

## SUMMARY OF CONCLUSIONS

### Management Board

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**Date:** 19 September 2011  
**Time:** 12:00 – 18:00h  
**Location:** Le Méridien Bristol, Krakowskie Przedmieście 42/44, Warsaw 00-325, Poland  
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No Items

**1. Adoption of agenda** *MB/87* *decision*

The Chair welcomed members of the Board to Warsaw, noting the heavy workload for all over the summer.

**Decision:** The agenda was adopted unamended.

**2. Summary of conclusions of July meeting** *MB/88* *decision*

The Board discussed the draft summary of conclusions.

**Decision:** The draft summary of conclusions was approved subject to two amendments to the second conclusion on item 3. The conclusion should reflect that when work is within the remit of standing committees, that work should in principle go through standing committees and state that when ESMA actively seeks contact with stakeholders in a Member State, ESMA will in principle contact the national authority.

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

Market events and actions over the summer, including confidentiality *BS/195* *discussion*

The Board discussed ESMA's and national supervisors' professional secrecy obligations and the legal and operational risks that can arise from failures to maintain confidentiality, including a number of proposals to enhance the level of security around discussion of confidential issues.

**Conclusion:** The Chair agreed to take account of the proposals made by members of the Board and to remind people of the obligations on members of the Board and on ESMA staff.

The Chair noted that discussions on the summer's events would be discussed at the Board of Supervisors. The Board discussed the process of issuing the July statement on accounting issues, in particular:



the need for clarity over the position members have taken on a vote;

the need for a common understanding regarding presentation of proposals;

the usefulness of conference calls in providing a forum for discussions;

the need for papers to focus discussions, even if they are short due to the urgency of an issue;

the use of silence as a vote in favour of a matter in written procedure;

the desirability of greater coordination of communication, in particular as regards queries likely to arise after publication; and

the need to carefully consider proposed actions, and the potential need for urgent action if information starts to be disclosed.

Headquarters agreement update

*Oral information*

The Executive Director reported on a meeting with the Trésor in July which is considering further its proposals in relation to the ESMA Regulation's requirement for a headquarters agreement in the light of the discussions that have taken place in the UK and Germany in relation to EBA and EIOPA respectively. In particular the Trésor has accepted the need for a headquarters agreement to be put in place.

Court of Auditors visit

*Oral information*

The Executive Director reported on the proposed visit of the Court of Auditors in the first week of October. Nicolas Vasse explained the likely focus of the visit on financial and recruitment procedures and that the first Court's conclusions are normally sent to the authority six weeks later for discussion. The final comments are then sent to the Council and Parliament which may take several months. The Executive Director noted that as a new organisation ESMA is expecting recommendations to be made on improvements.

Chair's and Executive Director's activities

The Chair reported on his and the Executive Director's attendance at recent FSC, EFC and Ecofin meetings, noting also a conference call with Gary Gensler (CFTC) and Mary Schapiro (SEC) regarding mutual recognition in order to minimise dual supervision.

The Chair noted that he will appear with the other ESA Chairs before the European Parliament on 4 October 2011, principally concerning ESMA's budget.

The Chair noted ongoing consideration in the Commission of auditor oversight and the potential scope for ESMA to be given tasks in that area.

The Executive Director noted her attendance at recent EIOPA and EBA Board of Supervisors meetings, and in particular work on trying to ensure reasonable consistency in how the three ESAs operate. The Executive Director also noted her attendance at the recent FSC dialogue with the US authorities (including the SEC and CFTC) and the organisation of a CRA roundtable meeting by the Commission regarding



CRA3.

The Board discussed staff-related issues in a closed session.

#### **4. International strategy**

*MB/89 discussion*

The Chair presented the report on international strategy. The Chair noted in addition that in relation to regulatory dialogues the European Commission now invites ESMA to participate in the dialogues and the proposal to focus resources on the dialogues with the US and Japan, and bilateral dialogues relating to CRAs.

The Board discussed the paper, in particular:

proposals for ESMA's participation in IASB, and the importance of the support of the European Commission if ESMA wished to become an observer;

proposals for ESMA's participation in IOSCO as an observer on the IOSCO Board and membership of the regional committee, by becoming an associate member if proposed changes to IOSCO's bye-laws are adopted at its next annual meeting;

clarification of the authority of the Chair and other ESMA staff, and of the chairs of standing committees, to present ESMA's position internationally;

ESMA's ability to make statements concerning supervisory issues given its role in forming judgements on supervisory issues in the context of supervisory cooperation and convergence, for example through its participation in colleges and in carrying out peer reviews;

the role of the Board of Supervisors in setting ESMA's policy on international issues.

Several members commented that they would consider consultation of positions by ESMA staff with the Board of Supervisors before bi- or multilateral meetings in the international sphere to be necessary where issues of importance are concerned and where no policy has been formulated within the Board previously. The Chair noted that issues have historically been tabled for discussion in the Board of Supervisors on international issues, and time would be found in future meetings to discuss upcoming international issues. Once the Board has agreed on a policy, it is the role of ESMA staff to implement that policy, rather than for ESMA staff to agree positions with the Board ahead of each meeting with international bodies that may take place. The Chair further noted that, as regards people representing ESMA policy, he and the Executive Director consider it clear that when they say something is ESMA international policy it has the support of the Board of Supervisors, if there is not support then that is made clear. However, it is necessary to leave room for the Chair and Executive Director to form a judgement on new issues that have not been discussed explicitly in the Board of Supervisors, while new policy areas would continue to come to the Board of Supervisors for discussion.

Olivier Salles (EC) welcomed ESMA gaining greater visibility in international organisations and the importance of ensuring a regular flow of information between the Commission and ESMA.

**Conclusion:** An updated version of the report would be produced which reflected the points discussed.

#### **5. Finance, work programme and establishment plan report**

*MB/90 discussion*



The ED and Nicolas Vasse presented the report, noting that ESMA currently expects to spend 65-70% of its 2011 budget. The Board discussed the report, in particular:

the accounting system operated by the Union for budget purposes;

the current plan for annual contributions from national competent authorities to be provided in two tranches: one in January and another in July once the previous year's accounts have been finalised;

the need to ensure consistency of the underlying source data for the report, in particular as regards the scale of work programme tasks and priorities assigned, and for clear links between the budget and work programme to facilitate reprioritisation if necessary;

the need for a recruitment plan to be developed to ensure that there is not a similar degree of under-spending in 2012;

the need for further information in future reports on the reasons for postponement or cancellation of workstreams; and

the need for some analysis of the data presented in the periodic reports and specific questions for the Management Board in order to ensure effective consideration of the report.

The Executive Director explained that an analysis would be carried out in November of 2012 recruitments to ensure appropriate phasing to avoid under-spending. The Chair noted that ESMA will largely achieve the planned number of recruitments for 2011 in December, with under-spending having primarily arisen from delays in recruitments during the year. The Executive Director noted that the postponement of some significant tasks helped ensure that the delayed recruitment had not impacted on fulfilment of ESMA's remaining tasks.

**Conclusion:** The Chair welcomed the suggestions on improving the report, in particular the inclusion of questions to focus Management Board input and an accompanying explanation, and the need to reflect the scale of priorities and reasons for delay or cancellation of tasks. The ultimate aim would be to enable effective discussion of key financial and business risks in the Board.

The Executive Director explained that following work on the closing of the CESR accounts there are some inconsistencies so the repayment of the 2010 contributions made by CESR members was being considered further and would be discussed further at the Board's November meeting. It was noted that the Liechtenstein, Norwegian and Icelandic authorities are the only one that have not yet paid their contributions for 2011 as a result of the calculation of their contributions still being finalised.

## **6. Internal control standards update**

*MB/91 information  
Annex 1*

The Executive Director reported on the internal control standards, noting that further intensive work is needed to complete implementation. It was noted that the 0% on internal audit capability resulted from a plan to recruit internal audit in the course of 2012. Further documentation would be required on internal controls, with the standard on risk management due for implementation in 2012.

## **7. Work programme for 2012**

*MB/92 discussion*

## *Annex 1*

The Executive Director presented the draft work programme which focused on key work streams and tried to prioritise, estimate resources required and align with ESMA's objectives. The Executive Director noted that the 2012 work programme has to be given to the EU institutions by 30 September 2011. The current plan was to provide a note based on the information in the report to the Management Board, with a more detailed plan developed for adoption by the Board of Supervisors in November which would then be reported to the institutions.

The Board discussed the draft work programme, in particular:

the priorities listed, taking account of the significant task presented by the MiFID Review even assuming technical standards do not need to be delivered until 2013, and more generally the very substantial amount of regulatory work to be carried out;

the desirability of an indication of the level of resources available through standing committees;

the improved focus in the new format of the work programme which improved the ability to discuss it;

the possibility of reconsidering whether some of the tasks should be categorised as primarily concerning efficiency of markets rather than consumer protection;

the need for input from chairs of standing committees in order to assist ESMA staff in assessing the tasks to be carried out in 2012 and for more detailed plans for standing committees.

**Conclusion:** It was agreed that a high-level narrative would be produced for circulation to the Board of Supervisors so it can be submitted to the EU institutions by the end of September. A detailed discussion would then take place in the Board of Supervisors in November. It was agreed that the high-level tasks presented will ultimately need to be broken down further for standing committees.

### **8. Board of Supervisors forward agenda**

*Oral discussion*

The Executive Director reported on the planned Board of Supervisors forward agenda for November and December 2011. The Chair noted that the report is presented by standing committee, reflecting how most of ESMA's work is carried out, and is discussed in internal management meetings. It should also reflect discussions by rapporteurs with the standing committee chairs.

### **9. Summary of future ESMA budgets**

*MB/94 discussion  
Annex 1  
Annex 2*

The Executive Director presented the report on future ESMA budgets which reflected information previously provided to the Board. The Executive Director explained that contributions from CRAs would affect the funding ratio between the Union and Member States set out in the report, and noted the jump in resources expected between 2013 (€24m) and 2014 (€37.3m) which principally reflected a large increase in staff whereas ideally there would be a smoother increase in budget to reflect the significant tasks expected for ESMA in 2013.



Olivier Salles reported on the Commission's financial perspectives proposal for 2014 to 2020 and noted the proposals for 5% decrease in staff in the EU, the implications of which are not currently known, and the uncertainty around the 2014 review of the ESA Regulations.

**Conclusion:** The Chair noted that in the October hearing in the European Parliament he would argue for 100% Union funding, reflecting the views of the majority of ESMA's Boards. The Chair considered that future staff numbers also need to reflect the heavy workload currently being carried out by ESMA's staff whose commitment had been noted by both the Chair and Executive Director.

## **10. Annual report structure**

*MB/95 discussion*

The Executive Director presented the report on the annual report structure and process. The Board discussed the report, in particular:

whether the report should be presented by objective, by legislative act or through a combination of both;

whether to publish only in English or a wider range of languages, and the possibility of national authorities providing translations; and

the need for a three month period for the editorial and publication process.

**Conclusion:** A further proposal would be produced for the November Board meeting which would develop the structure, timetable and costing in more detail.

## **11. IT Management Group report**

*MB/96 information*

The Board noted the IT Management Group report.

Nicolas Vasse reported on the delays with the ESMA website project which is now expected to be operational in the autumn, noting that the delays had led to increased costs from consultants working for ESMA on this project.

## **12. AOB**

The Chair noted that the written procedure appointing ESMA's members of the Board of Appeal had closed with the decision approved. Publication was expected in October following confirmation of acceptance from the members appointed.

The Board discussed the process for preparing probationary reports and management probationary reports for the Chair and Executive Director and appointed reporting officers for each with a view to preparing probationary reports by the end of October.

Raul Malmstein (EE) asked for a list of hotels with negotiated prices to be provided in ESMA's Handbook. The Chair agreed to work on a list and invited feedback from Board members in the light of existing experience.

The Chair noted that Alexander Justham (UK) would be leaving the FSA and therefore this would be his last meeting at the Management Board. The Chair noted his commitment to ESMA, and thanked Alexan-



der Justham for his cooperation and sharing of his extensive knowledge which assisted in getting ESMA onto a good track.

The Chair noted that Martin Wheatley would become the UK's member of the Board of Supervisors and that an election would be held for the vacant Management Board post in the November meeting of the Board of Supervisors. The person elected would serve the remainder of Alexander Justham's term. A further election would be held in April in relation to those Management Board whose terms will expire at that point.

The Chair noted that it was also Olivier Salles's last meeting in the Management Board, thanking him for all his work in quickly, efficiently and successfully establishing ESMA.

### **13. Future meetings**

*information*

7 November (pm) (Paris)

19 December 2011 (pm) (Paris)

13 February 2012 (pm) (tbd)

16 April 2012 (pm) (tbd)

18 June 2012 (pm) (tbd)

10 September 2012 (pm) (tbd)

5 November 2012 (pm) (tbd)

17 December 2012 (pm) (tbd)

Steven Maijoor  
Chair



## Participant List

	<b>Members</b>	<b>Advisers</b>
ESMA	Steven Maijoor (Chair)	
EC	Olivier Sallès	
DE	Karl-Burkhard Caspari	Philipp Sudeck
EE	Raul Malmstein	Gerle Reinumagi
ES	Fernando Restoy	Antonio Mas
LU	-	
AT	Kurt Pribil	Andrea Kuras-Goldmann
UK	Alexander Justham	Cristina Frazer

Vice-Chair	Carlos Tavares
Executive Director	Verena Ross
Head of Operations	Nicolas Vasse
Minutes	Jonathan Overett Somnier