post trade risk reduction services.

**24. Penalties imposed on third-country CCPs, TRs and CRAs**

- 1) Cover Note Information
- 2) Technical advice on Rules of Procedure on Penalties imposed on TC CCPs, TRs and CRAs Decision

**Decision:** The Board adopted the Technical advice on Rules of Procedure on Penalties imposed on TC CCPs, TRs and CRAs

**25. A.O.B.**

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**Participants list**

**Voting members**

<b>Member State</b>	<b>Representative</b>	<b>Accompanying Person</b>
Belgium	Jean-Paul Servais	
Bulgaria	Mariya Filipova	
Croatia	Jurica Jednacak (alternate)	
Czech Republic	Vojtech Belling	
Denmark	Karen Dorte Abelskov	
Germany	Elisabeth Roegele	
Estonia	Andre Nõmm	
Ireland	Derville Rowland	
Greece	Vasiliki Lazarakov	
Spain	Sebastian Albella	
France	Robert Ophèle	
Italy	Carmine Di Noia (alternate)	
Cyprus	Demetra Kalogerou	
Latvia	Ieva Ose (alternate)	
Lithuania	Vaidas Cibas (alternate)	

Luxembourg	Claude Marx	
Hungary	Gergő Szeniczey	
Malta	Lorraine Vella (alternate)	
Netherlands	Jos Heuvelman	
Austria	Eduard Müller	
Poland	Magdalena Łapsa-Parczewska	
Portugal	Gabriela Figueiredo Dias	
Romania	Florentina Baboc (alternate)	
Slovenia	Milos Čas	
Slovakia	Peter Tkáč	
Finland	Armi Taipale (alternate)	
Sweden	Malin Omberg (alternate)	
ESMA Chair	Steven Maijoor	

#### Non-voting members

European Commission	Ugo Bassi	
EBA	Anne Tiedemann	
EIOPA	Kai Kosik	

ESRB	Francesco Mazzaferro	
Iceland	Páll Friðriksson (alternate)	
Liechtenstein	Marcel Lotscher (alternate)	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marco Urcelli (alternate)	

## ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Markets and Data Reporting	Fabrizio Planta
Senior Policy Officer	Benjamin Burlat

Done at Paris on 24 April 2020

Steven Majoor

For the Board of Supervisors