

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 30 January 2019
Time: 09h00 – 17h00
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 Decision

Decision: The agenda was adopted.

2. Oral Report by Chair and Executive Director Information

The Chair reported on:

- His meeting with Valdis Dombrovskis, vice-president of the European Commission, to discuss the ongoing review of the operations of the European Supervisory Authorities (ESAs) and the European Market Infrastructure Regulation (EMIR);
- The activities of the International Organization for Securities Commissions (IOSCO), in particular the follow-up group on market fragmentation;
- The developments in relation to the administrative arrangement and the oversight mechanism for the transfer of personal data between EU and non-EU authorities;
- The activities of the European Systemic Risk Board (ESRB), in particular in relation to the proposed framework to help assess leverage used by investment funds and the contribution to ESMA's stress-testing related work;
- Activities of the Joint Committee, in particular the joint Fintech work and the fact that the European Insurance and Occupational Pensions Authority (EIOPA) has taken over the chairmanship of the Joint Committee;
- The Statement published by the CBI (IE) and the CSSF (LU) on the implementation of the Money Market Funds Regulation; and
- The January 2019 meeting of the Management Board.

The Executive Director reported on ESMA's conflict of interest policy, in particular the annual declaration by Members of the Board of Supervisors.

Florentina Boboc (RO) presented the priorities for the Romanian Presidency of the Council of the European Union.

3. UK's withdrawal from the European Union

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| 1) Update Note | Discussion |
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Conclusion: The Board took note of the update.

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| 2) Memoranda of Understanding with the UK Financial Conduct Authority | |
| o Cover Note | Discussion |
| o Multilateral Memorandum of Understanding between NCAs and the UK FCA | Decision |
| o Memorandum of Understanding between ESMA and the UK FCA | Decision |
| o Decision on delegation to the Chair | Decision |

The Executive Director presented the memoranda of understanding with the UK Financial Conduct Authority.

The Board discussed the report, in particular:

- Whether any national competent authorities intend to supplement the memorandum by bilateral agreements; and
- How to deal with potential future amendments to the memorandum.

Decision: The Board adopted the multilateral memorandum of understanding between NCAs and the UK FCA and the memorandum of understanding between ESMA and the UK FCA. The Board also agreed with the delegation to the Chair. It was agreed that ESMA should also communicate externally that the Board agreed with the multilateral memorandum of understanding. ESMA staff will coordinate the signing process and keep the Board informed regularly.

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| 3) Memoranda of Understanding with the Bank of England | |
| a) NCAs – Bank of England | |
| o Update on the activities of the MoU Project Group relating to CCPs and CSD MoUs | Discussion |
| b) ESMA – Bank of England | |
| o Cover Note | Discussion |
| o Memorandum of Understanding between ESMA and the Bank of England on CCPs | Decision |
| o Memorandum of Understanding between ESMA and the Bank of England on CSD | Decision |

Nicoletta Giusto presented the update on the activities of the MoU Project Group relating to CCPs and CSD MoUs. The Head of the Markets Department presented the memoranda of understanding with the Bank of England.

The Board took note of the update and the memoranda, in particular

- The interactions with the ongoing review of the European Markets and Infrastructure Regulation (EMIR); and

- Whether EU competent authorities will also be invited to participate in UK colleges.

Conclusion: The Board adopted the multilateral memoranda of understanding between ESMA and the Bank of England on CCPs and CSD and supported the proposed way forward to assist in the exchange of information on clearing members.

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| 4) Impact of the UK's withdrawal on MIFID II Post-trade transparency | Discussion |
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Conclusion: The Board agreed with the suggested way forward and invited ESMA staff to discuss the approach further with the UK Financial Conduct Authority (FCA).

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| 5) Impact of the UK's withdrawal on the trading obligation for shares | Discussion |
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Elisabeth Roegele presented the impact of the UK's withdrawal on the trading obligation for shares.

The Board discussed the note, in particular the:

- Statement issued by ESMA in November 2017 clarifying the trading obligation for shares under MIFID II;
- Need to provide clarity to market participants by ESMA and the UK FCA in the absence of an equivalence decision; and
- Practical impact of the different solutions and the underlying data used to analyse that impact.

Conclusion: The Board decided to set-up an ad hoc expert group to identify a way forward on the trading obligation for shares. A conference call will be scheduled with the Board of Supervisors to discuss the proposed way forward by the expert group.

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| 6) Data implementation plan in case of a no-deal withdrawal | |
| <ul style="list-style-type: none"> ○ Presentation | Discussion |
| <ul style="list-style-type: none"> ○ Statement on the use of UK data in ESMA databases and performance of MIFID II calculations in case of a no-deal withdrawal | Decision |

The Head of Resources Department presented the data implementation plan in case of a no-deal withdrawal.

The Board discussed the presentation, in particular the

- Participation of trading venues in the data collection;
- Importance of data quality; and
- Whether further guidance will be provided to national competent authorities.

Decision: ESMA staff was invited to present an updated report on the data implementation plan to the March 2019 Board of Supervisors. The Board adopted the Statement on the use of UK data in ESMA databases and the performance of MIFID II calculations in case of a no-deal withdrawal.

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| 7) EMIR reporting | |
| <ul style="list-style-type: none"> ○ Cover Note | Discussion |
| <ul style="list-style-type: none"> ○ Statement on issues affecting reporting, recordkeeping, reconciliation, data access, portability and aggregation of derivatives under EMIR | Decision |

Decision: The Board adopted the Statement on issues affecting reporting, recordkeeping, reconciliation, data access, portability and aggregation of derivatives under EMIR.

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| 8) Supervisory briefing on the supervision of non-EU branches of EU firms providing investment services and activities | Decision |
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Merel van Vroonhoven presented the supervisory briefing on the supervision of non-EU branches of EU firms providing investment services and activities.

The Board discussed the supervisory briefing, in particular:

- The scope of the supervisory briefing and whether further coordination is needed with prudential authorities; and
- Whether the briefing will be published.

Decision: The Board adopted the supervisory briefing on the supervision of non-EU branches of EU firms providing investment services and activities and agreed to its publication.

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| 9) Survey on EU27 firms outsourcing Discretionary Portfolio Management to the UK | Information |
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Conclusion: The Board took note of the survey on EU27 firms outsourcing discretionary portfolio management to the UK.

4. Trends, Risks and Vulnerabilities

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| 1) Cover Note | Discussion |
| 2) Presentation | Discussion |

Carmine di Noia and the Head of Risks Analysis and Economics presented the trends, risks and vulnerabilities report and the Risk Dashboard.

The Board discussed the report, in particular:

- The level of operational risk and the role of benchmarks in that context;
- The impact of the liquidity positions of banks; and
- Whether indicators related to sustainability and climate change should be included.

Conclusion: The Board took note of the presentation and of the fact that sustainability indicators will be included in future versions of the Trends, Risks and Vulnerabilities Report.

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| 3) TRV Report | Decision |
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Decision: The Board adopted the Trends, Risks and Vulnerabilities Report.

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| 4) Risk Dashboard | Decision |
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Decision: The Board adopted the Risk Dashboard.

5. Cybersecurity

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| 1) Issues Note on ongoing Joint Committee Work | Discussion |
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The Head of Risk Analysis and Economics presented the note on ongoing Joint Committee Work on cybersecurity.

The Board discussed the note, in particular:

- The need for all supervised entities to consider the potential impact of cybersecurity threats on their operations;
- The importance of close co-operation between the ESAs; and
- Whether a mandatory incident reporting requirement should be introduced.

The Executive Director informed the Board that ESMA is also working (in the context of the Joint Committee) on advice under the FinTech Action Plan and will report shortly to the Board on that.

Conclusion: The Board took note of the suggested approach.

6. Amendments to PRIIPs

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| 1) Cover Note | Discussion |
| 2) Final Report on amendments to PRIIPs | Decision |

Decision: The Board adopted the Final Report on amendments to PRIIPs.

7. EU Alternative Investment Fund Market

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| 1) Cover Note | Discussion |
| 2) Presentation | Discussion |
| 3) ESMA Annual Statistical Report | Decision |

The Head of Risk Analysis and Economics Department presented the ESMA Annual Statistical Report.

The Board discussed the report, in particular:

- Whether there is a need to look further into liquidity of real estate funds; and
- The importance of data collection and quality, also in relation to hedge funds.

Decision: The Board adopted the ESMA Annual Statistical Report.

8. Disclosure Requirements under the Securitisation Regulation

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| 1) Cover Note | Discussion |
| 2) Opinion on amendments to ESMA's technical standards on disclosure requirements under the Securitisation Regulation | Decision |

The Executive Director presented the opinion on the disclosure requirements under the Securities Regulation.

The Board discussed the opinion, in particular the guidance already provided by some national competent authorities.

Decision: The Board adopted the opinion on amendments to ESMA's technical standards on disclosure requirements under the Securitisation Regulation.

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| 3) Q&As on disclosure requirements under the Securitisation Regulation | Decision |
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Decision: The Board adopted the Q&As on disclosure requirements under the Securitisation Regulation.

9. 2020-2022 Programming Document

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| 1) Cover Note | Discussion |
| 2) 2020-2022 Programming Document | Decision |
| 3) NCAs contribution | Decision |
| 4) IT Work programme | Decision |

The Executive Director presented the 2020-2022 Programming Document.

The Board discussed the programming document, in particular the:

- Uncertainty in the context of the UK's withdrawal from the Union and the ongoing review of the operations of the European Supervisory Authorities; and
- Possible timing of recruitment of staff.

Decision: The Board adopted the 2020-2022 Programming Document, the NCAs contributions and the IT Work Programme.

10. 2019 Work Programme

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| 1) Cover note | Discussion |
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Conclusion: The Executive Director presented the 2019 work programmes.

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| 2) Supervision Work Programme | Decision |
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Decision: The Board adopted the Supervision Work Programme.

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| 3) Regulatory Work Programme | Decision |
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Decision: The Board adopted the Regulatory Work Programme.

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| 4) Risk Analysis Work Programme | Decision |
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Decision: The Board adopted the Risk Analysis Work Programme.

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| 5) Supervisory Convergence Work Programme | Decision |
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The Board discussed the Supervisory Convergence Work Programme, in particular:

- The need to continue promoting supervisory convergence, including in areas such as crypto-assets;
- How the work of the Supervisory Coordination Network could contribute to the peer review on the national competent authorities' activities in light of relocations following the UK's withdrawal from the Union.

Decision: The Board adopted the Supervisory Convergence Work Programme.

11. Statement on EMIR Refit implementation issues

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| 1) Cover Note | Discussion |
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- 2) Statement Decision

Decision: The Board adopted the Statement. The Chair informed the Board that he will inform the Council of the European Union and the European Parliament prior to publication.

12. Benchmark Fall backs and relief from margining and clearing

- 1) Issues Note Decision

Decision: The Board agreed with the suggested way forward to work with the other ESAs and to reach out to the EU Institutions whether there would be support to amend the existing Regulatory Technical Standards.

13. Supervisory Briefing Commodity Derivatives

- 1) Issues Note Decision

Decision: The Board agree with the suggested way forward.

14. Publication of inside information related to collective investment undertakings without legal personality traded on venue under MAR

- 1) Cover Note Discussion
2) Q&A Decision

Nicoletta Giusto presented the Q&A on the publication of inside information related to collective investment undertakings without legal personality traded on venue under MAR.

The Board discussed the Q&A, in particular the interaction with further supervisory convergence initiatives in that area.

Decision: The Board endorsed the Q&A in principle but instructed the Market Integrity Standing Committee (MISC) to provide examples and guidance on supervision and subsequent enforcement. The Q&A will be presented to the Board of Supervisors (together with that further guidance) for approval during a future meeting.

15. CRA Technical Committee

- 1) CRA TC Report Information
2) Final Report Guidelines on the submission of Periodic Information to ESMA by Credit Rating Agencies Decision

Decision: The Board adopted the Final Report on Guidelines on the submission of period information to ESMA by credit rating agencies.

16. Corporate Finance Standing Committee

- 1) CFSC Report Information
2) Publication of national thresholds for the exemption from the obligation to publish a prospectus. Decision

Decision: The Board agreed with the publication of national thresholds for the exemption from the obligation to publish a prospectus.

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| 3) Q&As on the applicable rules for prospectuses in the event of a no-deal UK withdrawal from the EU | Decision |
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Decision: The Board adopted the Q&As on the applicable rules for prospectuses in the event of a no-deal UK withdrawal from the EU.

17. Data Standing Committee

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| 1) DSC Report | Information |
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Conclusion: The Board took note of the Report.

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| 2) Terms of Reference Repositories Task Force | Decision |
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Decision: The Board adopted the Terms of Reference for the Repositories Task Force.

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| 3) Terms of Reference Funds Task Force | Decision |
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Decision: The Board adopted the Terms of Reference for the Funds Task Force.

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| 4) Terms of Reference Markets and Issuers Task Force | Decision |
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Decision: The Board adopted the Terms of Reference for the Markets and Issuers Task Force.

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| 5) TREM data quality report | Decision |
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Decision: The Board adopted the TREM data quality report.

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| 6) Revised FIRDS data quality methodology | Decision |
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Decision: The Board adopted the revised FIRDS data quality methodology

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| 7) Revised FIRDS engagement framework | Decision |
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Decision: The Board adopted the revised FIRDS engagement framework.

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| 8) MIFIR Q&As | Decision |
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Decision: The Board adopted the MIFID Q&As.

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| 9) EMIR Q&As | Decision |
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Decision: The Board adopted the EMIR Q&As.

18. Investment Management Standing Committee

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| 1) IMSC Report | Information |
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Conclusion: The Board took note of the Report.

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| 2) Consultation paper on guidelines on liquidity stress testing | Decision |
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Decision: The Board adopted the consultation paper on guidelines on liquidity stress-testing.

19. Market Integrity Standing Committee

- 1) MISC Report Information

Conclusion: The Board took note of the Report.

- 2) BMR Q&A Decision

Decision: The Board adopted the BMR Q&A.

20. Post-Trading Standing Committee

- 1) PTSC Report Information

Conclusion: The Board took note of the Report.

- 2) CSDR Q&A Decision

Decision: The Board adopted the CSDR Q&A.

21. Secondary Markets Standing Committee

- 1) SMSC Report Information

Conclusion: The Board took note of the Report.

- 2) MIFID II Q&As Decision

Decision: The Board adopted the MIFID II Q&As.

22. EMIR Data Quality Action Plan

- 1) Cover Note Information

- 2) Report Decision

Decision: The Board adopted the report on the EMIR data quality action plan.

23. Annual Update on Breach of Union Law and complaint handling

- 1) Note Information

Conclusion: The Board took note of the annual update on Breach of Union Law and complaint handling.

24. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Dimitar Koichev (alternate)	
Czech Republic	Vojtěch Belling	Karel Juras
Denmark	Karen Dorte Abelskov	Anne Bruun
Germany	Elisabeth Roegele	Marcus Hein
Estonia	Stina Mander (alternate)	
Ireland	Derville Rowland	Colm Kincaid Cian Murphy
Greece	Charalampos Gotsis	Vasiliki Koularmani
Spain	Sebastian Albella	Fatima Cerdan de la Cruz Antonio Mas
France	Robert Ophele	Benoit de Juvigny Viet-Linh Nguyen
Croatia	Jurica Jednacak	
Italy	Carmine Di Noia (alternate)	Nicoletta Giusto
Cyprus	Demetra Kalogerou	Andreas Andreou
Latvia	Sandis Andersmits	
Lithuania	Vaidas Cibas (alternate)	
Luxembourg	Claude Marx	Françoise Kauthen
Hungary	Krisztian Csaky (alternate)	

Malta	Christopher Buttigieg (alternate)	
Netherlands	Merel van Vroonhoven	Hanzo van Beusekom (AM only) Fleur de Roos
Austria	Birgit Puck (alternate)	Andrea Kuras-Goldmann Linda Li
Poland	Ilona Pieczyńska-Czerny (alternate)	Joanna Kott
Portugal	Gabriela Figueiredo Dias	Rita Oliveira Pinto
Romania	Florentina Boboc (alternate)	Raluca Tariuc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Vladimir Dvoracek	Tomas Ambra
Finland	Eeva Granskog (alternate)	
Sweden	Malin Omberg (alternate)	Fredrik Elmberg
United Kingdom	Andrew Bailey	Lee Foulger Cristina Frazer Kevin Bridgwater

Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Ugo Bassi	Ellen Boelema
EBA	Anne Tiedemann	
EIOPA	Kai Kosik	
ESRB	Francesco Mazzaferro	
Iceland	Pall Fridriksson (alternate)	

Liechtenstein	/	
Norway	Anne Merethe Bellamy	Marianne Elind Skaane
EFTA Surveillance Authority	Marco Uccelli (alternate)	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Markets Department	Fabrizio Planta
Head of Risk Analysis and Economics Department	Steffen Kern

Done at Paris on 23 April 2019

Steven Maijor

For the Board of Supervisors