



SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: Tuesday 22 and Wednesday 23 March 2022

Time: 14h00 – 18h30 (Tuesday) and 9h00 – 13h00 (Wednesday) **Location:** ESMA, rue de Bercy 201-203, 75012 Paris / MS Teams

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1. Adoption of agenda

Decision

Decision: The agenda was adopted noting that the CRA Network Terms of Reference (item 16) and the EMIR report on staffing and resources (item 29) were withdrawn from the agenda. They will be presented for adoption at a later stage.

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. Report by ESMA Chair, Executive Director and Chair of the CCP Supervisory Committee

Oral

Discussion

The ESMA Chair reported on:

- Her recent meeting with Sean Berrigan, Director General of the European Commission's Directorate General for Financial Services, Financial Stability and Capital Markets Union, in particular their discussions on ESMA's future strategy and on the impact on EU financial markets of the Russian invasion of Ukraine;
- Her recent interactions with Members of the European Parliament (MEPs), in particular to discuss the EU strategy for retail investors and how ESMA promotes sustainable finance;
- The activities of the European Systemic Risk Board (ESRB), in particular its response to the European Commission public consultation on the targeted review of EMIR;
- ESMA's international activities, in particular IOSCO's Sustainable Finance Taskforce (STF)'s workplan, and the fact that ESMA will be co-chairing a workstream on carbon markets alongside the US Commodity Futures Trading Commission (CFTC);
- The activities of the Joint Committee, in particular the submission to the European Commission of the joint advice on digital finance and the publication of a joint European Supervisory Authority (ESA) statement welcoming the ESRB's recommendation on systemic cyber risk; and
- The March 2022 Management Board, in particular the discussion on the staffing and resources report called for by EMIR, and the change in approach to the preparation of peer review workplans based on a two-year cycle.



The Executive Director reported on the:

- February and March 2022 Financial Services Committee (FSC) meetings, in particular discussions on the financial market risks stemming from Russia's invasion of Ukraine and the presentation of ESMA's study on banks' expected credit losses disclosures;
- Adoption, in the context of the impact on EU financial markets of the Russian invasion of Ukraine, of a general ban for ESMA Staff to deal in financial instruments for which trading is usually subject to prior authorisation under the relevant conflict-of-interest policy; and
- Continued impact of COVID-19 on ESMA's activities, in particular the fact that following the European Commission's latest recommendations and the French authorities' announcements, it was decided to resume as of 7 March the requirement for ESMA staff to work from ESMA premises at least one day per week.

The Chair of the CCP Supervisory Committee reported on the postponement of the ongoing CCP stress-test exercise in light of the need to prioritise work on the impact from Russia' invasion of Ukraine.

The Head of the Risk Analysis and Economics Department, the Chair of the CCP Supervisory Committee and the Executive Director also presented an update on risks and developments stemming from the Russian invasion of Ukraine and ESMA's activities in that regard.

The Board discussed the update, in particular the:

- Developments within EU and third-country commodity markets; and
- Request for assistance received from Ukrainian authorities by ESMA and certain national competent authorities.

Conclusion: The Board discussed the update and will continue to monitor developments.

4. Final report on the EU carbon market

Presentation Discussion
Final report Decision

The Chair of the Commodity Derivatives Task Force and the Head of the Trading Unit presented the final report on the EU carbon market.

The Board discussed the final report, in particular:

- The developments in the EU carbon market, in particular those since the Russian invasion of Ukraine;
- ESMA's recommendations with regards to transparency and data quality;
- The use of monitoring tools similar to the ones applied by the Agency for the Cooperation of Energy Regulators (ACER); and
- The potential application of position limits in carbon markets and the difficulties in assessing their impact ex ante.

Decision: The Board adopted the final report on the EU carbon market.

5. Targeted review of EMIR

Presentation Discussion
Response to the European Commission consultation Decision



The Head of the Markets and Data Reporting Department and the Independent Member of the CCP Supervisory Committee presented the response to the European Commission consultation on the targeted review of the central clearing framework in the European Union.

The Board discussed the response, in particular the:

- Importance of keeping the prudential risk perspective in mind when determining capital requirements;
- Need for an efficient procedure to validate certain types of risk-model changes; and
- Pros and cons of exposure reduction targets.

Decision: The Board adopted the ESMA response to the European Commission's consultation on the targeted review of the central clearing framework in the European Union, subject to amendments to ensure that any differentiation of capital treatments is risk-based and to propose further streamlining of EU supervision.

6. Responses to the European Commission's requests for advice on retail investor protection and PRIIPs

1) Presentation Discussion

 Joint Committee response to the European Commission's Call for Advice on Packaged Retail Insurance-based Investment Products (PRIIPs)

o Note Discussion

Discussion Discussion

The Head of the Investors and Issuers Department presented the note on the Joint Committee response to the European Commission's Call for Advice on Packaged Retail Insurance-based Investment Products (PRIIPs).

The Board discussed the note on the European Commission's Call for Advice on PRIIPs, in particular:

- Whether the ex-ante notification of the Key Information Document (KID) should be mandatory across the European Union;
- How supervisory competencies should be shared between home and host authorities;
- The differentiation between types of PRIIPs and the adjustment of requirements to their specificities;
- The importance of aligning terminology to that used under the Sustainable Finance Disclosure Regulation (SFDR); and
- The need to ensure continued accessibility of information for the non-digitally proficient.

Conclusion: The Board discussed the note on the Joint Committee response to the European Commission's Call for Advice on PRIIPs.

3) Draft technical advice on retail investor protection topics

Discussion

The Chair of the Investor Protection and Intermediaries Standing Committee presented the draft technical advice on retail investor protection topics.

The Board discussed the draft technical advice on retail investor protection topics, in particular the:

- Regulatory and supervisory framework ensuring investor protection in the context of payment for order flow (PFOF) and the enforceability of best execution provisions;
- Alignment between PRIIPs and MiFID cost disclosure requirements; and
- Importance of marketing guidelines for firms and their affiliates.



Conclusion: The Board discussed the draft technical advice on retail investor protection topics which will be presented for adoption by written procedure.

The Board discussed other actions on retail investor protection and PRIIPs beyond the scope of the requests for technical advice, in particular the:

- Importance of taking action on a number of other retail investor protection related-topics in a timely manner in the context of the rise in social media-driven investments; and
- Use of the common supervisory heatmap to identify areas requiring prioritised common supervisory actions, such as best execution requirements.

Conclusion: The Board discussed potential actions beyond the scope of the requests for technical advice on retail investor protection and PRIIPs.

7. ESMA Strategy 2023-2028

Cover note
Presentation (retail investors)
Discussion

The ESMA Chair presented the update on the ESMA Strategy for 2023-2028.

The Board discussed the presentation on ESMA's activities promoting retail investor protection, in particular the:

- Importance of effective prioritisation in the implementation of the proposed objectives in close cooperation with national competent authorities; and
- Need for further data supporting the implementation of ESMA's strategy.

Conclusion: The Board discussed the presentation. Members were invited to provide comments in writing.

8. European Single Access Point

Presentation
Note
Discussion

The Head of the Resources Department presented the update on the European Single Access Point (ESAP) project.

The Board discussed the update on the European Single Access Point project, in particular the:

- Scope of the ESAP project; and
- Flexibility of the envisaged governance.

Decision: The Board agreed with the proposals regarding the governance structure for the European Single Access Point project.

9. European Court of Auditors' audit on the EU Single Market for investment funds

1) Presentation Discussion



2) Cover Note Discussion

3) Special Report

Discussion

The Member of the European Court of Auditors (ECA) presented the ECA's report on the EU Single Market for investment funds.

The Board discussed the report, in particular:

- The supervisory convergence toolkit at ESMA's disposal since the 2019 ESAs' Review;
- ESMA's governance and the relationship between ESMA and its national competent authorities; and
- The correlation between regulatory policies on inducements and the availability of advice.

Conclusion: The Board discussed the ECA report on the EU Single Market for investment funds and its potential follow-up.

10. Dialogue with the UK Financial Conduct Authority

1) Note Discussion

The Chief Executive Officer of the United Kingdom's Financial Conduct Authority (FCA) provided an update on supervisory and market developments in the United Kingdom.

The Board discussed the update, in particular the:

- Financial market impact of the Russian invasion of Ukraine, in particular with regards to energy markets, and the co-operation between the EU and UK on the implementation of sanctions (and the role of crypto-assets therein);
- FCA's approach to crypto assets; and
- FCA's plans and priorities with regards to sustainable finance.

Conclusion: The Board discussed with the CEO of the FCA the update on supervisory and market developments in the UK.

11. Macroprudential framework for investment funds

1) Presentation Discussion

The Head of the Risk Analysis and Economics Department presented the slideshow on the macroprudential framework for investment funds.

The Board discussed the presentation, in particular:

- The importance of normalising the use of liquidity management tools (LMTs) in crisis scenarios;
- ESMA's coordination role with regards to system-wide stress tests;
- The need to close remaining data gaps, particularly with regards to Money Market Funds; and
- The pros and cons associated with liquidity buffers.

Conclusion: The Board discussed the macroprudential framework for investment funds.

12. Leverage and derivatives – Archegos case

1) Presentation Discussion

2) Cover note Discussion

3) Article Decision



The Senior Economist presented the "Leverage and derivatives – the case of Archegos" article.

The Board discussed the article, in particular the lessons to draw from this case, with regards to risk mitigation techniques and the use and sharing of data to increase the foreseeability of such events.

Decision: The Board discussed the article.

13. Commodity trading firms and the EMIR clearing thresholds

1) Presentation Discussion

2) Note Discussion

The Chair of the Commodity Derivatives Task Force and the Head of the Markets and Data Reporting Department presented the note on commodity trading firms and the EMIR clearing thresholds.

The Board discussed the note, in particular the expected effects of temporarily increasing the clearing thresholds and the corresponding timeframe.

The European Systemic Risk Board representative expressed concerns that doing so would result in less collateral being collected in a moment where counterparties are more exposed to potential defaults, thus the increase of the threshold was not advisable.

The European Commission representative commented that any adjustment to the clearing thresholds should be based on a longer term need to adjust them, rather than on a short-term response to market developments.

Conclusion: The Board agreed with the proposal to temporarily increase clearing thresholds for commodity derivatives from €3 billion to €4 billion via regulatory technical standards. The regulatory technical standards will be presented for adoption by written procedure.

14. Net Short Position Daily Reporting

1) Presentation Discussion

2) Note Decision

The Board discussed the note on net short position daily reporting, in particular the:

- Legal basis for the reinstatement of net short position daily reporting; and
- Data collection and the analysis which ESMA will be able to carry out on its basis.

Decision: The Board agreed with the proposal to reinstate net short position daily reporting once the infrastructure for automatic reporting is in place. Karen Dortea Abelskov (DK) and Claude Marx (LU) objected.

15. Benchmarks Network

1) Benchmarks Network Report

Information

Conclusion: The Board took note of the Benchmarks Network Report.

2) BMR Q&As

Decision

Decision: The Board adopted the BMR Q&As.

16. CRA Network



6) SFTR Q&A

1) CRA Network Report Information 2) CRA Network Terms of Reference Decision **Conclusion**: The item was removed from the agenda. **Corporate Reporting Standing Committee** 17. 1) CRSC Report Information Conclusion: The Board took note of the CRSC report. 2) 2021 Corporate reporting enforcement and regulatory Decision activities report Decision: The Board adopted the 2021 corporate reporting enforcement and regulatory activities report. 3) Q&As on application of the guidelines on alternative Decision performance measures to ESG measures Decision: The Board adopted the Q&As on the application of the guidelines on alternative performance measures to ESG measures. 18. **Data Standing Committee** 1) DSC Report Information **Conclusion**: The Board took note of the DSC report. 2) Final report on guidelines on the transfer of data between Decision Trade Repositories under EMIR and SFTR Decision: The Board adopted the final report on guidelines on the transfer of data between trade repositories under EMIR and SFTR. 3) Review of AIFMD Data Quality Engagement Framework Non-technical document Decision **Technical Document** Decision **Decision**: The Board approved the review of the AIFMD data quality engagement framework. 4) Review of MMFR Data Quality Engagement Framework Non-technical document Decision **Technical Document** Decision **Decision**: The Board approved the review of the MMFR data quality engagement framework. 5) MIFIR Q&A Decision **Decision**: The Board adopted the MiFIR Q&A.

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Decision



Decision: The Board adopted the SFTR Q&A.

19. Investment Management Standing Committee

1) IMSC Report Information

Conclusion: The Board took note of the IMSC report.

2) Report on the follow-up work in relation to the ESRB recommendation on liquidity risks (ESRB/2020/4)

Decision

Decision: The Board adopted the report on the follow-up work in relation to the ESRB recommendation on liquidity risks (ESRB/2020/4).

3) Note on the review of the AIFMD and ELTIF Regulation

Information

Conclusion: The Board took note of the note on the review of the AIFMD and ELTIF Regulation.

20. Investor Protection and Intermediaries Standing Committee

1) IPISC Report Information

Conclusion: The Board took note of the IPISC report.

2) Final report for guidelines on remuneration

Decision

Decision: The Board adopted the final report for guidelines on remuneration.

21. Market Integrity Standing Committee

1) MISC Report Information

2) Technical advice to the European Commission on the Short Selling Regulation review

Decision

The Board discussed the technical advice to the European Commission on the Short Selling Regulation review, in particular the:

- Calculation of net short positions and whether subscriptions rights and capital should be included in the formula; and
- Lessons learned from the COVID-19 crisis on the coordination of short selling bans.

Decision: The Board adopted the technical advice to the European Commission on the Short Selling Regulation review. The Market Integrity Standing Committee was invited to further consider the formula for the calculation of net short positions.

22. Post-Trading Standing Committee

1) PTSC Report Information

Conclusion: The Board took note of the PTSC report.

2) Final report on the amending regulatory technical standards on the suspension of the CSDR buy-in regime

Decision

Decision: The Board adopted the final report on the amending regulatory technical standards on the suspension of the CSDR buy-in regime.



23. Secondary Markets Standing Committee

1) SMSC Report Information

Conclusion: The Board took note of the SMSC Report.

2) RTS 1 and 2 review Decision

Decision: The Board adopted the RTS 1 and 2 review.

3) Postponement of the RTS 2 annual review Decision

Decision: The Board adopted the postponement of RTS annual review.

4) Updated opinion on waivers Decision

Decision: The Board adopted the updated opinion on waivers.

24. Update on delegations

1) Cover note Information

2) Annual update on the exercise of the delegation to the ESMA Information Chair in relation to secondary markets

Conclusion: The Board took note of the annual update on the exercise of the delegation to the ESMA Chair in relation to secondary markets.

3) Annual update on the exercise of the delegation to the ESMA Information Chair on the adoption of changes to technical instructions

Conclusion: The Board took note of the annual update on the exercise of the delegation to the ESMA Chair on the adoption of changes to technical instructions.

25. Regulatory technical standards on the management body of data reporting service providers

1) Cover note Information

2) Final report on regulatory technical standards on the Decision management body of data reporting service providers

Decision: The Board adopted the final report on regulatory technical standards on the management body of data reporting service providers.

26. Risk analysis

1) Cover note Information

2) Article on "Fund performance during market stress – The Corona experience" Decision

Decision: The Board adopted the article on "Fund performance during market stress – The Corona experience".



27. Follow-up report to the peer review on the guidelines on the enforcement of financial information

1) Cover note Information

2) Report Decision

Decision: The Board adopted the follow-up report to the peer review on the guidelines on the enforcement of financial information.

28. EMIR and SFTR data quality report 2021

1) Cover note Information

2) EMIR and SFTR data quality report 2021 Decision

Decision: The Board adopted the EMIR and SFTR data quality report 2021.

29. EMIR report on staffing and resources

1) Cover note Information

2) Report Decision

Decision: The EMIR report on staffing and resources was removed from the agenda.

30. Amendment to the Establishment Plan 2022

1) Note Information

Conclusion: The Board took note of the amendment to the establishment plan for 2022.

31. 2021 Accounts

1) Cover note Information

2) Presentation Information

3) Provisional 2021 Accounts Information

4) Report on budgetary and financial management Information

5) Representation Letter 2021 Provisional Accounts Information

6) Report from Baker Tilly Information

Conclusion: The Board took note of the 2021 provisional accounts and related documents.

32. Rules of Procedure on Mediation

1) Cover note Information

2) Revised rules of procedure on mediation Decision

3) Revised rules on procedure on mediation (track-changes) Information



Decision: The Board adopted the revised rules of procedure on mediation.

33. Appointment of SMSG Members

1) Note Decision

Decision: The Board appointed Ben Granjé to the consumer category and Stephan Balthasar to the financial market participant category of the SMSG. Their terms will commence immediately and last until 30 June 2024.

34. A.O.B.

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Participants list Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais – 22/03	Antoine van Cauwenberge (alternate) – 23/03
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Vojtěch Belling	
Denmark	Karen Dortea Abelskov	
Germany	Thorsten Pötzsch	
Estonia	Andre Nõmm	
Ireland	Derville Rowland – 23/03	Patricia Dunne (alternate) – 22/03
Greece	Vassiliki Lazarakou	
Spain	Rodrigo Buenaventura	
France	Robert Ophèle	Benoit de Juvigny (alternate)
Croatia	Ante Žigman	
Italy	Carlo Comporti (alternate)	
Cyprus	George Theocharides	
Latvia	Girts Ruda (alternate)	



Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Claude Marx	
Hungary	Gergő Szeniczey	
Malta	Christopher Buttigieg	
Netherlands	Jos Heuvelman (alternate)	
Austria	Eduard Müller	
Poland	Rafał Mikusiński	
Portugal	Tiago Matias (alternate)	
Romania	Gabriel Gradinescu	
Slovenia	Anka Čadež	
Slovakia	Peter Tkáč – 22/03	Tomáš Ambra (alternate) – 23/03
Finland	Anneli Tuominen	
Sweden	Erik Thedeen	
ESMA Chair	Verena Ross	

Non-voting members

European Commission	Ugo Bassi	
ЕВА	Anne Tiedemann (alternate) – 23/03	Philippe Allard (alternate) – 22/03



EIOPA	Kai Kosik (alternate)	
ESRB	Francesco Mazzaferro	
Iceland	Páll Friðriksson	
Liechtenstein	Marcel Lötscher	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marianne Arvei Moen (alternate)	

ESMA

Executive Director	Natasha Cazenave
Summary of Conclusions	Frederiek Vermeulen
	Laura Weil
Chair of the CCP Supervisory Committee	Klaus Löber
Chair of the Commodity Derivatives Task Force	Robert Ophèle
Chair of the Investor Protection and Intermediaries Standing Committee	Rodrigo Buenaventura
Independent Member of the CCP Supervisory Committee	Nicoletta Giusto
Head of the Markets and Data Reporting Department	Fabrizio Planta
Head of the Ratings, Indices and Securitisation Department	Iliana Lani



Head of the Risk Analysis and Economics Department	Steffen Kern
Senior Economist	Antoine Bouveret

European Court of Auditors (item 9)

Member of the European Court of Auditors	Rimantas Šadžius
Auditor, European Court of Auditors	Eddy Struyvelt
Attache, Cabinet of Mr Sadzius, European Court of Auditors	Matthias Blaas

UK Financial Conduct Authority (item 10)

CEO	Nikhil Rathi
Director of Markets and Wholesale Policy	Edwin Schooling Latter
Head Of International Department	Zertasha Malik

Done at Paris on 20 June 2022

Verena Ross

Chair

For the Board of Supervisors



ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 11 to 21 March 2022)

1. Updated supervisory statement on the application of SFDR

18 March 2022

1) Updated statement

Decision

Decision: The Board adopted the updated joint supervisory statement on the application of SFDR.

2. Summary of Conclusions – 10 February 2022 Board of Supervisors

21 March 2022

1) Summary of conclusions

Decision

Decision: The Board adopted the summary of conclusions of the 10 February 2022 Board of Supervisors.

3. Summary of Conclusions – 25 February 2022 Board of Supervisors

21 March 2022

1) Summary of conclusions

Decision

Decision: The Board adopted the summary of conclusions of the 25 February 2022 Board of Supervisors.