

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

**Date:** 5 November 2015  
**Time:** 09h00 – 17h00  
**Location:** CSSF, route d’Arlon 283, 1150 Luxembourg, Luxembourg  
**Contact:** [frederiek.vermeulen@esma.europa.eu](mailto:frederiek.vermeulen@esma.europa.eu) Tel: +33 1 58 36 43 37

**1. Adoption of agenda** BS/213 Decision

**Decision:** The agenda was adopted.

**2. Summary of Conclusions**

— 24-25 September 2015 meeting BS/202 Decision

**Decision:** The Summary of Conclusions will be adopted by written procedure. The Chair informed the Board that an evaluation of the so-called early legal review by the European Commission will take place during the December 2015 or January 2016 Board meeting.

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

The Chair informed the meeting that during its confidential meeting the Board of Supervisors appointed three Members of the Management Board (starting from 1 December 2015):

	Member	Alternate
ES	Lourdes Centeno	Elvira Rodriguez
AT	Klaus Kumpfmüller	Erich Schaffer
DE	Elisabeth Roegele	Hannelore Lausch

The Chair reported on:

- The letter submitted to the European Commission Services on the implementation timeline for MiFID/MIFIR and the discussions that took place since. He emphasised the need for the timely involvement of the co-legislators and informed the Board about the upcoming hearing at the European Parliament on 10 November 2015;
- The November 2015 meeting of the Management Board and in particular the discussions on the

- 2017 Single Planning Document and the upcoming renewal of the Securities and Markets Stakeholder Group's (SMSG) membership;
- The activities of the Joint Committee and in particular the consultation paper on the Technical Standards stemming from the Packaged Retail and Insurance-based Investment Products (PRIIPS) and the External Credit Assessment Institutions (ECAI) mapping;
  - The activities of the European Systemic Risk Board (ESRB) and in particular the work on market liquidity and shadow banking;
  - The October 2015 meeting of the Board of the International Organization of Securities Commissions (IOSCO) and the work of IOSCO's Task Force on cross-border Regulation; and
  - The upcoming report of the OTC derivatives Regulators Group (ODRG) to the G20.

The Chair also updated the Board members that in relation to the written procedure on the revision of the Rules of Procedure of the Board of Supervisors will specify that in order to reach a qualified majority there should be more than 55% of Member-States in favour which means in practice 16 out of 28.

The Executive Director reported on:

- The October 2015 meeting of the Financial Services Committee and the discussions that took place on the European Commission's initiative to establish a Capital Markets Union and on level 2 processes;
- An upcoming registration decision for a credit rating agency and the co-operation with the US SEC as part of its supervision of EU based but US affiliated credit rating agencies; and
- The round table with trade repositories that took place where ESMA discussed among others the implementation of the delegated project.

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

- Whether the deadline could and should be delayed only for elements related to (the major data/IT systems on) transactions, position reporting and transparency or for all provisions of MiFID 2; and
- The interaction with the revised market abuse legislation.

**Conclusion:** The Board took note of the oral report in particular in relation to the implementation timeline for MiFID/MiFIR. The Board emphasised the importance of focussing the delay on elements related to transactions, position reporting and transparency. The Board also emphasized the role of the European Commission in this area and the need to involve the co-legislators. The Chair will share the opening statements he will deliver to the ECON Committee on 10 November 2015 with the Board of Supervisors.

#### 4. Capital Markets Union: Orientation Debate

BS/214 & Discussion  
Annex 1

The Head of the Investment and Reporting Division presented the Note on the European Commission's Action Plan on Building a Capital Markets Union (CMU).

The Board discussed the Note and in particular:

- How promoting supervisory convergence and collecting and properly analysing data at EU level is an essential part of a CMU;
- The need to focus on Small- and Medium sized Entities (SMEs) for example through enhancing the SME Growth Markets Label and revisiting the Prospectus Directive;

- The importance of continued high-quality supervision and enforcement of existing legislation such as in the area of over-the-counter derivatives;
- Whether, and if so what, ESMA should do further work on in relation to loan-origination funds; and
- The work the European Supervisory Authorities are carrying out in relation to securitisation and crowdfunding.

**Conclusion:** The Board confirmed its support for the European Commission’s initiative to establish a CMU and took note of the European Commission’s Action Plan. The Board highlighted the importance of non-legislative initiatives (such as promoting supervisory convergence) to achieve a CMU.

**5. Supervisory Convergence** BS/215      Information

- Supervisory Convergence Work Programme Annex 1      Discussion

The Executive Director introduced the draft 2016 Supervisory Convergence Work Programme.

The Board discussed the draft Work Programme, in particular:

- The importance of identifying a limited number of key priorities and targets, potentially supplemented by some key performance indicators;
- Whether further information should be obtained from market participants when developing the work programme and the merits of doing so;
- The need to achieve supervisory convergence in practice; and
- The role of national competent authorities and when they should be involved both in setting and executing the work programme;

**Conclusion:** The Board expressed support for the 2016 Supervisory Convergence Work Programme which will be further developed and presented to the Board for adoption during the January 2015 meeting of the Board of Supervisors.

- Supervisory Convergence Standing Committee Annex 2      Discussion

The Board discussed the proposed Terms of Reference for the Supervisory Convergence Standing Committee, in particular:

- The transversal role inherent to Supervisory Convergence Standing Committee;
- The complementary role of other standing committees; and
- The need to align the staff allocation to ESMA’s strategy focusing on supervisory convergence.

**Conclusion:** Subject to minor drafting amendments, the Board agreed with the Terms of Reference of the Supervisory Convergence Standing Committee. The Decision establishing the Review Panel will need to be withdrawn. The new Standing Committee will replace the existing Review Panel and the format of its Terms of Reference will be aligned to those of the other Standing Committees.

**6. Review Panel**

- Report by Lourdes Centeno BS/216      Information

**Conclusion:** Lourdes Centeno presented the Report and the accompanying documents. She highlighted the work carried out in relation to (i) MiFID compliance as regards suitability requirements

and (ii) the peer review report on the prospectus approval process.

- Peer Review Report on Compliance with Short Selling Regulation as regards market making activities      Annex 1      Decision

The Board discussed the Peer Review Report, in particular

- Whether the executive summary could be further improved to highlight the good practices identified in the report; and
- The information gathered from market participants in the drafting of the Report.

**Decision:** The amended Peer Review Report was agreed but will be presented to the Board for adoption by written procedure. National competent authorities subject to the review will be invited to submit a statement for publication with the report should they wish so.

## 7. Investor Protection and Intermediaries Standing Committee

- Report by David Lawton      BS/217      Information

**Conclusion:** David Lawton presented the Report and accompanying documents. He highlighted the work the Committee is doing in relation to the MiFID Guidelines on Knowledge and Competence.

- Final Report on Guidelines on Complex Debt Instruments and Structured Deposits      Annex 1      Decision

The Board discussed the Final Report, in particular whether:

- Financial instruments denominated in non-domestic currencies should be classified as complex products; and
- Standard tax clauses commonly used in the market would warrant a different treatment.

**Decision:** The Board adopted the Final Report on Guidelines on Complex Debt Instruments and Structured Deposits with the understanding that tax clauses (i.e. a contractual term that permits the issuer to prepay the debt instruments before the established maturity in case of a change in the applicable tax law) should not make a product complex for the purpose of Article 25(10) of MiFID II. The Guidelines will not consider financial instruments denominated in non-domestic currencies as complex products.

## 8. Investment Management Standing Committee

- Report by Gareth Murphy      BS/218      Information

**Conclusion:** Gareth Murphy presented the report and accompanying documents.

- Discussion Paper on Share Classes of UCITS      Annex 1      Discussion

The Board discussed the proposed discussion paper setting out a number of principles to be respected when share classes are created, in particular:

- Acknowledging the different treatment across EU Member-States; and
- Whether there is a need for principles that would result in lists of permitted and prohibited share classes.

**Conclusion:** The Board instructed the IMSC to reconsider the discussion paper and in particular the need for more precisely defining the relationship between investment strategy and risk and to give more prominence to the perspective of retail investors.

- AIFMD Q&A Annex 2    Decision

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

## 9. Market Data Standing Committee

- Report by David Lawton BS/219    Information

**Conclusion:** David Lawton presented the Report and accompanying documents.

- EMIR RTS/ITS Annex 1-2    Decision

**Decision:** The Board adopted the EMIR RTS/ITS.

## 10. Post-Trading Standing Committee

- Report by Giuseppe Vegas BS/220    Discussion

Giuseppe Vegas presented the Report and the accompanying documents. He particularly updated the Board on the possible amendments to the RTS on Margin Period of Risk (MPOR) for CCP client accounts.

The Board discussed the possible amendments, in particular

- The ongoing negotiations between the European Commission and the Commodity Derivatives Futures Trading Commission (CFTC) to find a mutual recognition agreement; and
- Whether there is a need for further public consultation.

**Conclusion:** The Board instructed the PTSC to consider whether there is a need for further public consultation and to provide the Board with an overview of the relevant arguments together with a draft consultation paper for consideration during the December 2015 meeting.

- Final Report on RTS on the Clearing Obligation on Other EEA currencies Annex 1    Decision

The Board discussed the Final report on RTS on the Clearing Obligation on Other EEA currencies, in particular the inclusion into the scope of the clearing obligation OTC interest rate swaps (IRS) denominated in Norwegian Krone as set out in the letter received from Finanstilsynet (Norway) and whether further research is needed.

The ESRB representative disagreed with the proposed RTS and with the analysis provided by ESMA to justify the exclusion of DKK, HUF, CZK on the basis of lower systemic risk for these countries.

**Decision:** The Board adopted the Final Report on RTS on the Clearing Obligation on Other EEA currencies. Carlos Tavares (PT) abstained.

- Note on the RTS on CCP Requirements for bank guarantees Annex 2 Decision

The Board discussed the Note on the RTS on CCP requirements for bank guarantees, 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.

Considering that launching a consultation paper on the extension of the agreed exemption period would create expectations among market participants and the fact that amending the Regulatory Technical Standard requires a qualified majority, the Chair put the proposed amendment forward for a vote.

	Approval	Objection	Abstain
Jean-Michel Van Copttem (BE)	X		
Vladimir Savov (BG)	X		
Pavel Hollmann (CZ)	X		
Birgitte Sogaard Holm (DK)	X		
Elisabeth Roegele (DE)			X
Kirstjan-Erik Suurvali (EE)	X		
Cyril Roux (IE)	X		
Konstantinos Botopoulos (EL)			X
Lourdes Centeno (ES)			X
G�rard Rameix (FR)	X		
Silvana Bozic (HR)	X		
Richard V�gh (HU)	X		
Giuseppe Vegas (IT)		X	
Demetra Kalogirou (CY)	X		

Kristine Batraga (LV)	X		
Vilius Sapoka (LT)	X		
Jean Guill (LU)	X		
Christopher Buttigieg (MT)	X		
Merel van Vroonhoven (NL)	X		
Klaus Kumpfmuller (AT)	X		
Marek Szuszkiewicz (PL)	X		
Carlos Tavares (PT)	X		
Misu Negritoiu (RO)	X		
Ivan Barri (SK)	X		
Sabina Bester (SI)	X		
Jarmo Parkkonen (FI)	X		
Sophie Degenne (SE)	X		
David Lawton (UK)		X	

**Decision:** The Board decided not to launch a consultation paper and will not introduce amendments to the RTS. This means that the exemption period will come to an end in March 2016.

- Consultation Paper on RTS on Indirect Clearing under EMIR and MIFIR Annex 3 Decision

**Decision:** The Board adopted the Consultation Paper on RTS on Indirect Clearing under EMIR and MIFIR.

- CSDR RTS on buy-in Annex 4 Discussion

**Conclusion:** The Board agreed with the proposed line for the finalisation of the CSDR RTS on buy-in.

- EMIR RTS on bilateral margins developed by ESAs Annex 5 Discussion

The Board discussed the EMIR RTS on bilateral margins developed by EBA, EIOPA and ESMA, in particular the

- Consistency with internationally developed principles;
- The phase-in for particular asset classes; and
- The timing for the collection of initial and variation margins.

**Conclusion:** The Standing Committee was invited to finalise the RTSs for approval during the December 2015 Board of Supervisors meeting. The Board agreed amongst other on a phase-in period of three years for equity derivatives.

## 11. Market Integrity Standing Committee

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| — | ESMA staff note on MAD Q&A                           | BS/221 | Information |
| — | MAD Q&A: Public Disclosure of Pillar II requirements | BS/222 | Decision    |

Konstantinos Botopoulos presented the note and the accompanying documents.

The Board discussed the proposed MAD Q&A, in particular:

- The interaction that took place and co-operation with the Single Supervisory Mechanism (SSM); and
- The difficulties encountered by national competent authorities.

**Decision:** The Board adopted the Q&A. Jarmo Parkkonen (FI) disagreed with the last paragraph of the Q&A as he considered that it was not necessary to refer explicitly to the competent authorities in a Q&A issued by ESMA.

## 12. ESMA Organisation

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| — | Memorandum of Understanding with the European Central Bank (ECB) | BS/181 | Decision |
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The Executive Director provided the Board with an update on the negotiations of a Memorandum of Understanding (MoU) with the ECB.

The Board discussed the MoU and agreed with the concerns identified by ESMA staff.

**Decision:** The Board decided that ESMA should continue its discussions with the ECB.

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| — | Procedures for ESMA Groups | BS/223 &<br>Annex 1 | Decision |
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The Chair presented the proposed amendment to the Procedures for ESMA Groups in line with the decision taken during the September 2015 meeting to allow senior national competent authority officials to chair Task Forces reporting to the Board of Supervisors.

The Board discussed the proposed amendments and in particular whether senior national competent authority official should also be allowed to chair Standing Committees.



**Decision:** The Board adopted the proposed amendment to the Procedures for ESMA Groups (i.e. to allow senior competent authority officials to chair Task Forces reporting to the Board of Supervisors). Whether Standing Committees can be chaired by senior national competent authority officials would need a dedicated discussion by the Board of Supervisors in the future.

### 13. Credit Rating Agencies

- Report by Verena Ross BS/224      Information

Verena Ross presented the Report and accompanying documents.

- Discussion Paper on the Validation and review of CRA Annex 1 methodologies Discussion

The Board discussed the Discussion Paper on the Validation and Review of CRA methodologies and in particular whether the identified practices were “best” practices or “good” practices.

**Conclusion:** The Board preferred to label the proposed practices as “good practices”.

### 14. A.O.B.

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### 15. Future meetings

- **10 December 2015 (Paris)**
- **27 January 2016 (Paris)**
- **23 March 2016 (Amsterdam)**
- **25 and 26 May 2016 (including joint Board/SMSG – Paris)**
- **11 and 12 July 2016 (including Away Day)**
- **28 September 2016 (Paris)**
- **9 and 10 November 2016 (including joint Board/SMSG – Paris)**
- **14 December 2016 (Paris)**

## Participants list

### Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Michel Van Cottem (alternate)	
Bulgaria	Vladimir Savov (alternate)	
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	Hanne Rae Larsen
Germany	Elisabeth Roegele	Philipp Sudeck
Estonia	Kirstjan-Erik Suurvali (alternate)	
Ireland	Cyril Roux	Gareth Murphy Cian Murphy
Greece	Konstantinos Botopoulos	Anastasia Maltoudi
Spain	Lourdes Centeno	Antonio Mas
Croatia	Silvana Bozic (alternate)	
France	Gerard Rameix	Françoise Buisson
Italy	Giuseppe Vegas	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Liana Ioannidou
Latvia	Kristine Batraga (alternate)	

Lithuania	Vilius Sapoka (alternate)	
Luxembourg	Jean Guill	
Hungary	Richard Végh (alternate)	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Merel van Vroonhoven	Ellen Boelema
Austria	Klaus Kumpfmuller	Christoph Kapfer
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	Carlos Tavares	Gabriela Figueiredo Dias
Romania	Misu Negritoiu	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Ivan Barri	Tomas Ambra
Finland	Jarmo Parkkonen	Ville Kajala
Sweden	Sophie Degenne	Oskar Ode
United Kingdom	David Lawton (alternate)	Eleftheria Apostolidou

### Non-voting members

ESMA Chair	Steven Maijoor	
European Commission	Martin Merlin	Lucia Marin
EIOPA	Carlos Montalvo	
EBA	Corinne Kaufman	
ESRB	Francesco Mazzaferro	

### Observers

Iceland	Sigurveig Guðmundsdóttir	
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	Marianne Elind Skaane

### ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Markets Division	Rodrigo Buenaventura
Head of Investment and Reporting Division	Laurent Degabriel
Head of Legal, Cooperation and Convergence	Sophie Vuarlot-Dignac
Team Leader Post-Trading	Fabrizio Planta



Done at Paris on 10 December 2015

Steven Maijor

Chair

For the Board of Supervisors