



SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 17 April 2012
Time: 09:00 – 18:00h
Location: ESMA, 103 rue de Grenelle, 75007 Paris
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No Items

1. Adoption of agenda *BS/45 decision*

The Chair welcomed the President of the Board of the Croatian Financial Services Supervisory Authority, Mr. Petar-Pierre Matek, accompanied by Board members Ms. Silvana Bozic and Ms. Gordana Letica, as observer to the ESMA Board of Supervisors.

Decision: The agenda was adopted.

2. Summary of conclusions of March meeting *BS/46 decision*

A revised version of the Summary of Conclusions was distributed at the meeting, incorporating comments from Julie Galbo (DK), Karl-Burkhard Caspari (DE) and the European Commission. With regard to item 6. Budget 2013, Konstantinos Botopoulos (EL) requested that the Summary of Conclusions include that any further increase of the budget will pose a problem for the Hellenic Capital Market Commission.

Decision: The revised Summary of Conclusions will be sent to members for approval by written procedure.

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

The Chair reported on:

- the need to organise an additional meeting of the Board of Supervisors at the end of September in order to submit the draft technical standards on EMIR to the European Commission by the deadline of 30 September 2012. A proposal for the date of the meeting will be sent to the members after examining the calendar of meetings in order to make sure that there is not a conflict with the meetings of the other ESAs or IOSCO;



- his participation in the ESRB General Board meeting on 22 March, the informal ECOFIN meeting on 31 March, the EFC-FST meeting on 23 March and a hearing on CRA's before the French Senate on 27 March. The Chair noted the need for the representation of the ESAs at informal ECOFIN meetings;
- a meeting with Director General Internal Market Jonathan Faull where he discussed issues such as ESMA's advice on the AIFM Directive, the 2013 budget and the level of seniority of representatives from national competent authorities in the ESMA Board of Supervisors.

With regard to the level of representatives from national competent authorities in the ESMA Board of Supervisors, the Chair indicated that ESMA had received several notifications from national competent authorities of a change of their representation in the Board of Supervisors. The Chair, supported by the European Commission, stressed the importance of adequate representation. ESMA staff is looking into the notifications and will approach national competent authorities in case of doubt; national competent authorities should check whether they are represented at the right level.

With regard to ESMA's advice on the AIFM Directive, the Chair noted that the differences between the advice from ESMA and the European Commission's draft implementing acts were not as substantial as implied by some media. The Board of Supervisors agreed that while in some cases ESMA and the European Commission may have diverging views and the advice from ESMA will not be fully taken on board, it is important to be transparent and inform each other as early as possible;

- the procedure for the election of Chairs of the Standing Committees. The Chair will bring forward a proposal for the procedure of the election to the Board of Supervisors meeting in June, while the actual election will take place after the summer. The proposal may include possible amendments to the structure and mandates of the Standing Committees; and
- the first assessment of the received comments regarding the procedures for Breach of Union Law cases and Mediation. The responses showed overall support for the proposed procedures, with some diverging views on more detailed issues. The procedures will be amended taking into account the comments and discussed within the Joint Committee. A final proposal will be submitted to the Board of Supervisors for approval.

The Executive Director reported on:

- the on-going discussions with the European Commission on the repayment of the 2011 budget surplus and the 2013 budget. DG Budget has indicated that they intend to cut the CRA part of the 2013 budget by 15 persons intended to cover the new tasks resulting from the CRA III legislative proposal. The Commission indicated that Commissioner Barnier has sent a letter to DG Budget in order to solve both issues as soon as possible. Also, Director General Internal Market Jonathan Faull is currently discussing it with DG Budget;
- ESMA's activities in the field of CRA supervision and cooperation with 3rd country regulators, where ESMA will announce that it considers the regulatory frameworks for CRAs of Argentina and Mexico to be in line with European rules, while ESMA staff is finalising the assessment of Brazil;
- the process for the publication of ESMA's annual report 2011. The Board of Supervisors will be requested for final comments by 4 May. The report has to be sent to the European Council, Parliament and Commission by 15 June; and

- the Management Board meeting of 16 April.

4. ESMA organisation

A. Review of the Rules of Procedure	<i>BS/47</i>	<i>decision</i>
– Rules of Procedure Board of Supervisors	<i>2011/BS/1</i>	<i>decision</i>
– Election of Management Board Members	<i>2011/BS/2</i>	<i>decision</i>
– Procedure for Developing and Adopting Draft Technical Standards and Guidelines and Recommendations	<i>BS/48 & 2011/BS/4a</i>	<i>decision</i>

The Head of the Legal, Cooperation and Convergence Unit presented the documents, explaining that when the rules of procedure were adopted in 2011 it was agreed that they should be reviewed after a year. The main changes proposed relate to the written procedure, the procedure in the case of QMV voting and reducing the lead time for Management Board elections.

The Board of Supervisors discussed the reports, in particular the Rules of Procedure for the Board, noting:

- the preference to align the rules of procedures with the other ESAs;
- whether a failure to vote should be counted as consent or abstention;
- the number of members and the time permitted to object against ‘silence means approval’ in case of a vote by written procedure;
- the need for active participation by all members in case of a vote by written procedure; and
- the preference to limit voting by written procedure to non-controversial items.

The Chair concluded that there was in principle support for the changes in the rules of procedure, with diverging views on more detailed issues. The Chair noted that if members always cast a vote on a written procedure there would not be a need for the principle that silence means approval.

Decision: The Rules of Procedure will be revised taking into account the discussion in the Board and will be discussed in the Joint Committee in order to align the procedures. The final documents will require approval by the Board of Supervisors.

B. Discussion paper on international strategy	<i>BS/49</i>	<i>discussion</i>
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The Chair presented the paper, explaining that the note identifies the role of ESMA in international policy and strategy following a request by the members.

The Board of Supervisors discussed the paper, noting in particular:

- the importance of strengthening the international role of ESMA with a view at globalizing financial markets, its standard-setting role and the need for a strong European voice at the global level;



- the need for a clear process for ESMA to undertake international activities in order to fulfil its responsibility in international standard-setting and supervision;
- the involvement of the Board of Supervisors in determining ESMA's position in discussions with third country regulators, at the initial stage and on an on-going basis;
- when entering into formal negotiations with third country regulators, the Board would need to decide beforehand on a mandate. In case of broader policy discussions the Board would provide guidance to the Chair; and
- the desirability of avoiding overlap with IOSCO work.

Conclusion: The paper will be revised taking into account the discussion and sent to the Board for approval by written procedure.

Relevant issues at the OTC Market Regulators meeting

BS/50

discussion

The Head of the Markets Division presented the report, introducing the different issues that are expected to be discussed at the high level meeting of OTC market regulators on 1 May in Toronto, with the objective of forming an ESMA view.

The Board of Supervisors discussed the report, in particular:

- the need for an expanded intensive regulatory dialogue and cooperation on supervision with the US authorities;
- the importance of maximum convergence with the US in order to avoid regulatory arbitrage, especially in the areas of exemptions, mandatory clearing, margin requirements, the registration of swap dealers and the location of collateral;
- stressing the importance of crisis management of CCPs; and
- the establishment of criteria with regard to access to Trade Repository data by authorities and the application of indemnification provisions.

Conclusion: The Chair noted general support for the report which will be used as guidance for the discussion at the OTC market regulators meeting, taking into account the discussion in the Board. Karl-Burkhard Caspari (DE) and Thierry Francq (FR) will also attend the meeting in Toronto as ESMA representatives.



C. Crisis management

– Crisis scenarios

BS/34

discussion

The Executive Director presented the report, asking the Board to review the scenarios and to discuss the underlying analysis, the actions proposed and whether there should be additional scenarios.

The Board of Supervisors discussed the report, in particular:

- the need for further analysis of the role of securities regulators in relation to financial stability;
- the importance of focussing on identifying risks in an early stage and the use of data analysis; and
- the need to develop a clear analytical framework in order to identify and deal with adverse developments.

Conclusion: The Board of Supervisors did not identify any additional scenarios that should be prepared. It was agreed that ESMA staff would take forward the actions proposed in the report together with Standing Committees as appropriate, taking into account what type of data is needed.

D. ESMA regulatory work programme 2012

BS/51

decision

& Annex

The Executive Director presented the report, explaining that according to the procedure for developing and adopting draft regulatory standards and guidelines and recommendations, ESMA should draft a regulatory work programme. Due to uncertainties in the legislative programme the drafting of the regulatory work programme was delayed.

Decision: The Board of Supervisors approved the regulatory work programme 2012. The technical standards on PRIIPs will be deleted from the work programme since the Commission proposal is not yet finalised. Fernando Restoy (ES) will send minor comments by email to be included.

5. Credit Rating Agencies

– Medium-term objectives for CRA supervision

BS/52

discussion

The Chair and Executive Director presented the medium-term strategic objectives for CRA supervision, noting in particular the earlier discussion in the Management Board and the need to provide the Board of Supervisors regularly with more detailed information on systematically important CRAs.

The Board of Supervisors discussed the report, in particular:

- the respective roles of the Management Board and the Board of Supervisors in the approval and ongoing monitoring of the CRA unit's supervision plans and its involvement in enforcement procedures; and
- the need for more detailed reporting to the Boards of ESMA on the unit's activities in order to be able to discuss the medium- and long-term strategy on CRA supervision;

The Head of the Credit Rating Agencies Unit further clarified the activities by the CRA Unit, noting in



particular thematic reviews, risk analysis and the allocation of resources within the Unit.

The Chair and Executive Director further clarified the role of ESMA staff being responsible for the day-to-day supervision of CRA's while the medium- and long-term strategic direction of ESMA's supervisory tasks and policy issues should be discussed by the Boards of ESMA. When deciding on the level of information to be provided, potential problems arising out of the disclosure of firm-specific information and the clear role of the Board of Supervisors in enforcement cases as laid down in the CRA Regulation should be taken into account.

Conclusion: It was agreed that ESMA staff will draft a more granular paper on the risks regarding CRAs which will facilitate the Boards to judge the proposed medium-term strategy.

6. ESMA-Pol

- Report by Konstantinos Botopoulos *BS/53* *information*
- Short selling: technical advice on delegated acts and draft regulatory technical standard *Annex 1* *decision*

The Chair of ESMA-Pol presented the report, explaining that after the discussion in the Standing Committee there were several remaining issues in the Technical Advice that need to be addressed by the Board of Supervisors.

With regard to the earlier approval of the draft technical standards on the Short Selling Regulation the Chair clarified that the Board of Supervisors had agreed to introduce a recital to acknowledge the potential limitation of the scope of easy to borrow or purchase shares and to call for revisiting this concept in the context of the review report of the European Commission expected by June 2013. The European Commission however indicated that adding in the technical standards a recital referring to the review clause in the Regulation is not appropriate. The Chair therefore proposed to reflect ESMA's position on this issue in the cover letter to the final ESMA technical advice on delegated acts to be submitted to the European Commission. The Board agreed with the proposal.

The Board of Supervisors discussed the report, in particular:

- the appropriate level for high correlation for determining a long position in a sovereign issuer;
- the method of calculation of the net short position within a group and for fund management activities;
- allowing cross country hedging within the EEA in the case of uncovered CDS and its consistency with the Level 1 Regulation;
- the determination of the initial and incremental levels of the notification thresholds to apply to net short positions in sovereign debt and the grouping of sovereign issuers into categories; and
- the significant fall in price or value of a financial instrument for a competent authority to consider whether taking an action to restrict or limit trading on a venue.

Decision:

- the Board of Supervisors decided to set the level for high correlation at 70% and to set the buffer level

at 50%;

- the Board of Supervisors decided that reporting of net short positions can happen both at individual entity level and at a group level only whenever a notification/disclosure threshold is reached or crossed, except when a single entity that belongs to a group and the group itself cross a threshold simultaneously, in which case only the group has to report;
- the Board decided to adopt a revised approach to cross country hedging in the draft technical advice under the assumption that the approach is compatible with the Level 1 text: the general rule is that a sovereign CDS position referencing a sovereign issuer may be used to hedge any assets or liabilities meeting the correlation test provided that the obligor of (or counterparty to) such asset/liability is located in the same Member State but, by way of exception, there are certain circumstances where the cross-border use of sovereign CDS as a hedging tool would be allowed;

The European Commission stated that their legal services have indicated that the approach by ESMA, that would provide for the suggested exceptions, would not be compatible with the Level 1 text and it is therefore very likely that they will not adopt this approach as it is;

- the Board decided to amend the list of sovereign issuers by combining categories a and b; and
- the Board adopted the draft technical standard for submission to the Commission for endorsement.

7. Investment Management Standing Committee

- Report by Giuseppe Vegas *BS/54* *decision*

Nicoletta Giusto (IT) presented the report on behalf of the Chair of the Investment Management Standing Committee.

Decision: ESMA staff will draft a response to the European Commission's Green Paper on Shadow Banking. The draft response will be submitted to the Investment Management Standing Committee for discussion.

- Consultation paper on co-operation with 3rd country regulators *Annex 1* *decision*

Nicoletta Giusto (IT) presented the consultation paper on behalf of the Chair of the Investment Management Standing Committee, explaining the need to have cooperation arrangements in place with the relevant non-EU jurisdictions by July 2013, to be negotiated by ESMA staff on behalf of the EU competent authorities.

The Board discussed the consultation paper, in particular:

- the importance of having a coordinated and single approach towards third country competent authorities; and
- the need to inform the Standing Committee and the Board of Supervisors on a regular basis on the ongoing negotiations.

Decision: The Board of Supervisors approved the consultation paper. The Board reiterated their support



for ESMA staff negotiating on behalf of EU competent authorities.

8. Post Trading Standing Committee

- Report by Thierry Francq *BS/55* *information*
- Key issues on the development of technical standards under EMIR *Annex 1* *discussion*

The Chair of the Post Trading Standing Committee presented the report, requesting views from the Board of Supervisors on several topics ahead of the approval of the consultation paper on the draft technical standards under EMIR.

The Board of Supervisors discussed the report, in particular:

- the determination of the level of granularity for the definition of the classes of derivatives subject to the clearing obligation;
- the definition of the exemption for non-financial counterparties;
- the determination of the timing for confirmation of OTC derivatives transactions not cleared by a CCP;
- the calculation of margins requirements for CCP's;
- the determination of the CCP's own resources to be dedicated to the default waterfall;
- the application of the central banks exemption to the reporting obligation to Trade Repositories;
- the identification of beneficiaries to derivative contracts under the reporting obligation to Trade Repositories;
- the determination of the data access level for authorities to Trade Repositories.

Conclusion: The Post Trading Standing Committee will continue its work on the consultation paper on the draft technical standards under EMIR taking into account the discussion in the Board of Supervisors.

9. Corporate Reporting Standing Committee

- Report by Julie Galbo *BS/56* *decision*
- Eurostat consultation paper on International Public Sector Accounting Standards *Annex 1* *decision*

The Chair of the Corporate Reporting Standing Committee presented the report, requesting views from the Board of Supervisors on whether ESMA should respond to the consultation paper on International Public Sector Accounting Standards (IPSAS).

The Board of Supervisors discussed the report, in particular whether ESMA should participate in the debate on public sector accounting with a view at ESMA's mandate on investor protection.



Decision: The Board of Supervisors agreed that ESMA should participate in the discussion on public sector accounting. Karl-Burkhard Caspari (DE) abstained from voting. The Corporate Reporting Standing Committee will draft a response and submit it for approval to the Board of Supervisors.

10. Financial Innovation Standing Committee

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| – Report by Anneli Tuominen | <i>BS/57</i> | <i>decision</i> |
| – Data collection survey analysis and proposals for an ESMA data set | <i>Annex 1</i> | <i>information</i> |

The Chair of the Financial Innovation Standing Committee presented the report, explaining that the recommended data set has been determined through analysis of the data collection questionnaire responses from competent authorities.

The Board of Supervisors discussed the report, in particular:

- supporting the important work on data collection in order to detect trends and risks at an early stage and have a better understanding of market developments and complexities;
- the importance of developing a data set with a high level of standardisation, but to start with data collection on a best-efforts basis;
- the fact that the process around the data set cannot replace the analytical work and ad hoc studies that can be done by NCAs at national level;
- the need for a common understanding on templates and definitions; and
- the extension of the deadline to deliver the data to ESMA.

The Chair and Executive Director stressed that it is vital to have the right people at the table in the Standing Committee.

Decision: The Board approved the data set, subject to further refinement of the proposals by the Financial Innovation Standing Committee, taking into account the discussion in the Board.

11. Review Panel

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| – Report by Jean Guill | <i>BS/58</i> | <i>information</i> |
| – Prospectus Directive good practices: peer review report | <i>Annex 1</i> | <i>decision</i> |

The Chair of the Review Panel presented the report, explaining that it presents the results of the peer review on the extent to which Competent Authorities take into account the good practices in their work when vetting and approving prospectuses.

Decision: The Board approved the report, subject to incorporating further comments by the French and Danish competent authorities.

12. Progress reports

- Report by Martin Wheatley (SMSC)

BS/59

information

The Board of Supervisors took note of the report.

- Report by Martin Wheatley (Commodity Derivatives Task Force)

BS/60

information

The Board of Supervisors took note of the report.

- Report by Arja Voipio (ITMG)

BS/61

information

The Board of Supervisors took note of the report.

13. AOB

14. Future meetings

information

- 19 June 2012 (Copenhagen, Denmark)
- 11 September 2012 (Paris)
- 12 September 2012 (Paris) – Joint meeting with SMSG, 09:30h – 13:00h
- 24 September (Paris)
- 6 November 2012 (Nicosia, Cyprus)
- 18 December 2012 (Paris)



Participants list

Voting Members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Antoniya Gineva (alternate)	
Czech Republic	Pavell Hollmann	
Denmark	Julie Galbo	Hanne Råe Larsen
Germany	Karl-Burkhard Caspari	Philipp Sudeck
Estonia	Raul Malmstein	Gerle Reinumägi
Ireland	Gareth Murphy (alternate)	Oliver Gilvarry
Greece	Konstantinos Botopoulos	Eleftheria Apostolidou
Spain	Fernando Restoy	Antonio Mas
France	Thierry Francq	Thierry Courret
Italy	Vittorio Conti (alternate)	Nicoletta Giusto
Cyprus	Demetra Kalogerou	
Latvia	Sandis Andersmits	
Lithuania	Kristina Dabrisiute (non-voting member)	
Luxembourg	Jean Guill	
Hungary	László Balogh (alternate)	
Malta	Mike Duignan (alternate)	
Netherlands	Ronald Gerritse	Pim de Wild Gert Luiting
Austria	Kurt Pribil	Andrea Kuras-Goldmann
Poland	Ilona Pieczynska-Czerny (alternate)	Tomczyk Katarzyna
Portugal	Carlos Tavares	Manuel Ribeiro da Costa
Romania	Bogdan Chetreanu (non-voting	



	member)	
Slovenia	Sabina Bešter	
Slovakia	Slavomir Stastny	Eva Svetlosakova
Finland	Anneli Tuominen	Ville Kajala
Sweden	Martin Andersson	Oskar Ode
United Kingdom	Martin Wheatley	Cristina Frazer

Non-voting members

European Commission	Emil Paulis	Emiliano Tornese
ESRB	Francesco Mazzaferro	Fabio Recine
EIOPA	Patrick Hoedjes	
EBA	Adam Farkas	

Observers

Croatia	Petar-Pierre Matek	Silvana Bozic Gordana Letica
Iceland	Sigurveig Gudmundsdottir	
Liechtenstein		
Norway	Anne Merethe Bellamy	Kristin Lund

ESMA

ESMA Chair	Steven Maijor
Executive Director	Verena Ross
Head of Markets Division	Rodrigo Buenaventura
Head of Investment and Reporting Division	Laurent Degabriel
Head of Operations Division	Nicolas Vasse
Head of Credit Rating Agencies Unit	Felix Flinterman



Head of Legal, Cooperation and Convergence Unit	Stephan Karas
Minutes	Max Simonis

Steven Maijoor
Chair



PARTICIPANT LIST

Voting Members

Non-voting members

Observers

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