

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 23 and 24 May 2017
Time: 13h45 – 18h30 (23 May 2017) and 09h00 – 14h00 (24 May 2017)
Location: Grand Hotel Excelsior, Great Siege Road, Floriana FRN1810, Valletta, Malta
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

Tuesday 23 May 2017

1. United Kingdom Leaving the European Union

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| 1) Cover Note | 20-95-632 | Discussion |
| 2) Opinion on general principles to support supervisory convergence in the context of the United Kingdom withdrawing from the European Union | 42-110-433 | Decision |

The Head of Legal, Convergence and Enforcement presented the opinion on general principles to support supervisory convergence in the context of the United Kingdom (UK) withdrawing from the European Union (EU).

The Board discussed the opinion, in particular the:

- Need to respect the freedom of location within the EU Single Market;
- Principle of not granting authorisation when the entity opted for a Member State for the purpose of evading the stricter standards in place in another Member State;
- Benefits of outsourcing and whether there is a difference between delegating it to an EU versus non-EU entity;
- Degree to which key executives and senior management should work within the Member State;
- Need for relocating entities to comply with national requirements in addition to EU law; and
- Relevance of the opinion for EEA-EFTA Member States.

Decision: The Board adopted the opinion. Andrew Bailey (UK) highlighted that the relevant sector legislation sets out the substantive legal requirements for the authorisation and supervision (including outsourcing arrangements) of entities operating in Member States.

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| 3) Supervisory Coordination Network | 20-95-631 | Decision |
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The Executive Director presented the mandate for the Supervision Coordination Network.

The Board discussed the mandate, in particular:

- The importance of promoting supervisory convergence in this area whilst noting that authorisation, supervision, and potential subsequent enforcement, is the responsibility of national competent authorities;
- The scope of the Network and the type of decisions that should be brought to the Network on an anonymous basis;
- Merging the three proposed Networks into one single network;
- That the proposed network should not lead to delays in national authorisation decisions;
- That an issue should only be escalated to the Board of Supervisors for discussion on the basis of a simple majority within the Network; and
- The legal basis for the Network.

A revised version of the mandate for the Supervisory Coordination Network (SCN) was presented later to the meeting (ESMA20-95-631rev1).

Decision: The Board approved the revised mandate for the Supervisory Coordination Network. Pavel Hollman (CZ) disagreed.

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| 4) Update on work in relation to arbitrage risks related to asset managers, investment firms and secondary markets | Oral | Discussion |
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Merel van Vroonhoven, Elisabeth Roegele and the Team Leader Investment Management provided the Board of Supervisors with an update on the ongoing work in relation to the sector-specific opinions supporting supervisory convergence in the context of the UK leaving the EU, relating respectively to investment firms, secondary markets and investment management.

Conclusion: The Board took note of the update.

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| 5) Third Country Regime | 70-151-392 | Discussion |
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The Head of Supervision Department presented the proposed approach for an opinion on third country regimes.

The Board discussed the proposed way forward, in particular:

- The need for a more continuous monitoring of equivalent regimes;
- The need for sound cooperation agreements to be in place between national competent authorities and/or ESMA on the one hand and third country supervisors on the other; and
- Whether those third country entities should be supervised by ESMA or by national competent authorities (or jointly).

Decision: The Board agreed to develop an opinion on the suggested way forward for adoption during its July 2017 meeting.

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| 6) Clearing location | 70-151-376 | Discussion |
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The Acting Head of Markets Department presented the report on the clearing location.

Conclusion: The Board took note of the report.

2. Review of the Operations of the European Supervisory Authorities

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| 1) Cover Note | 22-103-376 | Discussion |
| 2) Draft ESMA response | 22-103-375 | Decision |

The Chair presented the ESMA’s draft response on the review of the European Supervisory Authorities (ESAs).

The Board discussed the draft response, in particular:

- Whether there is a need for certain market participants, especially market infrastructures, to be supervised at EU-level such as CCPs, critical benchmarks and data providers;
- The need for a stronger continuous monitoring of equivalent regimes;
- The interaction with the European Commission’s initiative establishing a Capital Markets Union;
- Whether changes to ESMA’s governance should be proposed; and
- The need for additional resources in case the EU institutions would decide to broaden ESMA’s mandate.

Decision: The Board adopted the draft response. Jean-Michel Van Cottem (BE) informed that his abstention related to his opinion that the supervision regime for Benchmarks should not be altered before the foreseen review of the Benchmarks Regulation.

	Agree	Disagree	Abstain
Klaus Kumfmüller (AT)	X		
Jean-Michel Van Cottem (BE)			X
Karina Karaivanova (BG)	X		
Demetra Kalogirou (CY)	X		
Pavel Hollmann (CZ)		X	
Birgitte Sogaard Holm (DK)	X		
Andre Nõmm (EE)	X		
Jarmo Parkkonen (SU)	X		
G�rard Rameix (FR)	X		
Pierre Matek (HR)	X		
Elisabeth Roegele (DE)	X		
Charalampos Gotsis (EL)	X		
Gergo Szeniczey (HU)	X		
Gerry Cross (IE)	X		
Giuseppe Vegas (IT)	X		

Gunta Razane (LV)	X		
Vaidas Cibas (LT)	X		
Francoise Kauthen (LU)		X	
Marianne Scicluna (MT)	X		
Merel van Vroonhoven (NL)	X		
Marek Szuszkiewicz (PL)	X		
Gabriela Figueiredo Dias (OT)	X		
Mircea Ursache (RO)	X		
Ivan Barri (SK)			X
Sabina Bešter (SI)	X		
Sebastian Albella (ES)	X		
Erik Thedéen (SE)	X		
Andrew Bailey (UK)	X		

Wednesday 24 May 2017

3. Adoption of agenda

22-106-188 Decision

Decision: The agenda was adopted.

4. Summary of conclusions

1) 29 March 2017

22-106-216 Decision

Decision: The summary of conclusions was adopted subject to drafting comments that could be shared in writing by 2 June 2017.

2) 3 May 2017

22-106-209 Decision

Decision: The summary of conclusions of the 3 May 2017 meeting was adopted.

5. Oral Report by Chair and Executive Director

Information

The Chair reported on:

- His meetings with the European Central Bank management, in particular the discussions relating to the potential financial stability impact of the United Kingdom’s withdrawal from the European Union;
- His meetings with Members of the European Parliament and the scrutiny slots on the CRA Regulation and the Benchmark Regulation for which ESMA was invited;
- The meeting of the Financial Stability Round Table of the European Financial Committee;
- The activities of the Joint Committee and in particular the forthcoming Consumer Protection Day organised jointly by the ESAs on 23 June 2017;
- The Board Meeting of the International Organization of Securities Commissions (IOSCO) and in particular the consultation paper on liquidity tools for the asset management sector and the work IOSCO is doing in relation to cyber security;
- The activities of the European Systemic Risk Board (ESRB), in particular the ESRB’s opinion on recovery and resolution of CCPs;
- The May 2017 meeting of the Management Board, in particular the approval of the 2016 accounts and the discussion on the draft 2018 work programme;
- The composition of the Mediation Panel;
- The Chairmanship of the Committee for Economics and Markets Analysis (CEMA) being vacant following the departure from Misu Negritoiu (RO) as Member of the Board of Supervisors; and
- The European Commission’s proposal to add the Euro Overnight Index Average (EONIA) to the list of critical benchmarks.

The Executive Director reported on:

- The ongoing work in relation to the transitional calculations determining the liquidity status of non-equity instruments other than bonds and the thresholds for waivers/deferrals for all non-equity instruments;
- The April 2017 meeting of the Financial Services Committee, in particular the European Commission’s update on the proposal to establish a Capital Markets Union;
- Recent significant cyber-attacks towards EU and national public and private entities and ESMA’s contingency planning; and
- The finalisation of the 2016 annual report.

Conclusion: The Board took note of the report. The Board appointed Gabriela Figueiredo Dias as Member of the Mediation Panel until the end of her first term as Management Board Member. The Board agreed with the proposal that a CEMA Chair will be appointed during the September 2017 meeting and that the Head of Risk Analysis and Economics (RAE) will chair the meeting in the interim period.

6. Money Market Funds

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| 1) Cover Note | 34-39-534 | Discussion |
| 2) Consultation Paper on draft technical advice, implementing technical standards and guidelines under the Money Market Funds Regulation | 34-49-82 | Decision |

The Team Leader Investment Management introduced the Cover Note and the Consultation Paper by highlighting among others that the Guidelines will apply on a comply-or-explain basis to national competent authorities.

The Board discussed the consultation paper, in particular the:

- Reporting requirements under the Alternative Investment Managements Fund Directive (AIFMD) and the Money Markets Funds Regulation and the need for further work in that area; and
- Legal requirement to revise the Guidelines on a yearly basis and the need to continue monitoring market liquidity in that respect.

Decision: The Board adopted the consultation paper on draft technical advice, implementing technical standards and guidelines under the Money Market Funds Regulation.

7. Benchmarks Regulation

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| 1) Cover Note | 70-143-6 | Discussion |
| 2) Methodological Framework on selection of supervised entities for mandatory contribution under the Benchmark Regulation | 70-143-5 | Decision |

Giuseppe Vegas presented the Cover note and the Methodological Framework.

The Board discussed the Methodological Framework, in particular:

- The need to cater for an extension to the European Overnight Interest Rate (EONIA); and
- Whether the proposed high-level criteria to be applied to frame the selection of the supervised entities that are to be considered are in line with the Benchmark Regulation.

Decision: The Board adopted the Methodological Framework on selection of supervised entities for mandatory contribution under the Benchmark Regulation. The Board decided to delete the high-level criteria (section 3) from the Framework.

8. Communication on FIRDS launch

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| 1) Cover Note | 70-145-102 | Discussion |
| 2) Communication on FIRDS launch | 70-145-103 | Decision |

The Acting Head of Markets Department presented the Communication on the FIRDS launch by highlighting that the reference data concerned not only the financial instruments currently admitted to trading but also the ones which were admitted for trading or were traded from 3 July 2016 onwards.

Decision: The Board adopted the communication.

9. Q&A – pre-trade transparency waivers

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| 1) Cover Note & Q&A – substantial modification of MIFID I pre-trade transparency waivers | 70-154-164 | Decision |
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Elisabeth Roegle presented the Q&A on pre-trade transparency waivers.

Decision: The Board adopted the Q&A on the substantial modification of MIFID I pre-trade transparency waivers.

10. European Commission consultation paper on Financial Technology

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| 1) Cover Note | 50-157-422 | Discussion |
| 2) Draft ESMA response | 50-158-457 | Decision |
| 3) European Commission consultation paper | | Information |

The Team Leader Investor Protection presented ESMA's draft response to the European Commission consultation paper on financial technology.

The Board discussed the draft response, in particular:

- The need for different approaches depending on the (financial) technology, purpose and existing legislation;

- Whether encryption keys should be made accessible to supervisors; and
- The work done by ESMA in relation to crowdfunding.

Decision: The Board adopted ESMA’s response to the European Commission consultation paper on financial technology.

11. Impact of the Data Protection Regulation on Cooperation with third countries

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| 1) Issues Note | 40-133-498 | Discussion |
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The Chair presented the note on the impact of the Data Protection Regulation on Cooperation with Third Countries and the recent discussions within IOSCO.

Conclusion: The Board took note of the Issues Note.

12. Supervisory Convergence Standing Committee

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| 1) SCSC Report | 42-110-430 | Information |
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Conclusion: The Board took note of the Report.

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| 2) Supervisory Convergence Annual Report on the implementation of the 2016 Supervisory Convergence Work Programme | 42-114-500
42-114-498 | Decision |
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Decision: The Board adopted the Supervisory Convergence Annual Report on the implementation of the 2016 Supervisory Convergence Work Programme.

13. SMSG

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| 1) Note on the replacement of SMSG Members | 22-106-205 | Decision |
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Decision: The Board adopted the Management Board’s proposal to re-appoint Christiane Holz and to appoint Rainer Lenz as Members of the Securities and Markets Stakeholder Group (SMSG).

14. Post-Trading Standing Committee

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| 1) PTSC report | 70-151-439 | Information |
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Conclusion: The Board took note of the Report.

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| 2) CSDR Guidelines on Relevant Currencies | 70-708036281-66
70-708036281-72 | Decision |
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Decision: The Board adopted the CSDR Guidelines on Relevant Currencies.

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| 3) CSDR Guidelines on the Substantial Importance of a CSD | 70-708036281-67
70-708036281-73 | Decision |
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Decision: The Board adopted the CSDR Guidelines on the Substantial Importance of a CSD.

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| 4) Consultation Paper on Guidelines on CCPs’ management of conflicts of interests | 70-151-291 | Decision |
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Decision: The Board adopted the Consultation Paper on Guidelines on CCPs’ management of conflicts of interests.

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| 5) CSDR Q&As | 70-151-378 | Decision |
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Decision: The Board adopted the CSDR Q&As.

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| 6) CSDR Q&As (for competent authorities) | 70-151-360 | Decision |
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Decision: The Board adopted the CSDR Q&As.

15. Secondary Markets Standing Committee

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| 1) SMSC Report | 70-154-163 | Information |
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Conclusion: The Board took note of the Report.

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| 2) MiFID II Q&As – transparency | 70-154-170 | Decision |
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Decision: The Board adopted the MiFID II Q&As. It was agreed that ESMA should coordinate the contacts national competent authorities will have on the recognition of third country trading venues.

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| 3) MiFID II Q&As – market structure | 70-154-171 | Decision |
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Decision: The Board adopted the MiFID II Q&As.

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| 4) Third-country venues opinion | 70-154-165 | Decision |
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Decision: The Board adopted the third-country venues opinion.

16. Commodity Derivatives Task Force

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| 1) CDTF Report | 70-154-169 | Information |
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Conclusion: The Board took note of the Report.

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| 2) MiFID II Q&As – commodity derivatives | 70-154-172 | Decision |
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Conclusion: The Board adopted the MiFID II Q&As. It was agreed that ESMA should coordinate the contacts national competent authorities will have on the recognition of position limits.

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| 3) Third-country venues opinion | 70-156-112 | Decision |
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Decision: The Board adopted the third country venues opinion.

17. Financial Innovation Standing Committee

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| 1) FISC report | 50-157-424 | Information |
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Conclusion: The Board took note of the Report.

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| 2) Extension of the mandate of the Distributed Ledger Task Force | 50-157-423 | Decision |
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Decision: The Board agreed to extend the mandate of the Distributed Ledger Task Force.

18. Investor Protection and Intermediaries Standing Committee

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| 1) IPISC Report | 35-36-849 | Information |
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Decision: The Board took note of the Report.

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| 2) Final Report on Guidelines on Product Governance | 35-43-620 | Decision |
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Decision: The Board adopted the Final Report on Guidelines on Product Governance.

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| 3) MIFID II Q&As | 35-36-850 | Decision |
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The Board discussed the Q&A on complex financial instruments in particular whether a firm distributing non-UCITS funds should be required to assess whether they are complex or not, rather than that these should automatically be found complex.

Decision: The Board adopted the MIFID II Q&As. Erik Thedeen (SE) and Andrew Bailey (UK) disagreed with the Q&A.

19. Investment Management Standing Committee

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| 1) IMSC Report | 34-39-537 | Information |
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Decision: The Board took note of the Report.

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| 2) AIFMD Q&A | 34-32-352 | Decision |
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Decision: The Board adopted the AIFMD Q&A.

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| 3) UCITS Q&A | 34-43-392 | Decision |
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Decision: The Board adopted the UCITS Q&A.

20. Market Integrity Standing Committee

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| 1) MISC Report | 70-145-92 | Information |
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Conclusion: The Board took note of the Report.

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| 2) Final Report on the Benchmarks Regulation draft RTS on cooperation | 70-145-81 | Decision |
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Decision: The Board adopted the Final Report on the Benchmarks Regulation draft RTS on cooperation.

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| 3) Final Report on the MAR draft ITSs on cooperation between national competent authorities | 70-145-100 | Decision |
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Decision: The Board adopted the Final Report on the MAR draft ITSs on cooperation between national competent authorities.

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| 4) MAR Q&As (competent authorities) | 70-145-99 | Decision |
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Decision: The Board adopted the MAR Q&As.

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| 5) MAR Q&As | 70-145-97 | Decision |
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Decision: The Board adopted the MAR Q&As.

21. A.O.B.

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22. Future meetings

- 5 and 6 July 2017 (including joint Board/SMSG – Paris)
- 27 September 2017 (Paris)
- 7 and 8 November 2017 (including joint Board/SMSG – Paris)
- 14 December 2017 (Paris)

Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais (only 23 May 2017) Jean-Michel Van Cottem (alternate)	
Bulgaria	Karina Karaivanova	
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	Anne Bruun
Germany	Elisabeth Roegele	Hannelore Lausch Marcus Hein
Estonia	Andre Nomm	
Ireland	Gerry Cross	Martin Moloney Cian Murphy
Greece	Charalampos Gotsis	Anastasia Maltoudi
Spain	Sebastian Albella	Antonio Mas
France	Gerard Rameix	Stéphanie Cabossioras
Croatia	Pierre Matek	
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Andreas Andreou

		Liana Ioannidou
Latvia	Gunta Razane	
Lithuania	Vaidas Cibas	
Luxembourg	Françoise Kauthen (alternate)	
Hungary	Gergo Szeniczey	
Malta	Marianne Scicluna	Christopher Buttigieg
Netherlands	Merel van Vroonhoven	Ellen Boelema
Austria	Klaus Kumpfmuller	Andrea Kuras-Goldman
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	Gabriela Figueiredo Dias	
Romania	Mircea Ursache	Florentina Boboc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Ivan Barri	Adam Nadasky
Finland	Jarmo Parkkonen (alternate)	Ville Kajala
Sweden	Erik Thedéen	Oskar Ode
United Kingdom	Andrew Bailey	Cristina Frazer

Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Ugo Bassi	Peter Ohrlander
EBA	Philippe Allard	
EIOPA	Kai Kosik	
ESRB	Francesco Mazzaferro	
Iceland	Unnur Gunnarsdottir	
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	Marianne Elind Skaane
EFTA Surveillance Authority	Frank Buchel	Per Christian Baerøe

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Supervision Department	Felix Flinterman
Head of Resources Department	Nicolas Vasse
Head of Legal, Convergence and Enforcement Department	Sophie Vuarlot-Dignac

Head of Corporate Affairs Department	Mette Sicard Filtenborg
Acting Head of Markets Department	Fabrizio Planta
Team Leader Investor Protection	Salvatore Gogni
Team Leader Asset Management	Richard Stobo

Done at Paris on 5 July 2017

Steven Maijor

For the Board of Supervisors