

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** 31 January 2018  
**Time:** 09h00 – 16h30  
**Location:** ESMA, rue de Grenelle 103, 75007 Paris, France  
**Contact:** [frederiek.vermeulen@esma.europa.eu](mailto:frederiek.vermeulen@esma.europa.eu) Tel: +33 1 58 36 43 37

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**1. Adoption of agenda** Decision

**Decision:** The Board adopted the agenda.

**2. Summary of conclusions**

1) 14 December 2017 Decision

**Decision:** The summary of conclusions of the 14 December 2017 meeting was adopted.

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

The Chair reported on:

- His meeting with European Commission vice-President Dombrovskis, especially in relation to the ongoing review of the European Supervisory Authorities, the implementation of MIFID II and upcoming legislative files;
- His meetings with Members of the European Parliament, in particular in relation to the ongoing review of the European Supervisory Authorities, the EMIR review and the work ESMA is conducting in relation to the United Kingdom's decision to withdraw from the European Union (EU);
- The January 2018 meeting of the Management Board, in particular the discussions on the stocktake on the 2016-2020 strategic orientation and the work programmes;
- The activities of the Joint Committee, and in particular that ESMA has taken over the chairmanship;
- The activities in relation to the European Systemic Risk Board (ESRB), and in particular the Chair's intention to write to the ESRB Chair, Mario Draghi, on the conflict between the next ESMA Board of Supervisors meeting and the ESRB General Board meeting;
- The developments in relation to critical benchmarks, in particular the classification of LIBOR as a critical benchmark, the fact that Finansinspektionen (SE) proposed that STIBOR should become a critical benchmark and developments in relation to the risk-free-rate working group; and
- His meetings with Hong Kong stakeholders.

The Chair also informed the meeting of the Board's decision to appoint Robert Ophele (FR) and Erik Thedeen (SE) as Members of the Management Board.

The Executive Director reported on the:

- January 2018 meeting of the Financial Services Committee, in particular the discussions on sustainable finance and virtual currencies; and
- Annual call for declaration of interests by Board members.

#### 4. MIFID II implementation

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| 1) Presentation | Discussion |
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The Executive Director presented some key aspects related to the implementation of MIFID II.

The Board discussed the presentation, in particular the:

- Overall smooth coming into effect of the Regulation;
- Potential impact of the tick-size regime on liquidity;
- Fact that some national competent authorities were not exchanging data through TREM and its impact;
- Fact that some Approved Reporting Mechanisms (ARM) were not in a position to provide their service cross-border to clients based outside the Member State;
- Double Volume Cap (DVC) and ESMA's continuous monitoring of data completeness;
- IT-support provided by ESMA; and
- Concerns expressed by some stakeholders in relation to the availability of consumer products and the implementation of the Packaged Retail Investment and Insurance Based-Products Regulation.

**Conclusion:** The Board agreed that national competent authorities (NCAs) should ensure that the ARMs should be able to provide cross-border services and that NCAs should step-up efforts in relation to data exchange. The Secondary Markets Standing Committee (SMSC) was instructed to look at the impact of the existing tick-size regime. The Investor Protection and Intermediaries Standing Committee should look at the access to products and whether there is any change over time. The Investment Management Standing Committee will consider the implementation of PRIIPs. The Board will be updated on the implementation of MIFID II during the March 2018 Board of Supervisors. An earlier meeting on the Double Volume Cap might be needed.

#### 5. Warning on Virtual Currencies

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| 1) Cover Note | Discussion |
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**Conclusion:** Jean-Paul Servais presented the cover note and accompanying documents.

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| 2) Warning on virtual currencies | Decision |
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The Board discussed the draft joint ESA warning on virtual currencies.

The Board discussed the warning, in particular:

- The need to warn retail investors timely and strongly;
- Whether the warning should be extended to Initial Coin Offerings (ICOs);
- The issue of derivatives linked to crypto currencies; and
- Whether internal decision-making processes could be enhanced and where necessary accelerated whilst respecting the existing governance framework.

**Decision:** The Board adopted the warning on virtual currencies. It was agreed that the Chair could decide on the timing of the publication of the warning depending on market developments and the approval of the warning by the Board of Supervisors of the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA).

- 3) FISC Report Information

**Conclusion:** The Board took note of the report.

- 4) Terms of Reference ICO Task Force Decision

The Board discussed the Terms of Reference of the ICO Task Force, in particular:

- Whether virtual currencies can be considered as financial instruments defined under MIFID II;
- The need to approach virtual currencies on a cross-ESMA basis and in co-operation with other bodies; and
- The interaction with other financial services law, such as payment services.

**Decision:** The Board adopted the Terms of Reference of the ICO Task Force. It was decided that a first report should be presented to the May 2018 Board of Supervisors meeting.

## 6. Update on ESMA activities following the UK's decision to withdraw from the EU

- 1) Cover Note Discussion

**Conclusion:** The Executive Director presented the note and the accompanying documents.

- 2) Update on cliff effects work Discussion

**Conclusion:** The Board took note of the update on cliff effects work. Andrew Bailey (UK) updated the Board on the activities of the UK Financial Conduct Authority (FCA), in particular the December 2017 Statement on EU withdrawal.

- 3) ESMA operational impact Discussion

The Board discussed the update, in particular the

- Status of UK citizens currently employed by ESMA and their status once the UK has left the Union; and
- Need to identify the areas in which strong co-operation and data exchange with UK authorities will be needed once the UK has left the Union.

**Conclusion:** The Board took note of the update on the (potential) ESMA operational impact of the UK's withdrawal from the EU.

- 4) Update on Supervisory Coordination Network activities Discussion

**Conclusion:** The Board took note of the update on the Supervision Coordination Network's activities.

## 7. EMIR Data Quality Action Plan

- 1) 2017 Report Decision

Hannelore Lausch and the Head of Supervision Department presented the 2017 Report on the EMIR Data Quality Action Plan.

**Decision:** The Board took note of the update and suggested steps forward. The Chair reminded the Board that an interim report on the quality of data reported by trade repositories will be presented to the March 2018 Board of Supervisors.

## 8. Pre-trade Waiver Opinion – equity

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| 1. Cover Note | Discussion |
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Elisabeth Roegele presented the cover note and accompanying documents.

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| 2. Opinion | Decision |
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**Decision:** The Board adopted the pre-trade waiver opinion. Elisabeth Roegele (DE) disagreed with the opinion.

## 9. Data Protection Regulation and Cooperation with third countries

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| 1) Cover Note | Discussion |
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**Conclusion:** The Head of Legal, Convergence and Enforcement presented the note and accompanying documents.

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| 2) Revised draft administrative arrangement | Decision |
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**Decision:** The Board endorsed the revised administrative arrangement.

## 10. 2018 Work Programmes

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| 1) Cover Note | Discussion |
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**Conclusion:** The Executive Director presented the 2018 Work Programmes.

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| 2) Supervisory Convergence Work Programme | Decision |
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The Board discussed the supervisory convergence work programme, in particular:

- The peer reviews to be conducted by ESMA, in particular the fact that no resources are available to conduct a CCP peer review; and
- ESMA's activities in relation to cyber security.

**Decision:** The Board adopted the Supervisory Convergence Work Programme subject to some drafting amendments. ESMA staff was instructed to consider the further cyber security related initiatives ESMA should take.

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| 3) Risk Analysis Work Programme | Decision |
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**Decision:** The Board adopted the Risk Analysis Work Programme

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| 4) Regulatory Work Programme | Decision |
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**Decision:** The Board adopted the Regulatory Work Programme.

## 11. 2018-2021 Programming Document

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| 1) Cover Note | Discussion |
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**Conclusion:** The Executive Director presented the 2018-2021 Programming Document.

- 2) 2019-2021 Programming Document Decision

The Board discussed the 2019-2021 Programming Document, in particular:

- How ESMA should reflect the ongoing discussions in relation to the European Commission's legislative proposal following the ESA review;
- The need for ESMA to further develop Key Performance Indicators; and
- The allocation of human resources to ESMA's different activities.

**Decision:** The Board adopted the 2019-2021 Programming Document. It was agreed that ESMA should highlight in the cover letter that the budget will be amended depending on the final outcome of the European Commission's legislative proposal following the ESA review. Jean-Paul Servais (BE) abstained and Pavel Hollmann (CZ) disagreed noting that the 2019 budget should be based on ESMA's current mission and objectives and thus not assume the adoption of (parts of) the European Commission's proposal following the ESA review.

- 3) 2018-2021 IT Work Programme Information

**Conclusion:** The Board took note of the 2018-2021 IT Work Programme.

## 12. CSDR Implementation Questions

- 1) Issues Note Discussion

Robert Ophele presented the Issues Note.

The Board discussed the note, in particular the:

- Practical implementation of the questions; and
- Legal Advice.

**Decision:** On the use of international communication standards the Board expressed a preference for option 2 (as the drafting of Article 35 CSDR allows only for limited flexibility). The Board also agreed that the dematerialisation requirement of securities granted as collateral should only apply to those that are admitted to trading or traded on a trading venue.

## 13. Corporate Reporting Standing Committee

- 1) CRSC Report Information

**Conclusion:** The Board took note of the report.

- 2) Comment letter on the Monitoring Group Consultation –  
Strengthening the governance Oversight of the International  
Audit-related Standard-setting Boards in the Public Interest Decision

**Decision:** The Board adopted the comment letter on the Monitoring Group consultation.

- 3) Terms of Reference of the ESEF Working Group Decision

**Decision:** The Board adopted the terms of reference.

- 4) Terms of Reference of the Narrative Reporting Working  
Group Decision

**Decision:** The Board adopted the terms of reference.

- 5) Terms of Reference of the Financial Institutions Task Force Decision

**Decision:** The Board adopted the terms of reference.

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| 6) Terms of Reference of the Guidelines on Enforcement of Financial Information Task Force | Decision |
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**Decision:** The Board adopted the terms of reference.

**14. Market Data Standing Committee**

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| 1) MDSC Report | Information |
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**Conclusion:** The Board took note of the report.

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| 2) EMIR Q&A | Decision |
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**Decision:** The Board adopted the Q&A.

**15. Market Integrity Standing Committee**

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| 1) MISC Report | Decision |
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**Conclusion:** The Board took note of the report.

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| 2) Final Report on the draft ITS on cooperation under Articles 24 and 25 of the Market Abuse Regulation (MAR) | Decision |
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**Decision:** The Board adopted the Final Report on the draft ITS on cooperation under Articles 24 and 25 of the Market Abuse Regulation (MAR). Erik Thedeem (SE) informed the Board of the difficulties to apply the proposed draft ITS in Sweden as national law obliges national authorities to conduct an individual and independent assessment in every case to assess whether the information is confidential.

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| 3) BMR Q&A | Decision |
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**Decision:** The Board adopted the Q&As.

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| 4) Update of the Short Selling Regulation Q&A on rights issues | Decision |
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**Decision:** The Board adopted the updated Q&A.

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| 5) Supervisory Briefing under the Short Selling Regulation on the possibility of introducing short-term bans following an intraday fall in price corrected at the close | Decision |
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**Decision:** The Board adopted the Supervisory Briefing.

**16. Post-Trading Standing Committee**

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| 1) PTSC Report | Information |
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**Conclusion:** The Board took note of the report.

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| 2) Final Report on Guidelines on CCP management of conflicts of interests | Decision |
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**Decision:** The Board adopted the Final Report on Guidelines on CCP management of conflicts of interests.

- 3) CSDR Q&As Decision

**Decision:** The Board adopted the Q&As.

#### **17. Secondary Markets Standing Committee**

- 1) SMSC Report Information

**Conclusion:** The Board took note of the report.

- 2) Q&A on pre-arranged transactions Decision

**Decision:** The Board adopted the Q&A on pre-arranged transactions.

#### **18. ESRB recommendation on information related to commercial real estate**

- 1) Note Decision

**Conclusion:** The Board took note of the ESRB recommendation on information related to commercial real estate.

#### **19. IT governance**

- 1) Cover Note Information
- 2) Presentation Information

**Conclusion:** The Board took note of the presentation on IT governance.

#### **20. Securities and Markets Stakeholder Group (SMSG)**

- 1) Note on the appointment of two SMSG Members Decision

**Decision:** The Board appointed Juan Viver Gargallo and Geoffrey Bezzina as Members of the Securities and Markets Stakeholder Group (SMSG).

#### **21. A.O.B.**

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## Participants list

### Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Karina Karaivanova	
Czech Republic	Pavel Hollman	Karel Juras
Denmark	Ove Feddersen (alternate)	Kåre Valgreen
Germany	Elisabeth Roegele	Hannelore Lausch David Dietrich Marcus Hein
Estonia	Andre Nomm	
Ireland	Derville Rowland	Martin Moloney Cian Murphy
Greece	Charalampos Gotsis	Anastasia Maltoudi
Spain	Sebastian Albella	Antonio Mas
France	Robert Ophele	Benoit de Juvigny Stephanie Cabossioras
Croatia	Đurđica Mihotić Žižić (alternate)	
Italy	Anna Genovese (alternate)	Nicoletta Giusto



Cyprus	Demetra Kalogerou	Andreas Andreou
Latvia	Gunta Razane	
Lithuania	Mindaugas Šalčius	Vaidas Cibas
Luxembourg	Claude Marx	Françoise Kauthen
Hungary	Gábor Laki (alternate)	
Malta	Christopher Buttigieg (alternate)	
Netherlands	Merel van Vroonhoven	Pim de Wild
Austria	Birgit Puck (alternate)	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	Gabriela Figueiredo Dias	Rita Oliveira Pinto
Romania	Mircea Ursache (alternate)	Florentina Boboc
Slovenia	Sabina Bešter (alternate)	
Slovakia	Vladimir Dvoracek	Tomas Ambra
Finland	Anneli Tuominen	Jarmo Parkkonen
Sweden	Erik Thedéen	Fredrik Elmberg
United Kingdom	Andrew Bailey	Cristina Frazer

### Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Tilman Lueder	Peter Ohrlander
EBA	Anne Tiedemann	
EIOPA	Kai Kosik	
ESRB	Francesco Mazzaferro	
Iceland	Sigurveig Guðmundsdóttir (alternate)	
Liechtenstein	Marcel Lötscher	
Norway	Anne Merethe Bellamy	Marianne Elind Skaane
EFTA Surveillance Authority	Per Christian Baerøe (alternate)	

### ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Supervision Department	Felix Flinterman

Done at Sofia on 22 March 2018

Steven Maijor

For the Board of Supervisors

