

Summary of Conclusions

Board of Supervisors

Date:	Wednesday 24 and Thursday 25 January 2024
Time:	14h00 – 18h00 (Wednesday) and 09h00 – 12h45 (Thursday)
Location:	ESMA, rue de Bercy 201-203, 75012 Paris
Contact:	ESMABoard@esma.europa.eu

1. Dialogue with the UK Financial Conduct Authority

1) Note Discussion

The Chair and Chief Executive Officer (CEO) of the United Kingdom's Financial Conduct Authority (FCA) provided an update on supervisory and market developments in the United Kingdom.

The Board discussed the update, in particular the developments related to:

- Big Tech, including risks related to critical third-party providers, and the importance of cyber resilience;
- Artificial Intelligence;
- Crypto-assets;
- Sustainability, including sustainability reporting, product labelling and ESG ratings;
- Consumer agenda, notably implications of a customer duty centred supervisory approach; and
- Importance of supervisory cooperation.

Conclusion: The Board exchanged views with the FCA on supervisory and market developments in the United Kingdom.

2. Adoption of agenda Decision

Decision: The agenda was adopted.

3. Confirmation of absence of conflict of interests Decision

Decision: The Board endorsed 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.

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

The ESMA Chair reported on the:

- Interaction with European Institutions, and in particular her recent participation at the Financial Stability Table of the Council’s Economic and Financial Committee, and the visit of the president of the ECB to ESMA;
- Activities of the 3ESAs and the Joint Committee, and in particular recent finalisation of the first package of DORA Final Reports and of the Consultation Paper on ESAP;
- January 2024 Management Board, and in particular discussion on ESMA supervisory priorities for 2024, the 2025-2027 Programming Document, the revised framework of convergence tools and possible targeted review of the Conflict of Interest Policy for Non-Staff;
- Upcoming joint meeting with the SMSG and process for renewal of SMSG membership in 2024;
- Activities of the Board level Task Force on the Effectiveness of EU Capital Markets, and in particular, recent discussions related to the regulatory and supervisory framework in the EU as well as interaction with some stakeholders to gather practical insights on the state of capital markets;
- EMIR Third-country Pension Scheme Arrangement exemption from the clearing obligation, and in particular on the current positions of co-legislators in the EMIR 3 discussions maintaining such exemptions and the importance of coordinated approach on this matter; and
- Possible non-prioritisation of supervisory action on best execution reporting obligations by investment firms, in light of the recently adopted text of the MiFID II / MiFIR review.

The Executive Director reported on the recent meeting of the Council’s Financial Services Committee.

5. Cooperation with the Reserve Bank of India on CCP supervision

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| 1) Presentation | Discussion |
| 2) Draft Memorandum of Understanding | Decision |

The Chair of the CCP Supervisory Committee presented the update on the cooperation with the Reserve Bank of India (RBI) in relation to the draft Memorandum of Understanding on CCP supervision.

The Board discussed the cooperation with the RBI and the status of the draft Memorandum of Understanding, in particular the importance of the ongoing engagement with the RBI and the ability to uphold relevant EMIR requirements applicable to third countries CCPs.

Decision: The Board encouraged ESMA to continue its engagement with the RBI with regards to the draft Memorandum of Understanding.

6. Analysis of NCAs' use of SupTech

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| 1) Cover note | Discussion |
| 2) Presentation by ESMA | Discussion |
| 3) Presentation by FMA | Discussion |
| 4) Presentation by FIN-FSA | Discussion |

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| 5) Presentation by FSMA | Discussion |
| 6) Presentation by AMF | Discussion |

The Chair of the Data Standing Committee presented the analysis of NCAs' use of SupTech. Representatives of FMA, FIN-FSA, FSMA and AMF presented specific Sup-tech tools developed by their respective authorities.

The Board discussed NCAs' use of SupTech, in particular the:

- Importance of enhanced cooperation among NCAs, fostering common initiatives;
- Ability to engage in common projects in a modular way, pooling resources, mutualising the efforts and using common infrastructure where possible and efficient;
- Importance of cooperation with the other ESAs and the ECB as well as European Commission (DG REFORM);
- Change management and challenges of implementing SupTech; and
- Benefit of providing data back to the wider community and allowing their wider use, which also fosters data quality.

Conclusion: The Board discussed NCAs' use of SupTech. The Board agreed to further discuss ways to foster mutualisation of specific projects across the NCAs in a future Board meeting.

7. Trends, risks and vulnerabilities report

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) Trends, risks and vulnerabilities report – Risk monitor | Decision |
| 4) Trends, risks and vulnerabilities report – Statistical annex | Decision |

The Chair of the Risk Standing Committee and the Head of the Economics, Financial Stability and Risk Department presented the Trends, risks and vulnerabilities report.

The Board discussed the Trends, risks and vulnerabilities report, in particular the:

- Assessment of the different types of risks to which financial markets are exposed and notably risks related to geopolitical tensions and cybersecurity;
- Implications of digitalisation on financial markets;
- Developments related to the crypto-assets and the possibility to use distribution channels of traditional finance to create exposure of retail investors to crypto-assets;
- Different types and levels of risks across the non-homogenous NBFIs universe;
- Impact of higher level of interest rates on financial markets as well as real-estate markets (both commercial and residential real estate); and
- Developments related to ESG related products, and notably the increasing greenwashing by asset managers.

Decision: The Board adopted the Trends, risks and vulnerabilities report – Risk monitor and the Statistical annex.

8. Markets in Crypto Assets Regulation (MiCA)

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| 1) Presentation | Discussion |
| 2) European approach to market monitoring of crypto-assets | Decision |

The Chair of the Digital Finance Standing Committee presented the European approach to market monitoring of crypto-assets.

The Board discussed the European approach to market monitoring of crypto-assets, in particular the:

- Confirmation from the representative of the European Commission that from a legal perspective, the proposed approach to market monitoring is compliant with the MiCA legal mandate;
- Importance to engage with the co-legislators to ensure that identified shortcomings are addressed in future legislation (MiCA 2);
- Necessity to ensure a phased and scalable solution, due to uncertainty about the size of the market and its geographical distribution;
- Importance of collecting meaningful data and learning by doing; and
- Need to ensure a proportionate sharing of the costs among the NCAs.

Decision: The Board members expressed their support to further work towards the development of a centralised data collection system and asked ESMA staff to further investigate how to develop its analytical component. Vojtech Belling (CZ) and Karen Dorte Abelskov (DK) abstained.

9. 2025-2027 Programming Document

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| 1) Presentation | Discussion |
| 2) Programming Document 2025-2027 | Decision |

The Executive Director presented the 2025-2027 Programming Document, including the feedback from the discussion in the ESMA Management Board.

Decision: The Board adopted the 2025-2027 Programming Document.

10. Future of the Supervisory Digital Finance Academy

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| 1) Presentation | Discussion |
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The Director for Support to Member State reforms (DG REFORM, European Commission) presented a proposal from the EC to extend the Supervisory Digital Finance Academy (SDFA) project for an additional three years (i.e. 2025 - 2028).

The Board members provided positive feedback on the activities of the SDFA thus far. The Board welcomed and supported the plans of DG REFORM in this area and showed interest in active participation in the new projects. The Board mentioned the need for increased capacity to satisfy the demand from NCA staff. They also mentioned the importance of a common and coordinated approach of NCAs when applying for funds from technical support instrument (TSI).

Conclusion: The Board took note of the presentation on the future of the SDFA.

11. A.O.B.

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12. CCP Policy Committee

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| 1) Cover note | Information |
| 2) Final Report on Technical Advice on T1 CCP fees | Decision |

Decision: The Board adopted the Final Report on Technical Advice on T1 CCP fees.

13. Risk Standing Committee

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| 1) Cover note | Information |
| 2) ESMA Market report on Alternative Investment Funds (AIFs) 2023 | Decision |

Decision: The Board adopted the ESMA Market report on AIFs 2023.

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| 3) TRV Risk Article: Assessing risks posed by leveraged AIFs in the EU | Decision |
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Decision: The Board adopted the TRV Risk Article: Assessing risks posed by leveraged AIFs in the EU.

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| 4) TRV Risk Article: Impact investing: - do SDG funds fulfil their promises? | Decision |
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Decision: The Board adopted the TRV Risk Article: Impact investing: - do SDG funds fulfil their promises?

14. Senior Supervisors Forum

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| 1) Cover note | Information |
| 2) Calculation of fines | |
| a. Updated Supervisory Briefing | Decision |

Decision: The Board adopted the updated Supervisory Briefing.

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| b. Report | Decision |
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Decision: The Board adopted the report.

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| 3) Thematic study on informal tools in an enforcement context | Decision |
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Decision: The Board adopted the thematic study on informal tools in an enforcement context.

15. Supervision Policy Committee

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| 1) Cover note | Information |
| 2) Q&A on Discontinuation of Credit Ratings | Decision |

Decision: The Board adopted the Q&A on Discontinuation of Credit Ratings.

16. Data Standing Committee

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| 1) Cover note | Information |
| 2) MMFR Data Quality Engagement Framework | Decision |
| a. Annex | Decision |

Decision: The Board adopted the MMFR Data Quality Engagement Framework and the Annex.

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| 3) AIFMD Data Quality Engagement Framework | Decision |
| a. Annex | Decision |

Decision: The Board adopted the AIFMD Data Quality Engagement Framework and the Annex.

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| 4) Report on AIFMD Data Quality Engagement Framework | Decision |
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Decision: The Board adopted the report on AIFMD Data Quality Engagement Framework.

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| 5) Report on MMFR Data Quality Engagement Framework | Decision |
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Decision: The Board adopted the report on MMFR Data Quality Engagement Framework.

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| 6) EMIR Q&As | Decision |
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Decision: The Board adopted the EMIR Q&As.

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| 7) MiFIR Q&As | Decision |
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Decision: The Board adopted the MiFIR Q&As.

17. Digital Finance Standing Committee

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| 1) Cover note | Information |
| 2) Consultation Paper on Guidelines on conditions and criteria for the qualification of crypto-assets as financial instruments | Decision |

Decision: The Board adopted the Consultation Paper on Guidelines on conditions and criteria for the qualification of crypto-assets as financial instruments.

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| 3) Consultation Paper on Guidelines on reverse solicitation under MiCA | Decision |
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Decision: The Board adopted the Consultation Paper on Guidelines on reverse solicitation under MiCA.

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| 4) MiCA Q&As | Decision |
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Decision: The Board adopted the MiCA Q&As.

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| 5) Note on the coordination between ESAs for Q&As under MiCA | Information |
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Decision: The Board took note of the coordination between ESAs for Q&As under MiCA.

18. Markets Standing Committee

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| 1) Cover note | Information |
| 2) Warning on social media and investment recommendations | Decision |

Decision: The Board adopted the warning on social media and investment recommendations.

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| 3) Report on CSD cross border provision of services | Decision |
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Decision: The Board adopted the report on CSD cross border provision of services.

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| 4) Market making Q&A | Decision |
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Decision: The Board adopted the market making Q&A.

19. Updates on peer reviews

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| 1) Cover note | Decision |
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Decision: The Board adopted the note on updates on peer reviews.

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| 2) Mandate of STS Peer review | Decision |
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Decision: The Board adopted the mandate of STS Peer review, subject to minor adjustments.

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| 3) Annex to the peer review methodology | Decision |
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Decision: The Board adopted the annex to the peer review methodology.

20. Breach of Union Law

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| 1) 2023 update on Breach of Union Law and complaints handling | Information |
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Decision: The Board took note of the 2023 update on Breach of Union Law and complaints handling.

21. Terms of Reference – Task Forces

1) Corporate Governance Task Force – terms of reference

Decision

Decision: The Board adopted the Corporate Governance Task Force – terms of reference.

Participants list
Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge Marjan Wauters (Wednesday 24 January)
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Vojtech Belling	Karel Juráš (alternate)
Denmark	Karen Dorte Abelskov	Marcus Hejselbak Jensen
Germany	Thorsten Pötzsch	Jens Fürhoff (alternate) Jan-Ole Wagner
Estonia	/	
Ireland	Patricia Dunne (alternate)	Laura Murtagh
Greece	Vasiliki Koularmani (ad-hoc alternate)	
Spain	Rodrigo Buenaventura	Antonio Mas Sirvent
France	Marie-Anne Barbat-Layani	Estelle de Beauce Christophe Bonnet (Wednesday 24 January)

Croatia	Jurica Jednačak (alternate) (Wednesday 24 January)	
Italy	Carlo Comporti	Martina Tambucci
Cyprus	George Theocharides	George Karatzias (alternate)
Latvia	Kristaps Soms (alternate)	
Lithuania	Vaidas Cibas	
Luxembourg	Claude Marx	Andrea Gentilini (alternate)
Hungary	Gábor Laki (alternate)	
Malta	Christopher Buttigieg	Catherine Attard
Netherlands	Jos Heuvelman	Shoham Ben Rubi Quirine Hoogeveen Linda Sas (Thursday 25 January)
Austria	Eduard Müller	Andrea Kuras-Goldmann
Poland	Piotr Koziński	Dominika Szymańska
Portugal	Luís Laginha de Sousa	Tiago dos Santos Matias
Romania	Alexandru Petrescu	Maria Gabriela Horga Diana Ardelean

Slovenia	Sabina Bešter (alternate)	
Slovakia	Peter Tkáč	Tomáš Ambra (alternate)
Finland	Armi Taipale	Anna Sahrakorpi
Sweden	Per Nordkvist	Fredrik Elmberg Gabriel Bladh
Chair	Verena Ross	

Non-voting members

European Commission	Ugo Bassi	Cesare Posti
EBA	Anne Tiedemann	
EIOPA	/	
ESRB	Francesco Mazzaferro	
Iceland	Páll Friðriksson	
Liechtenstein	Franz-Anton Steurer	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marta Runarsdottir	

Executive Director	Natasha Cazenave
Chair of the CCP Supervisory Committee	Klaus Löber
Head of the Governance and External Affairs Department	Roxana De Carvalho
Head of the Economics, Financial Stability and Risk Department	Steffen Kern
Summary of Conclusions	Tomáš Borovský Johanna Hakka

UK Financial Conduct Authority (item 1)

Chair	Ashley Alder
CEO	Nikhil Rathi
Manager, EU Strategy and Engagement Team	Andrew Laidlaw

DG REFORM, European Commission (item 10)

Director for Support to Member State reforms	Nathalie Berger
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Done at Paris on 29 February 2024

[signed]

Verena Ross

Chair

For the Board of Supervisors

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 12 December 2023 to 23 January 2024)

1. Draft Consultation Paper on European single access point (ESAP) ITS 14 December 2023

1) Consultation Paper Decision

Decision: The Board adopted the draft Consultation Paper.

2. Package on the EMIR bilateral margining exemption for equity options 18 December 2023

1) Joint Final Report with regulatory technical standards (RTS) on the EMIR bilateral margin exemption for equity options Decision

2) Joint No-action Opinion on the EMIR bilateral margin exemption for equity options Decision

Decision: The Board adopted the Equity Option Package. Twenty-five (25) Members voted in favour, no Member objected, and no Member abstained for a total population-weighted result of 96.38% in favour.

	Approval	Objection	Abstain
Jean-Paul Servais (BE)	x		
Maria Filipova (BG)	x		
Vojtěch Belling (CZ)	x		
(DK)			
Thorsten Pöttsch (DE)	x		
Andre Nõmm (EE)	x		
Derville Rowland (IE)	x		
Vasiliki Lazarakou (EL)	x		
Rodrigo Buenaventura (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		
Agata Gawin (PL)	x		
(PT)			
Gabriel Gradinescu (RO)	x		
Peter Tkáč (SK)	x		
Anka Čadež (SI)	x		
Armi Taipale (FI)	x		
Per Nordkvist (SE)	x		

3. List of Identified Financial Conglomerates 2023

19 December 2023

- 1) 2023 list of identified Financial Conglomerates

Decision

Decision: The Board adopted the List of Identified Financial Conglomerates 2023.

4. ESMA Market Report: EU Prospectuses Report 2023

20 December 2023

- 1) ESMA Market Report: EU Prospectuses Report 2023

Decision

Decision: The Board adopted the report.

5. Consultation Paper on the Securitisation Disclosure Templates under Article 7 of the Securitisation Regulation

20 December 2023

- 1) Consultation Paper

Decision

Decision: The Board adopted the Consultation Paper

6. First package of DORA Final Reports

10 January 2024

- 1) Cover note
- 2) Final report on draft RTS on ICT risk management framework and draft RTS on simplified ICT risk management framework
- 3) Final report on draft RTS on criteria for the classification of ICT-related incidents

Information

Decision

Decision

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| 4) Final report on draft ITS to establish the templates for the register of information | Decision |
| 5) iv. Final report on draft RTS to specify the policy on ICT services supporting critical or important functions provided by ICT third-party providers | Decision |

Decision: The Board adopted the first package of DORA Final Reports. Twenty-seven (27) Members voted in favour for a total population-weighted result of 100% in favour.

Board Member	Approval	Objectio n	Abstain
Jean-Paul Servais (BE)	x		
Mariya Filipova (BG)	x		
Vojtěch Belling (CZ)	x		
Karen Dortea Abelskov (DK)	x		
Thorsten Pöttsch (DE)	x		
Andre Nõmm (EE)	x		
Derville Rowland (IE)	x		
Vasiliki Lazarakou (EL)	x		
Rodrigo Buenaventura (ES)	x		
Ante Žigman (HR)	x		
Marie-Anne Barbat-Layani (FR)	x		
Carlo Comporti (IT)	x		
George Theocharides (CY)	x		
Santa Purgaile (LV)	x		
Vaidas Cibas (LT)	x		
Claude Marx (LU)	x		
Gábor Laki (HU)	x		
Christopher Buttigieg (MT)	x		
Jos Heuvelman (NL)	x		
Eduard Müller (AT)	x		
Agata Gawin (PL)	x		
Luís Laginha de Sousa (PT)	x		
Ovidiu Petru (RO)	x		
Anka Čadež (SI)	x		
Peter Tkáč (SK)	x		
Armi Taipale (FI)	x		
Per Nordkvist (SE)	x		

7. CSDR Refit Task Force Terms of Reference

10 January 2024

1) Terms of Reference

Decision

Decision: The Board adopted the Terms of Reference.

8. ESMA Response to the European Commission (EC) targeted consultation on selection of a unique product identifier for public transparency in OTC derivatives

16 January 2024

1) ESMA Response

Decision

Decision: The Board adopted the ESMA Response.

9. Summary of conclusions – December 2023 Board of Supervisors meeting

18 January 2024

1) Summary of Conclusions

Decision

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