

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 10 December 2015
Time: 09h00 – 18h00
Location: ESMA, rue de Grenelle 103, 75007 Paris, France
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda BS/234 Decision

Decision: The agenda was adopted.

2. Summary of Conclusions

— 5 November 2015 meeting BS/232 Decision

Decision: The Summary of Conclusions of the 5 November 2015 meeting was adopted including a drafting suggestion in relation to agenda item 11.

3. Report by Chair and Executive Director Oral Information

The Chair reported on:

- The positions taken by the European Parliament and the discussion that took place at the Financial Services Committee of the Council of the European Union on the potential delay of the entry into application of MiFID 2;
- The hearing by the European Parliament's ECON Committee on the extension of the mandate of the Chair and ED and the upcoming decision by the European Parliament during its Plenary meeting on 16 December;
- The fact that the mandate of Carlos Tavares as Vice-Chair is coming to an end in January 2016 and that a call for candidates will be launched;
- The December 2015 meeting of the Management Board and in particular the discussions on the 2017-2019 Single Programming Document, the Supervisory Convergence Work Programme and the fact that ESMA will restart providing training to national competent authorities;
- The call for candidates for the Securities and Markets Stakeholder Group (SMSG) launched by ESMA;
- The activities of the Joint Committee and in particular the approach of the European Supervisory Authorities (ESAs) to supervisory convergence and the hearing on PRIIPs that took place;

- The activities of the European Systemic Risk Board (ESRB);
- The work ESMA staff is conducting together with the Investment Management Standing Committee (IMSC) in relation to closet indexing; and
- The revised scope of the EBA Guidelines on limits on exposures to shadow banking entities following ESMA's intervention.

The ED reported on:

- The implementation of the 2016-2020 ESMA Strategic Orientation Note and in particular the new organigram taking effect from 16 November 2015 onwards;
- ESMA supervisory activities and in particular the round tables that took place with compliance officers and INEDs from credit rating agencies and with trade repositories on the TRACE project; and
- The December 2015 meeting of the Financial Services Committee (FSC) and in particular the discussions on risk that took place.

The Board discussed the potential delay of the entry into application of MiFID 2, in particular:

- The fact that the delegated acts have not yet been published; and
- The interaction with the Market Abuse Regulation (MAR) and related IT implications.

The European Commission representative informed the Board that the European Commission was still discussing whether it will propose to delay the entry into force of MiFID 2 and, if so, the scope of such delay. In addition, in the absence of a delay all MiFID 2 deadlines remain unchanged.

Conclusion: The Board took note of the oral report. The Market Integrity Standing Committee (MISC) was instructed to look further on the impact of a potential MiFID 2 delay on the MAR.

4. Committee for Economic and Markets Analysis

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| — Report by Misu Negritoiu | BS/235 | Information |
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Conclusion: Misu Negritoiu presented the report.

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| — Trends, risks and vulnerabilities Report | Annex 1-2 | Discussion |
| — Update on national economic and market developments | BS/236 | Discussion |

The Head of the Risk Analysis and Economics Department presented the trends, risks and vulnerabilities report by highlighting the

- Developments in the EU and international macro-economic situation and financial markets since the July 2015 report identifying a high market risk;
- Monetary policy reversal and international inconsistency as a risk going forward and the fact that market-based financing was growing;
- Lower and more volatile returns expected for investors;
- Vulnerabilities identified in the report, in particular (i) the identification of risks and benefits of financial innovation, (ii) the collateral scarcity premium in EU repo markets and (iii) the impact the new banking prudential framework might have on investors.

Giuseppe Vegas (IT) presented an update on national economic and market developments by

highlighting the

- Performance of equity markets and the potential risk of financial contagion;
- Main developments and risks in EU financial markets, such as the geopolitical tensions causing uncertainty and the negative interest rate environment and related search for yield challenging investor protection and financial stability; and
- The need to strengthen coordination of financial market supervision within the context of the Capital Markets Union (CMU).

The Board discussed the trends, risks and vulnerabilities report and the update provided by Giuseppe Vegas, in particular:

- Whether, and if so, how, some parts of the report should be made more accessible for retail investors;
- The potential macro-prudential implications of the current monetary policy; and
- The risks related to cyber security and the work already conducted in that area.

Conclusion: The Board took note the draft trends, risks and vulnerabilities report which will be adopted by written procedure in February 2016. The Investor Protection and Intermediaries Standing Committee (IPISC) was invited to consider whether additional initiatives in relation to the potential implications of the new prudential framework following the analysis of the Minimum Requirements for Own Funds and Eligible Liabilities (MREL) is needed.

5. Financial Innovation Standing Committees

- Report by Jean-Paul Servais BS/237 Discussion

Conclusion: Jean-Paul Servais presented the report and accompanying documents.

- Supervisory Briefing and Procedures: MiFIR market monitoring and intervention powers Annex 1 Decision

The Board discussed the guidance provided under the form of a supervisory briefing and procedures on MiFIR market monitoring and intervention powers, in particular:

- The scope of the product intervention powers and the potential impact of the delegated acts the European Commission still has to issue;
- The interaction with the Packaged Retail Investment and Insurance-based Investment Products (PRIIPs) Regulation; and
- The interaction with national competent authorities' supervisory activities including the approval of prospectuses.

The European Commission representative stated that UCITS management companies and AIFMs are not covered by the product intervention powers.

Decision: The Board discussed the note which will be further developed for discussion at the Board of Supervisors during the March 2016 meeting.

- Task Force on product intervention powers (phase 2) Annex 2 Decision

Decision: The Board agreed with the extension of the Task Force on product intervention powers.

6. Investor Protection and Intermediaries Standing Committee

- Report by David Lawton BS/238 Information

Conclusion: David Lawton presented the report and accompanying documents.

- Final Report on MiFID II ITS on cooperation and exchange of information between NCAs, notification of sanctions and consultation prior to authorisation. Annex 1 Decision

Decision: The Board adopted the Final Report on MiFID II ITS on cooperation and exchange of information between NCAs, notification of sanctions and consultation prior to authorisation.

- Final Report on Guidelines on knowledge and competence Annex 2 Decision

The Board discussed the Final Report on Guidelines on knowledge and competence, in particular:

- The minimum period to fulfil the experience requirement; and
- The fact that some national competent authorities intend to introduce stricter requirements.

Decision: The Board adopted the Final Report on Guidelines on knowledge and competence including an amendment that the Guidelines are minimum requirements and can be supplemented by national add-ons.

- Note on CFDs and other speculative products Annex 3 Information

Conclusion: The Board took note of the results of the IPISC mapping exercise of the provision of CFDs and other speculative products.

- Task Force on CFDs Annex 4 Decision

Decision: The Board agreed with setting-up a temporary Task Force on CFDs for one year.

7. Guidelines on Cross Selling

- Final Report on Guidelines on cross selling BS/239 & Decision
Annex 1

The Board discussed the Final Report on Guidelines on cross-selling, in particular:

- The legal basis for the Guidelines and the importance of cross-sectoral consistency; and
- The deadline set out in MiFID 2 and impact of the potential MiFID 2 delay.

Decision: The Board adopted the Final Report on Guidelines on cross-selling. It was agreed that a letter should be sent together with the other ESAs to the European Commission highlighting the cross-sectoral nature and the need for an appropriate legal basis.

8. Investment Management Standing Committee

- Report by Gareth Murphy BS/240 Information

Conclusion: Gareth Murphy presented the report and accompanying documents.

- Final Report on ELTIF RTS Annex 1 Discussion

Gareth Murphy presented the Final Report by highlighting the upcoming legal review by the Legal Service of the European Commission. The European Commission representative indicated that the legal review was likely to address issues around powers of supervisors and clarification of the links with MiFID / MiFIR.

Conclusion: The Board endorsed the policy aspects of the Technical Standards and will approve the Technical Standards after the legal review by the European Commission Legal Service.

- AIFMD Q&A Annex 2 Decision

Decision: The Board approved the AIFMD Q&A.

9. Corporate Finance Standing Committee

- Report by Gerard Rameix BS/241 Information

Conclusion: Gerard Rameix presented the report and accompanying documents.

- Prospectus Q&A Annex 1 Decision

The Board discussed the two Prospectus Q&As, in particular whether more than the proposed disclosure for securities subject to conversion or write-down powers under the Bank Recovery and Resolution Directive (BRRD) is needed and whether investors should not be warned further about securities subject to BRRD conversion or write-down powers.

Decision: The Board approved the Prospectus Q&A. Giuseppe Vegas (IT) and Anneli Tuominen (SU) disagreed with the Q&A related to bail in.

- Follow-up report on best practice principles for proxy advisors Annex 2 Decision

Decision: The Board approved the Follow-up report on best practice principles for proxy advisors.

10. Credit Rating Agencies

- Report by Verena Ross BS/242 Information

Verena Ross presented the report.

Conclusion: The Board agreed with communicating to the European Commission the issues arising from the wording in the CRA Regulation regarding the principle of the sovereign rating calendar and Friday publication.

- Q&A on solicitation status Annex 1 Decision

Decision: The Board adopted the Q&A on solicitation status.

11. ESMA organisation

- ECB/ESMA Memorandum of Understanding BS/243 Decision

The Head of Legal, Convergence and Enforcement Department presented the Memorandum of Understanding (MoU).

The Board discussed the proposed Memorandum of Understanding, in particular the:

- Importance of having a Memorandum in place for supervisory activities and for the T2S-cooperative agreement; and
- Fact that the template Memorandum between national competent authorities and the European Central Bank may need to be tailored to national facts and circumstances.

Decision: The Board adopted the Memorandum of Understanding between the European Central Bank and ESMA and endorsed the template Memorandum of Understanding between national competent authorities and the European Central Bank that national competent authorities could use. Sabine Bester (SL) abstained. The Memorandum will be reviewed after two years.

- 2016 Budget BS/245 & Decision
Annexes
1-2

The Executive Director and Head of Resources Department introduced the draft 2016 budget.

The Board discussed the draft 2016 budget, in particular the:

- Budget allocated to maintenance of existing IT projects; and
- Importance for ESMA's supervisory convergence objective of providing national competent authorities with training.

Decision: The Board approved the proposed 2016 budget. Karel Juras (CZ) voted against.

- 2017 Planning BS/246 & Discussion
Annex 1

The Executive Director presented the proposed 2017 budget and planning which was supporting by the Management Board following its discussion in the November and December 2015 meeting.

The Board discussed the proposed 2017 budget and planning, in particular the:

- Shift from single rulebook activities to supervisory convergence work and the staff allocation per ESMA activity;
- Stress-testing activities ESMA will need to carry out in relation to the Alternative Investment Fund Managers Directive (AIFMD);
- The budget allocated to maintenance of existing IT projects; and
- The European Commission's intention to review the funding model of the ESAs.

Conclusion: The Board supported the proposed 2017 budget and planning which will be presented to the Board of Supervisors for final adoption during its January 2016 meeting. ESMA staff will prepare an overview of the staff allocated per ESMA activity and the evolution over time. Karel Juras (CZ) disagreed with the proposed 2017 budget and planning.

- IT Strategy, Work Programme and Implementation BS/247 & Information Annexes 1-3

The Head of Resources Department presented the documents.

The Board welcomed and discussed the IT Strategy, Work Programme and Implementation, in particular the interaction between data provided at EU and at national level.

Conclusion: The Board took note of the ESMA IT Strategy and multi-annual work programme.

- Rules of Procedure of the Board of Supervisors BS/248 & Decision 2012/BS/82 rev 2

Decision: The Board agreed with the proposed amendment to the Rules of Procedure of the Board of Supervisors.

12. Post-Trading Standing Committee

- Report by Giuseppe Vegas BS/251 Information

Conclusion: Giuseppe Vegas presented the report.

- Note on potential Consultation Paper on MPOR Annex 1 Decision

The European Commission representative informed the Board about the ongoing equivalence discussions with the United States Commodities Futures Trading Commission (CFTC).

The Board discussed the note, in particular the pros and cons of introducing a one-day gross omnibus account in EU Regulation. Some Board members highlighted that the launch of the consultation paper would not pre-empt the Board's final decision.

Decision: The Board approved the consultation paper on MPOR. Elisabeth Roegele (DE) abstained.

- Update on CCP stress-testing Annex 2 Discussion

The Board discussed ESMA's CCP stress-testing activities, in particular:

- The minimum scenarios to start the process with CCPs to fill the identified gaps and the importance of having those right at EU level;
- The work conducted by the European Systemic Risk Board; and
- Whether ESMA has the resources available.

Conclusion: The Board took note of the update and agreed the minimum scenario list further to a final technical check with the Post-Trading Standing Committee. The Board will continue to be kept

informed.

13. Secondary Markets Standing Committee

- Report by Elisabeth Roegele BS/252 Information

Conclusion: Elisabeth Roegele presented the report.

- Draft implementing technical standards under MiFID II Annex 1 Decision

Decision: The Board adopted the draft implementing technical standards un MiFID II.

14. Commodities Derivatives Task Force

- Report by Edwin Schooling Latter BS/253 Information

Conclusion: Edwin Schooling Latter presented the report and accompanying documents.

- Final Report on ITS on position reporting Annex 1 Decision
- Cost-Benefit Analysis on Position Reporting Annex 2 Decision

Decision: The Board approved the Final Report on the Implementing Technical Standards on position reporting and the accompanying cost-benefit analysis.

15. Market Data Standing Committee

- Report by David Lawton BS/254 Information

Conclusion: David Lawton presented the report and accompanying documents.

- Consultation Paper on Guidelines on Transaction Reporting, Reference Data, Order Record Keeping and Clock Synchronisation Annex 1 Discussion

The Board discussed the consultation paper on Guidelines on transaction reporting, reference data, order record keeping and clock synchronisation under MiFID 2, in particular the possibility of outsourcing the creation of transaction reports to entities other than ARMs.

Conclusion: The Board endorsed the policy aspects of the Guidelines on transaction reporting, reference data, order record keeping and clock synchronisation which will be adopted by written procedure with a shortened comment period. ESMA staff will address the remaining issues, such as outsourcing, during the consultation period.

- Consultation Paper on TS on operational standards for access to data and aggregation and comparison of data across TRs under Article 81 of EMIR Annex 2 Decision

Decision: The Board adopted the consultation paper on Technical Standards on operational standards for access to data and aggregation and comparison of data across TRs under Article 81 of EMIR. The

Board highlighted its expectation for trade repositories to co-operate with ESMA. The Board agreed to align the timeliness requirements of the access to data by authorities to the ones included in the TRACE project.

16. Supervisory Convergence Standing Committee

— Report by Lourdes Centeno BS/250 Information

Conclusion: Lourdes Centeno presented the report by highlighting that further consideration will be given on the work ESMA will conduct in relation to the follow-up of previous peer reviews on MiFID.

17. Market Integrity Standing Committee

— Report BS/255 Information

Conclusion: The Board took note of the report.

18. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine Van Cauwenberge
Bulgaria	Todor Valchev (alternate)	
Czech Republic	Pavel Hollmann	Karel Juras
Denmark	Birgitte Sogaard Holm	Hanne Rae Larsen
Germany	Elisabeth Roegele	Philipp Sudeck
Estonia	Andre Nomm	
Ireland	Cyril Roux	Gareth Murphy Cian Murphy
Greece	Charlampos Gotsis	Anastasia Maltoudi
Spain	Lourdes Centeno	Antonio Mas
Croatia	Pierre Matel	
France	Gerard Rameix	Benoit de Juvigny Dora Blanchet
Italy	Giuseppe Vegas	Nicoletta Giusto)
Latvia	Kristaps Zakulis	Sandis Andersmits
Lithuania	Vilius Sapoka (alternate)	

Luxembourg	Jean Guill	
Hungary	Krisztian Csaky (alternate)	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Cornelius Jansen (alternate)	Ellen Boelema
Austria	Klaus Kumpfmuller	Andrea Kuras-Goldman
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	Gabriela Figueiredo Dias (alternate)	Cristina Dias
Romania	Misu Negritoiu	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Tomas Ambra (alternate)	Peter Tkac
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Sophie Degenne (alternate)	Oskar Ode
United Kingdom	David Lawton (alternate)	Edwin Schooling Latter Eleftheria Apostolidou

Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Martin Merlin	

EIOPA	Patrick Hoedjes	
EBA	Corinne Kaufman	
ESRB	Francesco Mazzaferro	

Observers

Iceland	Unnur Gunnarsdottir	
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	Marianne Elind Skaane

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Markets Department	Rodrigo Buenaventura
Head of Resources Department	Nicolas Vasse
Head of Risk Analysis and Economics Department	Steffen Kern
Head of Legal, Convergence and Enforcement Department	Sophie Vuarlot-Dignac
Team Leader Investor Protection	Salvatore Gnoni
Team Leader Asset Management	Richard Stobo



Done at Paris on 27 January 2016

Steven Maijor

Chair

For the Board of Supervisors