

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** 24 and 25 September 2015  
**Time:** 11h30 – 19h15 (24/9) and 09h00 – 11h00 (25/9)  
**Location:** ESMA, 103, rue de Grenelle, 75007 Paris  
**Contact:** [frederiek.vermeulen@esma.europa.eu](mailto:frederiek.vermeulen@esma.europa.eu) Tel: +33 1 58 36 43 37

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Thursday 24 September 2015 (11h30 – 19h15)

**1. Adoption of agenda** BS/167re Decision  
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**Decision:** The agenda was adopted.

**2. Summary of Conclusions**

– 24 June 2015 meeting BS/140 Decision

**Decision:** The summary of conclusions of the 24 June 2015 meeting was adopted.

– 9 July 2015 meeting BS/139 Decision

**Decision:** The summary of conclusions of the 9 July 2015 meeting was adopted.

– 31 August 2015 meeting BS/168 Decision

**Decision:** The summary of conclusions of the 31 August 2015 meeting was adopted.

**3. Report by Chair and Executive Director** Oral Information

The Chair informed the meeting that during its confidential meeting the Board appointed the chairs of the following standing committees starting 1 October 2015:

Committee for Economic and Markets Analysis	Misu Negritoiu (RO)
Investor Protection and Intermediaries Standing	David Lawton (UK)

Committee	
Commodity Derivatives Task Force	Edwin Spooner Latter (UK)

The Chair reported on:

- The annual hearing of the ESAs’ Chairs at the European Parliament ECON Committee that took place on 14 September 2015 and the ad hoc hearing on the MiFID 2 related Technical Standards organised by the European Parliament;
- The fact that ESMA documents had been leaked to some market participants granting asymmetrical access to information and in particular to the European Parliament to whom ESMA is accountable. As a result of which the Parliament is requesting access to all documents going to ESMA’s Board of Supervisors;
- The September 2015 meeting of the Management Board and in particular on the approval of the 2016 work programme;
- The fact that Martin Wheatley has stepped down as Chief Executive of the UK Financial Conduct Authority (FCA), and thus also as a member of ESMA’s Management Board, and that his mandate would have ended December 2015, together with the mandates of Klaus Kumpfmüller and Konstantinos Botopoulos. The Board of Supervisors will elect three Management Board Members during its November 2015 meeting;
- The activities of the Joint Committee including the joint regulatory mandates under PRIIPs and the progress in negotiations with the EEA-EFTA States;
- The September 2015 meeting of the Economic and Financial Committee (Financial Stability) meeting and in particular on the Joint Committee Risk Analysis;
- The activities of the European Systemic Risk Board (ESRB) and in particular the work it carried out on CCP recovery and resolution;
- The judgment of the General Court of the European Union that the Board of Appeal is not competent to review an ESA decision not to investigate, on its own initiative, an alleged Breach of Union law; and
- Concerns that the definition of shadow banking put forward by the European Banking Authority (EBA) might be too wide as it includes all funds but UCITS non-Money Market Funds.

The Executive Director reported on:

- The September 2015 meeting of the Financial Services Committee (FSC) and in particular the discussion that took place on the involvement of the Council of the European Union in the development of Technical Standards by the European Supervisory Authorities (ESAs);
- The Financial Markets Regulatory Dialogue with US authorities organised by the European Commission;
- ESMA’s supervisory activities and in particular the upcoming CRA registration decisions and the work carried out to enhance trade repositories’ data quality.

The Board discussed the work carried out by the EBA in relation to shadow banking.

**Conclusion:** The Board agreed with the suggestion from the Chair to extend the mandate of the Chair of the Joint Committee Sub-Committee for Consumer Protection and Financial Innovation, Anneli Tuominen, until March 2016 in light of the key role the Committee plays in executing the PRIIPs related work entrusted to the ESA. Regarding, the EBA work on shadow banking it was agreed that ESMA should send a letter to the EBA setting out its concerns.

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

- Report by Jean-Paul Servais BS/169 Information

Jean Paul Servais presented the report and the accompanying documents. He highlighted the work the Committee is carrying out in relation to the MiFID II Guidelines on complex debt instruments and structured deposits.

**Conclusion:** The Board supported the work ESMA is doing in liaison with the EBA on complex instruments and structured deposits and highlighted the need for investors to have clarity on the characteristics of the instruments.

- Final Report on MiFID II Regulatory Technical Standards (Best Execution) Annexes 1-2 Decision

**Decision:** The Board adopted the Final Report on MiFID II Regulatory Technical Standards on Best Execution.

- EBA Report on Investment Firms Annex 3 Information

**Conclusion:** The Board took note of the high level note.

#### 5. Secondary Markets Standing Committee, Market Data Reporting Working Group and Commodities Derivatives Task Force

- Joint report BS/170 Information

**Conclusion:** David Lawton presented the Report and the accompanying documents. He reminded Board members of the legal review process agreed between the ESAs and the European Commission and the input received since the Board endorsed the policy aspects of the Technical Standards during its June 2015 meeting.

- Final Report on MiFID II Regulatory Technical Standards Annexes 1-3 Decision

The Board discussed the Final Report, in particular:

- The legal review carried out by the Legal Services of the European Commission;
- Package transactions (i.e. transaction comprising several inextricably-linked, contingent components allowing clients or investment firms to reduce transaction costs and manage execution risks);
- The transparency regime for bonds under MiFID 2 and in particular the accuracy of the data collected under the so-called Instruments-by-Instruments-Approach (IBIA) and the Class-of-Financial-Instruments-Approach (COFIA);
- The test determining whether MiFID activity is ancillary to the main business; and
- The use of pre- or post-trade large in scale threshold to exclude bigger transactions.

The European Commission representative stated that the Commission would favour the IBIA approach for the transparency regime for bonds under MiFID 2 and stated, by highlighting package transactions,

that it is important that ESMA should not go beyond the requirement set out in the Regulation.

**Decision:**

- Concerning package transactions, the Board decided to exclude package-specific provisions for pre-trade transparency but to recommend to the European Commission to introduce a change to the Level 1 text so that package orders may be eligible to be waived from pre-trade transparency;
- The Board endorsed the suggested way forward in relation to (i) the test to determine whether MiFID activity is ancillary to the main business and (ii) the exclusion of activities conducted by authorised entities in the group from the ancillary activity test.

The Board adopted the Final Report and the proposed Regulatory Technical Standards (RTS).

RTS 1 and 11 were adopted with the proposed IBIA-approach following a specific vote:

	Approval	Objection	Abstain
Jean-Paul Servais (BE)	X		
Vladimir Savov (BG)	X		
Pavel Hollmann (CZ)	X		
Birgitte Sogaard Holm (DK)		X	
Elisabeth Roegele (DE)	X		
Andre Nõmm (EE)	X		
Cyril Roux (IE)	X		
Konstantinos Botopoulos (EL)		X	
Lourdes Centeno (ES)		X	
G�rard Rameix (FR)	X		
Silvana Bozic (HR)	X		
Krisztian Csaky (HU)	X		
Giuseppe Vegas (IT)		X	
Demetra Kalogirou (CY)	X		
Sandis Andersmits (LV)	X		
Vilius Sapoka (LT)	X		

Jean Guill (LU)	X		
Christopher Buttigieg (MT)	X		
Merel van Vroonhoven (NL)	X		
Erich Schaffer (AT)	X		
Marek Szuszkiewicz (PL)	X		
Carlos Tavares (PT)		X	
Mircea Ursache (RO)	X		
Ivan Barri (SK)	X		
Sabina Bester (SI)	X		
Anneli Tuominen (FI)	X		
Sophie Degenne (SE)	X		
David Lawton (UK)	X		

In addition, the Board decided that ESMA should evaluate together with the European Commission the early legal review and report back to the Board of Supervisors.

- MAR Regulatory Technical Standards (reference data) Annex 4 Decision

**Decision:** The Board adopted the MAR Regulatory Technical Standards (related to reference data).

- MiFID/MiFIR Implementation Annex 5 Discussion

The Board discussed the implementation of MiFID/MiFIR, in particular:

- The implementation time needed for the real applicability of certain MiFID provisions; and
- Whether and, if so, how the (Services of the) European Commission, the European Parliament and the Council of the European Union should be informed.

**Conclusion:** The Board considered that the implementation of MiFID 2 by its effective date could be challenging both for market participants and the regulatory community. The Board asked ESMA staff to examine those issues further and discuss them with the European Commission Services.

## 6. Market Data Reporting Working Group

- Report by David Lawton BS/171 Information

David Lawton presented the Report highlighting the impact of the work for the data reporting regime starting on 1 January 2017.

- EMIR reporting: Review of Technical Standards under Article 9 – Annexes Discussion  
Final report 1-3

**Decision:** The Board endorsed the policy aspects of the Technical Standards under Article 9 and will approve the Technical Standards after the legal review by the European Commission.

- EMIR Q&As Annex 4 Decision

**Decision:** The Board adopted the EMIR Q&As.

## 7. Market Integrity Standing Committee

- Report by Konstantinos Botopoulos BS/172 Information

**Conclusion:** Konstantinos Botopoulos presented the Report.

- Final Report on MAR Technical Standards Annex 1a Decision
- Cost analysis for MAR report Annex 1b Information

The European Commission representative expressed his disagreement with the proposed approach whereby emission allowance market participants are subject to disclosure obligations qualitatively equivalent to the ones that apply to issuers of financial instruments. An approach he considered to be not in line with Recital 51 of MAR. The representative also stated that in his opinion only the market soundings involving the disclosure of inside information should be recorded.

**Decision:** The Board adopted the Final Report on MAR Technical Standards. Carlos Tavares (PT) disagreed with the method of calculating the positions of the producer of the recommendation in the share capital of issuers to which the communication refers.

## 8. Post-Trading Standing Committee

- Report by Giuseppe Vegas BS/173 Information

**Conclusion:** Giuseppe Vegas presented the Report.

- Final Report on CSDR Technical Standards Annex 1 Decision  
Parts 1, 2  
3
- The Board discussed the Final Report, in particular the suspension of securities issued for settlement in case of severe reconciliation problems.

**Decision:** The Board adopted the Final Report deleting the reference to potential action from the European Commission in relation to extraterritoriality but noting that further work might be needed from ESMA in relation to the suspension of securities issued for settlement in case of severe reconciliation problems.

- Final Report on RTS on the Clearing Obligation on Other EEA currencies

Annex 2 Decision

The Board discussed the Final Report, in particular:

- The potential systemic risk in the jurisdictions where the considered currencies are the principal currency;
- The feedback received from market participants; and
- Whether there is a need for further analysis and data.

**Decision:** The Board rejected the Final Report on RTS on the Clearing Obligation on other EEA currencies and requested the PTSC to consider a way forward based on another set of currencies.

	Approval	Objection	Abstain
Jean-Paul Servais (BE)	X		
Vladimir Savov (BG)	X		
Pavel Hollmann (CZ)		X	
Elisabeth Roegele (DE)		X	
Birgitte Sogaard Holm (DK)		X	
Andre Nõmm (EE)			X
Cyril Roux (IE)			X
Konstantinos Botopoulos (EL)		X	
Lourdes Centeno (ES)	X		
G�rard Rameix (FR)	X		
Silvana Bozic (HR)	X		
Krisztian Csaky (HU)		X	
Giuseppe Vegas (IT)	X		
Demetra Kalogirou (CY)			X
Sandis Andersmits (LV)			X
Vilius Sapoka (LT)	X		
Jean Guill (LU)	X		

Christopher Buttigieg (MT)	X		
Merel van Vroonhoven (NL)			X
Erich Schaffer (AT)	X		
Marek Szuszkiewicz (PL)	X		
Carlos Tavares (PT)	X		
Mircea Ursache (RO)	X		
Ivan Barri (SK)		X	
Sabina Bester (SI)			X
Anneli Tuominen (FI)			X
Sophie Degenne (SE)	X		
David Lawton (UK)	X		

- Final Report on RTS on the Clearing Obligation on CDS Annex 3 Decision

The Board discussed the Final Report, in particular:

- The length of the phase-in period;
- Whether the effective date should be delayed considering the fact that contrary to what was expected earlier, only one CCP has been authorised to clear CDS.

**Decision:** The Board adopted the Final Report on RTS on the Clearing Obligation on CDS modifying the application date for frontloading.

- Mandate on CCP Peer Review Annex 4 Decision

**Decision:** The Board adopted the Mandate on CCP Peer Review.

- Joint Nordic FSAs letter on Bank Guarantees Annex 5 Discussion

The Board discussed the letter it received from the Financial Supervisory Authorities from the Nordic countries proposing to amend the CCP Technical Standards to provide another three years of exemption from the obligation to collateralised bank guarantees.

The Board discussed the letter, in particular:

- The (potential) risk posed to CCPs and financial markets;
- The non-compliance with the CPMI-IOSCO requirements; and
- The use of the already agreed exemption period.



**Conclusion:** The Board decided that a note should be prepared for consideration during the next meeting of the Board of Supervisors. The note should set out the impact for both the cases where the Board would decide to extend and not to extend the exemption period. This note should be accompanied with a potential draft consultation paper in case the Board decides to consult on the extension of the exemption period in the Technical Standard.

## 9. IT Delegated Projects

—	Cover Note	BS/174	Decision
—	Delegation Agreement	BS/175	Information
—	Annexes to the Delegation Agreement	Annexes 1-8	Decision
—	Amendment to the Delegation Agreement – Option A	BS/176	Decision
—	Amendment to the Delegation Agreement – Option B	BS/177	Decision

The Executive Director introduced the revised Delegation Agreement by reminding Board members of the history of the project and the current budget and planning state.

The Board discussed the revised Delegation Agreement, in particular:

- Whether the scope of the project should be extended as suggested by some national competent authorities; and
- The impact of such scope extension on the budget and planned delivery.

The Executive Director stated that ESMA should now focus on executing the project with the scope agreed after lengthy discussions. At a later stage, particularly once the relevant Technical Standards will be endorsed by the European Commission, ESMA staff should bring forward for consideration to the Delegated Project Board potential options for limited change requests.

The Head of Markets Division stated that the data quality assessments set out in Article 5 of the Draft regulatory technical standards 23 has not been delegated to ESMA and will need to be done by national competent authorities in line with the relevant Technical Standards.

**Decision:** It was decided that the Board should be provided with five working days to provide further comment on the amendments to the Delegation Agreement following which the Delegation Agreement will be approved by written procedure.

## 10. Investment Management Standing Committee

—	Report by Gareth Murphy	BS/178	Discussion
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Gareth Murphy presented the Report and accompanying documents. He particularly updated the Board on the analysis carried out by ESMA staff on closet indexing and the related discussions within IMSC.

**Conclusion:** The Board expressed its support for the work done in relation to closet indexing.

- Report on thematic study on authorisation of UCITS management companies      Annex 1      Discussion

**Conclusion:** The Board welcomed the initiative in light of ESMA's decision to step up its work related to promoting supervisory convergence and took note of the Report on the thematic study on authorisation of UCITS management companies.

- AIFMD Q&A      Annex 2      Decision

The Board discussed the proposed Q&A and in particular whether further market consultation would be needed.

**Decision:** The Board adopted the AIFMD Q&A.

Friday 25 September 2015

## 11. ESMA Organisation

- 2016 work programme      BS/179 & Decision Annexes

The Executive Director presented the draft 2016 work programme including the negative priorities which might need to be implemented due to budget constraints. She informed the Board that the Management Board approved the 2016 work programme subject to some minor drafting changes. Whether ESMA will be able to execute the presented 2016 work programme will depend on the EU subsidy which was still under discussions by the EU budget authority.

**Decision:** The Board adopted the 2016 work programme subject to some minor drafting changes.

- Follow-Up Away Day (Supervisory Convergence)      BS/180      Discussion

The Chair introduced the discussion on how ESMA could improve its work in the area of supervisory convergence.

The Board discussed the Report, in particular:

- The importance of promoting supervisory convergence within the context of the European Commission's initiative establishing a Capital Markets Union (CMU);
- The need for a comprehensive but concise (multi-)annual supervisory convergence work programme covering all ESMA's related activities and how such a work programme should be developed;
- The involvement of the Board of Supervisors and standing committees in the development of a work programme;
- Whether the Review Panel should be rebranded as Supervisory Convergence Standing Committee, its role and membership;
- The importance of providing training to national competent authorities to create a common supervisory convergence culture; and
- The need to further target peer reviews and to consider which areas could particularly contribute to enhancing retail investor protection.

**Conclusion:** The Board highlighted that promoting supervisory convergence is an objective to which both standing committees and the Review Panel should contribute. The latter should be rebranded as Supervisory Convergence Standing Committee building further on the wide mandate of the Review Panel. ESMA staff will develop draft terms of reference for the Committee and a first annual supervisory work programme for discussion during the November 2015 meeting of the Board of Supervisors.

- Memorandum of Understanding with the European Central Bank (ECB) BS/181 Discussion

The Executive Director updated the Board on the ongoing discussion with the European Central Bank on concluding a Memorandum of Understanding (MoU) between ESMA and the ECB.

The Board discussed the Note, in particular:

- The need to consider the principle of separation when defining the scope of the cooperation between ESMA and the ECB;
- Whether the cooperation should be extended to share data beyond those required under existing laws or regulations; and
- The need for memoranda of understanding between national authorities and the ECB to facilitate the exchange of supervisory information.

A Board member raised the difficulties encountered by national competent authorities in ensuring correct information to the market in connection with the Supervisory Review and Evaluation Process (SREP) exercise carried out by the European Central Bank (ECB) under the Single Supervisory Mechanism (SSM).

**Conclusion:** It was reiterated that ESMA cannot share data which is not the property of the organisation. The Board noted that there is no clear separation between the ECB and SSM. It also underlined the importance getting the T2S agreement signed.

In relation to the difficulties encountered as part of the SREP, it was decided that the Market Integrity Standing Committee (MISC) should look further into the issue, including the possibility of publishing a Q&A on the public disclosure of Pillar II requirements.

## 12. Review Panel

- Report by Jean Guill BS/182 Information

Jean Guill presented the report and the accompanying documents.

- Follow-up on Peer Review on Market Abuse Directive Annex 1 Decision

The Board took note of the legal changes introduced by the Parliament of the Republic of Poland since the Follow-up on Peer Review on Market Abuse Directive.

**Decision:** The Board adopted the Follow-up on Peer Review on Market Abuse Directive supervisory practices.

## 13. Credit Rating Agencies

- Report by Verena Ross BS/183 Information

Verena Ross presented the Report and accompanying documents.

- Technical Advice on Competition Choice and Conflicts of Interest Annex 1 Decision

**Decision:** The Board adopted the Advice on Competition Choice and Conflicts of Interest.

- Technical Advice on Reducing Sole and Mechanistic Reliance on external credit ratings Annex 2 Decision

**Decision:** The Board adopted the Technical Advice on Reducing Sole and Mechanistic Reliance on external credit ratings.

- Report on the Possibility of a Mapping of Ratings of the ERP Annex 3 Decision

**Decision:** The Board adopted the Report on the Possibility of a Mapping of Ratings of the ERP.

#### 14. Corporate Reporting Standing Committee

- Report by Hannelore Lausch BS/184 Information

Hannelore Lausch presented the Report and the accompanying documents.

- Final Report on European Electronic Access Point (EEAP) Regulatory Technical Standards Annex 1 Decision

The Board discussed the Final Report on the EEAP RTSs.

The European Commission representative expressed concerns on ESMA's decision to delay the implementation of the related IT projects. The Executive Director reminded that decision had been driven by budget constraints.

**Decision:** The Board adopted the Final Report on EEAP RTSs.

- Consultation Paper on European Single Electronic Format (ESEF) Annex 2 Decision

**Decision:** The Board adopted the Consultation Paper on ESEF.

- Opinion on Deposit Guarantee Schemes (DGS) Annex 3 Decision

The Board discussed the Opinion on Deposit Guarantee Schemes, in particular:

- Its impact on the financial statements prepared by credit institutions;
- The co-operation with the International Financial Reporting Standards Interpretation Committee (IFRS IC), the International Accounting Standards Board (IASB) and the European Banking Authority (EBA) in the development of the Opinion; and

- Whether an Opinion is the best legal instrument.

**Decision:** The Board adopted the Opinion. Cian Murphey (IE), Marek Szuszkiewicz (PL) and David Lawton (UK) voted against. Lourdes Centeno (ES) and Sophie Degenne (SE) abstained.

## 15. Joint Committee

- PRIIPs Issues Note BS/185 Discussion

Anneli Tuominen presented the Issues Note summarizing the proposal agreed by the Joint Committee Sub-Committee on Consumer Protection and Financial Innovation for the preparation of the consultation paper.

The Board discussed the Issues Note, in particular:

- The need for explicit and clear information in the Key Information Document (KID);
- The need for a balanced approach between different products;
- How to deal with multi-option products which could put into question the exemption by the Regulation of investment funds;
- The use of what-if methods for performance scenarios and the role of qualitative and quantitative indicators; and
- Cost disclosures.

**Conclusion:** The Board took note of the Issues Note.

## 16. Financial Innovation Standing Committee

- Report by Anneli Tuominen BS/186 Information

Anneli Tuominen presented the report.

**Conclusion:** The Board took note of the report.

## 17. A.O.B.

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## 18. Future meetings

- **5 November 2015 (Luxembourg)**
- **10 December 2015 (Paris)**

## Participants list

### Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais (24/9 only) Jean-Michel Van Cottem	Antoine Van Cauwenberge (24/9 only)
Bulgaria	Vladimir Savov (24/9 only)	
Czech Republic	Pavel Hollmann (24/9 only)	Karel Juras
Denmark	Birgitte Sogaard Holm	
Germany	Elisabeth Roegele Hannelore Lausch (25/9 only)	Philipp Sudeck
Estonia	Andre Nomm (alternate)	Stina Mander
Ireland	Cyril Roux (24/9)	Gareth Murphy (24/9) Cian Murphy
Greece	Konstantinos Botopoulos	Anastasia Maltoudi
Spain	Lourdes Centeno	Antonio Mas Victor Rodriguez
Croatia	Silvana Bozic	
France	Gerard Rameix (24/9 only) Benoit de Juvigny (alternate)	Françoise Buisson Dora Blanchet

Italy	Giuseppe Vegas (24/9 only)	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Liana Ioannidou
Latvia	Sandis Andersmits (alternate)	
Lithuania	Vilius Sapoka (alternate)	
Luxembourg	Jean Guill	
Hungary	Krisztian Csaky (alternate)	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Merel van Vroonhoven	Ellen Boelema Cornelis Jansen
Austria	Erich Schaffer	Andrea Kuras-Goldmann
Poland	Marke Szuszkiewicz	Anna Skrzypek Joanna Kott
Portugal	Carlos Tavares (24/9 only)	Gabriela Figueiredo Dias
Romania	Misu Negritoiu (24/9 only) Mircea Ursache (alternate)	Mirela Ciuvat
Slovenia	Sabina Bešter (alternate)	
Slovakia	Ivan Barri	Tomas Ambra
Finland	Anneli Tuominen	Jarmo Parkkonen

		Ville Kajala
Sweden	Sophie Degenne	Oskar Ode
United Kingdom	David Lawton (alternate)	Eleftheria Apostolidou (24/9 only)

### Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Martin Merlin (24/9 only)	Peter Ohrlander
EIOPA	Patrick Hoedjes	
EBA	Corinne Kaufman	
ESRB	Francesco Mazzaferro	

### Observers

Iceland	Sigurveig Guðmundsdóttir	
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	

### ESMA

Executive Director	Verena Ross
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Summary of Conclusions	Frederiek Vermeulen
Head of Markets Division	Rodrigo Buenaventura
Head of Investment and Reporting	Laurent Degabriel
Head of Operations	Nicolas Vasse
Acting Head of Credit Rating Agencies Unit	Raquel de Julian Artajo
Head of Economic Research and Financial Stability	Steffen Kern
Head of Legal, Cooperation and Convergence	Sophie Vuarlot-Dignac

Done at Paris on 25 November 2015

Steven Maijor

Chair

For the Board of Supervisors