

Summary of Conclusions

Board of Supervisors

Date:	Wednesday 17 May 2023
Time:	09h00 – 15h50
Location:	Scandic Anglais Hotel, Stockholm, Sween
Contact:	ESMABoard@esma.europa.eu

1. Adoption of agenda Decision

Decision: The agenda was adopted. Items 14.3 *Q&A on error reporting in CRAs* and 21.2 *Procedure for ESMA Groups* were removed from the agenda and will be submitted for Board approval by written procedure.

2. Confirmation of absence of conflict of interests Information

Decision: The Board took note of the ESMA Chair's statement not to have received any indication by a Board Member of any interest which might be considered prejudicial to her/his independence in relation to any items on the agenda.

3. Report by ESMA Chair, Executive Director and Chair of the CCP Supervisory Committee Discussion

The ESMA Chair reported on:

- The recent interactions with the European Institutions, in particular her recent meetings with Members of the European Parliament to discuss the main legislative proposals under discussion, including the MiFIR/MiFID review, EMIR 3, and Listing Package and her participation in the Financial Stability Table of the Economic and Financial Committee;
- ESMA's international activities, in particular, participation in the (i) exceptional IOSCO Board meeting, that considered IOSCO's preliminary analysis of the International Sustainability Standards Board (ISSB) disclosure standards, (ii) IOSCO FSEG Steering Group and (iii) FSB Steering Committee on non-banking financial intermediation as well as (iv) recent bilateral meetings with US authorities and the International Monetary Fund (IMF);
- The activities of the Joint Committee, in particular upcoming work on implementing Digital Operational Resilience Act (DORA) and the preparatory work on European Single Access Point (ESAP);
- The May 2023 Management Board, in particular the discussion that took place on the annual stocktake of discussions of real supervisory cases, the development of the Strategy Implementation Plan and the finalisation of changes to ESMA Groups; and

— ESMA’s peer review work plan, outlining planned peer review activities over the next months.

The Executive Director reported on the April 2023 Financial Services Committee meetings, in particular the European Commission’s presentation of the functioning of the Single Supervisory Mechanism, the European Banking Authority’s presentation on the results from its latest diversity benchmarking exercise and the discussion on systemic cyber-risk.

4. Market update and deep-dive on CDS markets

1) Presentation	Discussion
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The Head of the Economics, Financial Stability and Risk Department presented the market update and deep-dive on credit default swap (CDS) markets and valuation issues.

The Board discussed the presentation, in particular the:

- Characteristics of the various segments of the CDS market, many of which are marked by low levels of liquidity;
- Relative importance of the CDS market for price discovery and valuation purposes;
- Need to look back and investigate the March 2023 episode, which raised questions on orderly functioning of the market;
- Need for enhanced transparency of the CDS markets and improved availability of market data, notably through improved trade transparency under MiFIR;
- Importance of continued market monitoring and data exchange among supervisors,
- Need for enhanced monitoring of specific types of investment funds (such as real estate funds and private equity funds) and their valuation practices; and
- Need, in close cooperation with prudential supervisors, to closely monitor any reclassifications of bonds in the financial statements of banks from fair value to amortised cost.

Conclusion: The Board discussed the presentation providing a market update and deep-dive on CDS markets. The Board was supportive of enhancing transparency of the CDS markets. The Board tasked relevant Standing Committees with further monitoring and analysing of (i) the transparency of the CDS market and possible policy measures (Markets Standing Committee), (ii) specific types of investment funds (Investment Management Standing Committee) and (iii) financial reporting repercussions of high level of unrealised losses on bond portfolios of the listed banks (Issuers Standing Committee).

5. Technical standards under ELTIF Regulation

1) Presentation	Discussion
2) Consultation paper for regulatory technical standards under the revised ELTIF Regulation	Decision

The Executive Director presented the consultation paper for regulatory technical standards under the revised ELTIF Regulation.

The Board discussed the consultation paper, in particular the:

- Support for the development of European long-term investment funds (ELTIFs);
- Importance of the requirements related to liquidity management notably in light of the recent market developments and the need to provide to retail investors a safe environment to invest in long-term products;

- Nature of the ELTIF and relative merits of two alternatives related to notice periods proposed in the consultation paper and their interaction with Level 1;
- Importance of open public consultation to collect feedback; and
- Proportionality of the proposals.

Decision: The Board adopted the consultation paper for regulatory technical standards under the revised ELTIF Regulation, subject to a technical clarification of the wording in Option 1 on notice periods.

6. Follow-up on May 2022 flash crash - pre-trade controls

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

The Chair of the Markets Standing Committee presented the note on the follow-up on the May 2022 flash crash and pre-trade controls.

The Board discussed the note on the follow-up on the May 2022 flash crash and pre-trade controls, in particular the:

- The feedback gathered on the implementation of pre-trade controls by EU investment firms and trading venues in each jurisdiction;
- Next steps to be undertaken to conclude the assessment on how EU investment firms and trading venues have implemented the legal provisions regarding pre-trade controls; and
- Need for the provision of further guidance to ensure the convergent implementation of pre-trade controls by investment firms across the EU.

Conclusion: The Board discussed the note on the follow-up on the May 2022 flash crash and pre-trade controls. The Board agreed that further evidence on the implementation of pre-trade controls by investment firms across the EU should be gathered before considering developing guidance and tasked the Markets Standing Committee (MSC) to develop a proposal for such an exercise.

7. Digital Operational Resilience Act

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

The Executive Director presented the note on the Digital Operational Resilience Act. The Chair of the Digital Finance Standing Committee (DFSC) complemented this presentation with information from the related discussion in the DFSC on some securities regulators' specific aspects.

The Board took note of the update on the Digital Operational Resilience Act, in particular the upcoming Consultation Paper including draft technical standards on the ICT Risk Management Framework, the policy for third party service providers, ICT related incident classification and register of information.

Conclusion: The Board took note of the information on the Digital Operational Resilience Act.

8. 2024 IPSC Common Supervisory Action - topic and timing

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| 1) Presentation | Discussion |
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2) Note

Decision

The Chair of the Investor Protection Standing Committee presented a note on the topic and timing for the 2024 IPSC Common Supervisory Action.

The Board discussed the note on the topic and timing for the 2024 IPSC Common Supervisory Action, in particular the:

- Importance of timely assessment of the integration of sustainability in firms' suitability assessment;
- Interaction with relevant parts of the product governance framework; and
- Timing of the proposed Common Supervisory Action.

Decision: The Board agreed with the topic and timing for the 2024 IPSC Common Supervisory Action. The Board agreed that the Common Supervisory Action on the integration of sustainability in firms' suitability assessments, should cover product governance requirements and start by the end of H1 2024.

9. Greenwashing progress report

1) Presentation

Discussion

2) Report

Decision

The Chair of the Sustainability Standing Committee presented the Greenwashing progress report.

The Board discussed the Greenwashing progress report, in particular the:

- Support to the direction of ongoing ESMA work to tackle greenwashing;
- Preliminary nature of the progress report and that the final report might include further policy recommendations; and
- Importance of the double materiality principle.

Decision: The Board adopted the Greenwashing progress report.

10. CCP Stress Test

1) Presentation

Discussion

2) Framework

Decision

- Annex 1 – Instructions Decision
- Annex 2 – Validations Decision
- Annex 3 – Data Request Templates Decision

3) ESRB adverse scenario

- Adverse scenario narrative Information
- Adverse scenario Information

The Independent Member of the CCP Supervisory Committee presented the framework on the CCP Stress Test.

The Board discussed the framework for the CCP Stress Test, in particular new aspects of this stress test that does not only stress resilience of CCPs themselves but also the feedback loops to the broader financial system in order to assess the spill-over risks.

Decision: The Board adopted the framework for the CCP Stress Test.

11. Second ESMA Data Strategy

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| 1) Presentation | Discussion |
| 2) Data Strategy | Decision |

The Head of the Data Intelligence and Technology Department presented the second ESMA Data Strategy.

The Board discussed the second ESMA Data Strategy, in particular the:

- Role of ESMA as a data hub, which does not change allocation of supervisory responsibilities but should lead to effective and efficient allocation of resources;
- Importance of broad cooperation and buy-in from the NCAs, including through sharing of data to the maximum level possible, and of legislation enabling the data sharing necessary for supervisors to fulfil their supervisory responsibilities;
- Need to further develop detailed (including budgetary) planning for each project at an early stage at the IT Standing Committee, in order to enable efficient and timely planning for both NCAs and ESMA; and
- Need for ongoing monitoring of implementation and prioritisation in light of scarce resources at ESMA and NCA level.

Decision: The Board adopted the second ESMA Data Strategy.

12. ESMA Strategy: implementation plan

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| 1) Presentation | Discussion |
| 2) Implementation plan | Decision |

The Executive Director and the Acting Head of Governance and External Affairs Department presented the ESMA Strategy implementation plan.

The Board discussed the ESMA Strategy implementation plan, in particular the:

- Level of ambition reflected in the implementation plan and the need for ongoing monitoring of implementation of the Strategy, taking into account need for prioritisation;
- Need for efficient use of existing convergence tools; and
- Importance of real supervisory cases discussion for effective convergence.

Decision: The Board adopted the ESMA Strategy implementation plan.

13. Consultative Working Groups

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| 1) Presentation | Discussion |
| 2) Note | Decision |

The Acting Head of the Governance and External Affairs Department presented the note on the Consultative Working Groups.

The Board discussed the note on the Consultative Working Groups, in particular the:

- Need for flexibility in stakeholder engagement, especially when new expertise is needed in case of new regulation or changes of regulatory perimeter; and
- Specific case of stakeholder engagement in the area of Digital Finance.

Decision: The Board adopted the note on the Consultative Working Groups.

14. ESMA Supervision Policy Committee

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

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| 2) Revised RTS on authorisation and registration of benchmark administrators | Decision |
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Decision: The Board adopted the revised Regulatory technical standards on authorisation and registration of benchmark administrators.

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| 3) Q&A on error reporting in CRAs | Decision |
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Decision: The item was removed from the agenda.

15. Investment Management Standing Committee

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| 1) IMSC Report | Information |
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Conclusion: The Board adopted the IMSC Report.

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| 2) Opinion on undue costs | Decision |
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The Board discussed the Opinion on undue costs, in particular the:

- Support for enhanced cost transparency of products;
- wording of the Opinion to avoid the impression that the NCAs will effectively become price regulators; and
- eligibility test proposed in the Opinion and its application to investment managers under UCITS and under AIFMD.

Decision: The Board adopted the Opinion on undue costs. Rafal Mikusiński (PL) and Tomáš Ambra (SK) voted against the Opinion, while Vojtech Belling (CZ) and Susanna Grufman (SE) abstained.

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| 3) Report on 2022 Common Supervisory Action on valuation | Decision |
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Decision: The Board adopted the Report on the 2022 Common Supervisory Action on valuation.

- 4) AIFMD Q&As Decision

Decision: The Board adopted the AIFMD Q&As.

16. Investor Protection Standing Committee

- 1) IPSC Report Information

Conclusion: The Board took note of the IPSC Report.

- 2) Statement on investment firms providing unregulated activities Decision

The Board discussed the Statement on investment firms providing unregulated services, in particular the:

- Importance of highlighting the risks arising where investment firms provide at the same time services and products regulated under MiFID II as well as unregulated products/services;
- Importance of clear, fair and not misleading information to clients;
- Impact of providing unregulated activities on the risk profile of an investment firm; and
- Role of NCAs with regards to unregulated activities based on their respective mandates.

Decision: The Board adopted the Statement on investment firms providing unregulated activities.

- 3) Q&As on crowdfunding Decision

Decision: The Board adopted the Q&As on crowdfunding, subject to an editorial change.

17. Markets Standing Committee

- 1) MSC Report Information

Conclusion: The Board took note of the MSC Report.

- 2) Opinion on market outages of trading venues Decision

Decision: The Board adopted the Opinion on market outages of trading venues.

- 3) Q&A on the use of waivers from pre-trade transparency for non-equity instruments Decision

Decision: The Board adopted the Q&A on the use of waivers from pre-trade transparency for non-equity instruments.

18. Follow-up to Peer Review on the Guidelines on ETFs and other UCITS issues

- 1) Cover note Information

- 2) Report Decision

Decision: The Board adopted the Report on the Follow-up to the Peer Review on the Guidelines on ETFs and other UCITS issues.

19. TRV Risk Article

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| 1) Cover note | Information |
| 2) Stress testing MMFs in the EU – first evidence from fund reporting | Decision |

Decision: The Board adopted the TRV Risk Article: Stress testing MMFs in the EU – first evidence from fund reporting.

20. ESMA Groups

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| 1) Cover note | Information |
| 2) Procedure for ESMA Groups | Decision |

Decision: The item was removed from the agenda.

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| 3) Terms of Reference – Working Groups | |
| • Reporting to the DSC | |
| ○ Disclosure Working Group | Decision |
| ○ Reporting Working Group | Decision |
| • Reporting to the IMSC | |
| ○ IMSC Operational Working Group | Decision |
| • Reporting to the IPSC | |
| ○ Working Group on Investor Protection | Decision |
| • Reporting to the RSC | |
| ○ Financial Stability and Risk Monitoring Working Group | Decision |
| ○ Investor Trends and Research Working Group | Decision |

Decision: The Board adopted the Terms of Reference for Working Groups.

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| 4) Terms of Reference – Task Forces | |
| • Reporting to the DSC / ITSC | |
| ○ ESAP Task Force | Decision |
| • Reporting to the ESPC | |
| ○ Securitisation Task Force | Decision |

- Reporting to the FRWG (EECS)
 - Climate in Financial Information Task Force Decision
- Reporting to the IPSC
 - Crowdfunding Task Force Decision
 - Product Intervention Task Force Decision

Decision: The Board adopted the Terms of Reference for Task Forces.

- 5) Updated rules of procedure of the Board of Supervisors Decision

Decision: The Board adopted the updated rules of procedure of the Board of Supervisors.

- 6) Overview of ESMA Groups Information

Conclusion: The Board took note of the Overview of ESMA Groups.

21. A.O.B. A.O.B.

Participants list
Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais Erik Peetermans (ad-hoc alternate)	
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Vojtech Belling Karel Juráš (alternate)	
Denmark	Karen Dorteab Abelskov Henrik Brarup Damgaard (alternate)	
Germany	Thorsten Pöttsch Jens Fürhoff (alternate)	Jan-Ole Wagner
Estonia	Andre Nõmm	
Ireland	Patricia Dunne (alternate)	Laura Murtagh John Montgomery
Greece	Vassiliki Lazarakou	Vasiliki Koularmani
Spain	Rodrigo Buenaventura Montserrat Martinez (alternate)	Antonio Mas Sirvent

France	Marie-Anne Barbat-Layani	Frederic Pelèse Françoise Buisson
Croatia	Jurica Jednačak (alternate)	
Italy	Carlo Comporti	Martina Tambucci
Cyprus	George Karatzias (alternate)	
Latvia	Santa Purgaile	
Lithuania	Vaidas Cibas	
Luxembourg	Claude Marx Andrea Gentilini (alternate)	
Hungary	Gábor Laki (ad-hoc alternate)	
Malta	Christopher Buttigieg	
Netherlands	Jos Heuvelman	Quirine Hoogeveen
Austria	Eduard Müller Andrea Kuras-Goldman (ad-hoc alternate)	
Poland	Rafal Mikusiński	Dominika Szymanska
Portugal	Luís Laginha de Sousa	

Romania	Ovidiu Petru (alternate)	
Slovenia	Sabina Bešter (alternate)	
Slovakia	Peter Tkáč Tomáš Ambra (alternate)	Andrea Lacková
Finland	Armi Taipale	Merja Lehtimäki
Sweden	Susanna Grufman Marie Jespersen (alternate)	Fredrik Elmberg Gabriel Bladh
Chair	Verena Ross	

Non-voting members

European Commission	Ugo Bassi	Cesare Posti
EBA	/	
EIOPA	/	
ESRB	Francesco Mazzaferro	
Iceland	Björk Sigurgísladóttir	
Liechtenstein	Reto Degen	
Norway	Geir Holen (alternate)	

EFTA Surveillance Authority	/	
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ESMA

Executive Director	Natasha Cazenave
Summary of Conclusions	Tomáš Borovský
Independent Member of the CCP Supervisory Committee	Froukelien Wendt
Head of the Economics, Financial Stability and Risk Department	Steffen Kern
Head of the Data Intelligence and Technology Department	Fabrizio Planta
Acting Head of the Governance and External Affairs Department	Jakub Michalik

Done at Paris on 26 June 2023

Verena Ross

Chair

For the Board of Supervisors

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 22 March to 15 May 2023)

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| <p>1. Joint Committee Report on Risks and Vulnerabilities for Spring 2023 (JC 2023 07)</p> <p>1) Report</p> <p>Decision: The Board adopted the Joint Committee report on Risks and Vulnerabilities.</p> | <p>3 April 2023</p> <p>Decision</p> |
| <p>2. Draft joint interactive factsheet on financial education, inflation and rising interest rates (general factsheet (JC 2023 11) and sectoral factsheet (JC 2023 12))</p> <p>1) Cover note</p> <p>2) General fact sheet</p> <p>3) Sectoral fact sheet</p> <p>Decision: The Board adopted the draft interactive factsheet on financial education, inflation and rising interest rates. Marie-Anne Barbat-Layani (FR) abstained.</p> | <p>3 April 2023</p> <p>Information</p> <p>Decision</p> <p>Decision</p> |
| <p>3. Draft joint ESAs' Consultation Paper with amendments to the Regulatory Technical Standards (RTS) in the SFDR Delegated Regulation</p> <p>1) Draft consultation paper</p> <p>Decision: The Board adopted the draft consultation paper.</p> | <p>5 April 2023</p> <p>Decision</p> |
| <p>4. Final reports on draft Guidelines on the template for the written agreement and on the template to summarise the resolution plan</p> <p>1) Final report on draft guidelines on the template for the written agreement</p> <p>2) Final report on draft guidelines on the template to summarise the resolution plan</p> | <p>11 April 2023</p> <p>Decision</p> <p>Decision</p> |

Decision: The Board adopted the final reports on draft guidelines on the template for the written agreement and on the template to summarise the resolution plan.

5. Joint Committee Annual Report 2022

14 April 2023

- 1) Annual report

Decision

Decision: The Board adopted the Joint Committee Annual Report.

6. TRV Risk Analysis Article on EU natural gas derivatives markets

24 April 2023

- 1) TRV article

Decision

Decision: The Board adopted the TRV article.

7. Summary of conclusions – 16 March 2023

28 April 2023

- 1) Summary of conclusions

Decision

Decision: The Board adopted the summary of conclusions of the 16 March 2023 Board of Supervisors.

8. Summary of conclusions – 22-23 March 2023

28 April 2023

- 1) Summary of conclusions

Decision

Decision: The Board adopted the summary of conclusions of the March 2023 Board of Supervisors.

9. Draft package for the proposed amendments to External Credit Assessment Institutions (ECAI) mapping

4 May 2023

- 1) Cover note
- 2) Consultation Paper on Amendment Implementing Technical Standards (ITS) ECAs mapping CRR Art 136 (JC 2023 15)
- 3) Consultation Paper on Amendment ITS ECAs mapping SII Art 109a1 (JC 2023 16)
- 4) Amended mapping reports

Information

Decision

Decision

Decision

Decision: The Board adopted the draft package.

10. Final report including the Joint Committee draft Regulatory Technical Standards on ESG impact disclosure for STS securitisation (JC 2023 13)

5 May 2023

- 1) Cover note

Information

2) Final report

Decision

Decision: The Board adopted the final report including the Joint Committee draft Regulatory Technical Standards on ESG impact disclosure for STS securitisation.

	Approval	Objection	Abstain
No response received (BE)			x
Maria Filipova (BG)	x		
Vojtěch Belling (CZ)	x		
Karen Dorte Abelskov (DK)	x		
Thorsten Pöttsch (DE)	x		
Andre Nõmm (EE)	x		
Derville Rowland (IE)	x		
Vasiliki Lazarakou (EL)	x		
No response received (ES)			x
Marie-Anne Barbat-Layani (FR)	x		
Ante Žigman (HR)	x		
Carlo Comporti (IT)	x		
George Theocharides (CY)	x		
Santa Purgaile (LV)	x		
Vaidas Cibas (LT)	x		
Claude Marx (LU)	x		
Gergő Szeniczey (HU)	x		
Christopher P. Buttigieg (MT)	x		
Jos Heuvelman (NL)	x		
Eduard Müller (AT)	x		
Rafał Mikusiński (PL)	x		
Luís Laginha de Sousa (PT)	x		
Gabriel Gradinescu (RO)	x		
Peter Tkáč (SK)	x		
Sabina Bester (SI)	x		
Armi Taipale (FI)	x		
Susanna Grufman (SE)	x		