

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** Tuesday 20 and Wednesday 21 September 2022  
**Time:** 14h00 – 18h00 (Tuesday) and 09h00 – 13h00 (Wednesday)  
**Location:** ESMA, rue de Bercy 201-203, 75012 Paris  
**Contact:** [ESMABoard@esma.europa.eu](mailto:ESMABoard@esma.europa.eu)

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**1. Adoption of agenda** Decision

**Decision:** The agenda was adopted.

**2. Confirmation of absence of conflict of interests** Decision

**Decision:** The Board endorsed the ESMA 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** Discussion

The ESMA Chair reported on:

- Recent interactions with the European Commission in the context of the ongoing developments in energy derivatives markets;
- Recent interactions with Members of the European Parliament (MEPs), in particular to discuss the EU strategy for retail investors, the implementation of DORA and MiCA, ESMA's work in the area of sustainable finance, and the MiFIR and EMIR targeted reviews, as well as the presentation of the CCP Supervisory Committee's achievements over the past year to the European Parliament's Committee on Economic and Monetary Affairs (ECON);
- The activities of the European Systemic Risk Board (ESRB), in particular the upcoming ESRB warning on vulnerabilities in the EU financial system and the 2022 MMF stress test scenario;
- The activities of the Joint Committee, in particular the setting up on the Joint Committee's Subcommittee on Digital Operational Resilience, the forthcoming mandates of the European Supervisory Authorities (ESAs)' one-off system-wide climate stress test, as mandated by the European Commission, as well as the upcoming ESAs' annual Joint Consumer Protection Day;
- ESMA's international activities, in particular ESMA's ongoing equivalence monitoring work and 2022 equivalence monitoring report, the UK's new Overseas Funds Regime, and the recent submission to IOSCO of ESMA's application to join the IOSCO MMoU;
- The September 2022 Management Board, in particular the discussion that took place on the peer review on NCAs' handling of relocation to EU27 in the context of the UK's withdrawal from the EU,

the impact of the ESMA Strategy for 2023 to 2028 on the structure of ESMA Groups, and the adoption of new HR rules in line with the European Commission's implementing rules on working time and hybrid working;

- The activities of the Securities and Markets Stakeholder Group (SMSG), in particular the re-election of the SMSG Chair and Vice-Chairs and the establishment of a working group for the issuance of an SMSG advice on MiFID II Product Governance Guidelines; and
- Erik Thedéen's upcoming departure from the Board of Supervisors and the election for his replacement as ESMA Vice-Chair planned for the November Board of Supervisors meeting.

The Executive Director reported on the July and September 2022 Financial Services Committee meetings, in particular the discussions on current developments in commodity derivatives markets and the presentation of ESMA's work on investor protection in the context of crypto-asset markets.

#### 4. Update on market developments

Discussion

The Chair of the CCP Supervisory Committee and the Head of the Trading Unit presented the update on market developments and on corresponding policy options that can be considered, namely in light of the [letter received from the European Commission on 13 September 2022](#).

The European Commission representative and the representative of the European Banking Authority provided updates.

The Board discussed the presentations, in particular:

- ESMA's role in responding to the ongoing developments in energy and energy derivatives markets;
- The use of volatility-reducing measures such as circuit breakers in energy derivatives markets, and the interactions between spot and secondary markets in that context;
- Potential regulatory changes to eligible collateral and how to avoid transferring risks from the energy to the financial markets;
- The appropriate level of clearing thresholds and the importance of strengthened supervision of non-financial counterparties; and
- The importance of information-sharing in the context of heightened risks of market abuse.

**Conclusion:** The Board discussed the recent developments in energy and energy derivatives markets, as well as the letter received from the European Commission in that context. The Board agreed that ESMA staff will draft a response to the letter accordingly and submit it for fatal flaw review shortly after the meeting for submission to the European Commission on 22 September.

#### 5. ESMA Strategy

##### 1) ESMA Strategy 2023-2028

- Presentation

Discussion

- ESMA Strategy 2023-2028

Decision

The ESMA Chair presented the ESMA Strategy 2023-2028.

The Board discussed the ESMA Strategy 2023-2028, in particular:

- ESMA's data-related work; and
- Investment thresholds in the area of sustainable finance.

**Decision:** The Board adopted the ESMA Strategy 2023-2028. It will be published on ESMA's website mid-October.

##### 2) Impact on structure of ESMA Groups

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|---------------------------|-------------|
| ○ Presentation            | Discussion  |
| ○ Note                    | Discussion  |
| ○ Overview of ESMA Groups | Information |

The Executive Director presented the note on the impact of the ESMA Strategy 2023-208 on the structure of ESMA Groups.

The Board discussed the note, in particular the:

- Importance of ensuring the ESMA Group structure is designed as an effective tool to implement the upcoming Strategy and to quickly capture any new topics that arise, and of it ensuring effective coordination and collaboration with national competent authorities;
- Extent to which the current structure should be changed;
- Use of a mix of horizontal (transversal) and vertical (sectoral) groups;
- Seniority of national competent authorities' representation at ESMA Groups; and
- Implications of current market developments on certain groups' workload.

**Conclusion:** The Board discussed the impact of the ESMA Strategy 2023-2028 on the structure of ESMA Groups. A proposal will be brought back to the November 2022 Board of Supervisors meeting for further discussion.

### 3) CCP Strategic Objectives 2023-2025

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|--------------------------------------|------------|
| ○ Presentation                       | Discussion |
| ○ CCP Strategic Objectives 2023-2025 | Discussion |

The Chair of the CCP Supervisory Committee presented the CCP Strategic Objectives 2023-2025.

**Conclusion:** The Board endorsed the CCP Strategic Objectives 2023-2025.

## 6. 2022 Supervisory Convergence Heatmap

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|------------------------|------------|
| 1) Presentation        | Discussion |
| 2) 2022 Heatmap Report | Decision   |

The Chair of the Senior Supervisors' Forum presented the 2022 Supervisory Convergence Heatmap.

The Board discussed the Heatmap, in particular the:

- Heightening risks stemming from the developments in commodity derivative market;.
- Classification of leverage and of payment for order flow (PFOF) related risks in the heatmap; and
- Methodology of the heatmap, in particular the possibility of seeking input from stakeholders and incorporating a more quantitative approach in the 2023 exercise, and whether the methodology is sufficiently incremental to avoid all risks being indefinitely classified as high.

**Decision:** The Board adopted the 2022 Supervisory Convergence Heatmap Report subject to amendments to raise the classification of the risk related to leverage and to give more prominence to the recent developments in energy markets.

## 7. Union Strategic Supervisory Priorities

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|---|------------|
| 1) Presentation                           | Discussion |
| 2) Union Strategic Supervisory Priorities | Discussion |

The Chair of the Senior Supervisors' Forum presented the Union Strategic Supervisory Priorities (USSPs).

The Board discussed the Union Supervisory Strategic Priorities, in particular the:

- Appropriate exit communication strategy for the USSP on costs and performance as well as phase-out and refocus of the USSP on data quality; and
- Timing and management of the new USSP on ESG in an evolving environment that would need follow a progressive approach.

**Decision:** The Board adopted the Union Strategic Supervisory Priorities.

## 8. Guidelines on suitability (sustainability)

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|-----------------|------------|
| 1) Presentation | Discussion |
| 2) Final report | Decision   |

The Chair of the Investor Protection and Intermediaries Standing Committee presented the final report on the review of MIFID II guidelines on suitability (sustainability).

The Board discussed the Guidelines, in particular the:

- Significant complexity of the legal framework in this area and the corresponding intensified need for financial education and to allow for flexibility in the application of the framework, where possible;
- Importance of alignment with EIOPA's corresponding guidance;
- Use of a portfolio approach; and
- Date of application of the guidelines.

**Decision:** The Board adopted the final report on the review of MIFID II guidelines on suitability (sustainability). These guidelines will apply six months after the publication of their translation.

## 9. Crypto-assets

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|---|------------|
| 1) Presentation   | Discussion |
| 2) Article on "Crypto assets and their risks for financial stability" | Discussion |

The Head of the Innovation, Products and Technology Unit presented the article on "crypto assets and their risks for financial stability" and of the forthcoming ESMA tasks under the Markets in Crypto-Assets Regulation (MiCA).

The Board discussed the article, in particular the:

- Investor protection risks posed by the growing asset class that is crypto-assets, particularly given the novel transmission channels for advice (namely social media) and speculative nature of typical investments;
- Corresponding importance of using all possible tools in the national competent authorities' toolkit to mitigate these risks as much as possible;
- Transmissibility of risks from crypto-asset markets to traditional financial markets; and
- Importance of highlighting the areas that remain outside the scope of MiCA, including decentralised finance, as well as the resulting risks and likelihood of risks shifting towards those areas.

**Decision:** The Board adopted the article subject to amendments to be made on the basis of the discussion to further emphasize and clarify certain concepts and risks, to raise awareness on the caution with which to consider certain figures and to clarify that further regulatory action may become relevant

as such markets evolve. The thus amended article will be sent to the Board for information before its publication. The Board also took note of the presentation of the forthcoming ESMA tasks under MiCA.

#### 10. A.O.B.

The Executive Director presented the Fit-for-Strategy project, a plan for the alignment of the ESMA organisation to the 2023-2028 Strategy.

The Board discussed the Fit-For-Strategy project, in particular the plans to create a new Data and IT Department.

**Conclusion:** The Board discussed the Fit-for-Strategy project.

#### 11. Advisory Committee on Proportionality

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|---------------|-------------|
| 1) ACP report | Information |
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**Conclusion:** The Board took note of the ACP report.

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| 2) ACP work programme | Decision |
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**Decision:** The Board adopted the ACP work programme.

#### 12. CCP Policy Committee

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

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|---|----------|
| 2) Consultation paper on regulatory standards on CCP reorganisation plans | Decision |
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**Decision:** The Board adopted the consultation paper on regulatory standards on CCP reorganisation plans.

#### 13. Commodity Derivatives Task Force

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

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| 2) Q&As on commodity derivatives topics | Decision |
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**Decision:** The Board adopted the Q&As on commodity derivatives topics.

#### 14. Investor Protection and Intermediaries Standing Committee

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

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| 2) Public statement on the impact of inflation on retail investors | Decision |
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**Decision:** The Board adopted the public statement on the impact of inflation on retail investors.

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| 3) Q&As on crowdfunding | Decision |
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**Decision:** The Board adopted the Q&As on crowdfunding.

#### 15. 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) MAR Q&A on interactions with the Transparency directive | Decision |
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**Decision:** The Board adopted the MAR Q&A on interactions with the Transparency directive.

#### 16. 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) Report on EMIR clearing thresholds | Decision |
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**Decision:** The Board adopted the report on EMIR clearing thresholds.

#### 17. 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) Consultation paper on guidance on market outages | Decision |
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**Decision:** The Board adopted the consultation paper on guidance on market outages.

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| 3) Q&As on market structure issues | Decision |
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**Decision:** The Board adopted the Q&As on market structure issues.

#### 18. Report on the DLT Pilot Regime

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|---------------|-------------|
| 1) Cover note | Information |
| 2) Report     | Decision    |

**Decision:** The Board adopted the report on the DLT Pilot Regime.

#### 19. 2023 Annual Work Programme

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| 1) Cover note  | Information |
| 2) 2023 Annual Work Programme  | Decision    |
| 3) Opinion of the European Commission on ESMA's 2023-2025 Programming Document | Information |

**Decision:** The Board adopted the 2023 Annual Work Programme and took note of the European Commission's Opinion on ESMA's 2023-2025 Programming Document.

#### 20. Impact of inflation on ESMA's budget

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| 1) Note  | Decision |
| 2) National competent authorities' 2023 contribution | Decision |

The Executive Director presented the note on the impact of inflation on ESMA's budget.

The Board discussed the impact of inflation on ESMA's budget, in particular the:

- EU Staff Regulations' implications in the inflationary context and EU staff salary inflation indexation which will impact ESMA's budget in coming years;
- Expense reductions required from ESMA in 2023, given the expected rise in costs, especially for personnel, IT contracts and building related costs; and
- Financial rules governing ESMA's budget, including the interdependency between an increase in income from the EU subsidy and from national competent authority contributions.

**Decision:** The Board endorsed the proposal that ESMA absorb inflation in its budget for 2022 through savings only. The Board also reluctantly accepted the approach that the inflation-driven increase in costs be dealt with through both savings and the proposed income increases in 2023, as well as ESMA's proposed approach for 2024. The topic will be brought back to the November Board of Supervisors meeting for further discussion in the context of the 2023/2024 budget planning. ESMA staff will also convey to the European Commission the challenges arising from the EU Staff Regulations' implications in the inflationary context and its impact on NCAs' contributions to ESMA's funding.

## Participants list

### Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Karel Juras (alternate)	
Denmark	Henrik Brarup Damgaard (alternate)	
Germany	Thorsten Pötzsch	Jens Fürhoff Jan-Ole Wagner
Estonia	Stina Mander (alternate)	
Ireland	Patricia Dunne (alternate)	Cormac Staunton Laura Murtagh
Greece	Vasiliki Lazarakou	Vasiliki Koularmani
Spain	Rodrigo Buenaventura	Antonio Mas
France	Benoit de Juvigny (alternate)	Francoise Buisson Martin Chudej
Croatia	Ante Žigman	
Italy	Carlo Comporti (alternate)	Martina Tambucci



Cyprus	George Karatzias (alternate)	
Latvia	Santa Purgaile	
Lithuania	Vaidas Cibas	
Luxembourg	Claude Marx	Francoise Kauthen
Hungary	Krisztián Csáky (alternate)	
Malta	Christopher Butigieg	
Netherlands	Jos Heuvelman	Quirine Hoogeveen Pim de Wild
Austria	Eduard Müller	Andrea Kuras-Goldman
Poland	Rafal Mikusiński	Dominika Szymanska
Portugal	Jose Miguel Almeida	Tiago dos Santos Matias
Romania	Ovidiu Petru (alternate)	
Slovenia	Anka Čadež	
Slovakia	Peter Tkáč	Tomáš Ambra (alternate)
Finland	Armi Taipale	
Sweden	Erik Thedéen	
Chair	Verena Ross	

### Non-voting members

European Commission	Ugo Bassi	
EBA	Anne Tiedemann (alternate)	
EIOPA	Kai Kosik (alternate)	
ESRB	Francesco Mazzaferro	
Iceland	Páll Friðriksson (alternate)	
Liechtenstein	Reto Degen (alternate)	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marianne Moen (alternate)	

### ESMA

Executive Director	Natasha Cazenave
Summary of Conclusions	Jakub Michalik Laura Weil
Chair of the CCP Supervisory Committee	Klaus Löber
Chair of the Senior Supervisors' Forum	Jos Heuvelman
Chair of the Investor Protection and Intermediaries Standing Committee	Rodrigo Buenaventura
Acting Head of the Governance and External Affairs Department	Jakub Michalik

Head of the Innovation, Products and Technology Unit	Claudia Guagliano
Head of the Trading Unit	Carsten Ostermann

Done at Paris on 3 November 2022

Verena Ross

Chair

For the Board of Supervisors



## **ANNEX:**

### **OUTCOME OF WRITTEN PROCEDURES**

#### **Written Procedures (outcomes from 8 to 19 September 2022)**

##### **1. Joint Committee 2023 Work Programme**

12 September 2022

###### 1) JC work programme

**Decision:** The Board adopted the Joint Committee (JC) 2023 Work Programme.