

Summary of Conclusions

Board of Supervisors

Date:	Wednesday 20 March 2024
Time:	10h45 – 18h00
Location:	MS Teams
Contact:	ESMABoard@esma.europa.eu

- 1. Adoption of agenda** Decision

Decision: The agenda was adopted.

- 2. 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.

- 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 meeting with Commissioner McGuinness, and recent conclusion of Level 1 files;
- process of renewal of the Securities Markets Stakeholder Group (SMSG);
- changes to the subcommittees of the Joint Committee and their Chairmanship;
- ESMA's international activities, including her continued contribution to the FSB and IOSCO, as well as her recent visit to Hong Kong and Japan;
- March 2024 Management Board meeting;
- 2024 Annual declarations of Interest by ESMA's Non-staff;
- upcoming ESMA Advices on two proposed measures by the Central Bank of Ireland and the CSSF under Article 25 of AIFMD, related to investment restrictions on GBP denominated Liability Driven Investment funds (LDI); and
- response from the European Commission to ESMA's draft regulatory technical standards (RTS) under the revised ELTIF Regulation. The proposed ESMA response to the European Commission on possible changes to the draft RTS will be discussed in the Investment Management Standing Committee (IMSC) and submitted for Board's approval in written procedure.

The Executive Director reported on the:

- review of ESMA Groups that has been initiated 1 year after the change of the structure of the ESMA Standing Committees and Working Groups;

- participation in the Financial Services Committee; and
- development of DORA policy mandates and on preparation for the oversight framework of DORA and in particular on the funding gap related to DORA preparatory activities in the 1st half of 2025, ahead of the collection of any supervisory fees. It was also indicated that any additional contribution from the Union budget – to cover this gap – would be conditional on the 40/60 EU/NCA contribution formula. It was agreed to seek approval on a potential budget increase by written procedure.

The Chair of the CCP Supervisory Committee reported on the planned implementation of mandates stemming from EMIR 3.0, and notably the large number of implementing measures not accompanied by resources that will need to be prioritised.

4. Task Force on the Effectiveness of EU Capital Markets

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| 1) Presentation | Discussion |
| 2) Note on the work of the Task Force and draft recommendations. | Discussion |

The Head of Governance and External Affairs Department presented the Note on the work of the Task Force on the Effectiveness of EU Capital Markets and draft recommendations.

The Board discussed the note, and in particular the:

- importance of the pension system, tax incentives and financial education in development of efficient capital markets;
- interaction of the initiative to improve effectiveness of EU Capital markets with other broader policy initiatives in the EU and in the Member States;
- development of ESMA as a European data hub;
- way securitisation can help to develop capital markets as well as possible risks associated with securitisation;
- role digitalisation of capital markets plays in potentially enhancing their effectiveness and enabling retail participation;
- relative merits of developing and labelling simple financial products and simple advice for retail investors;
- continuing efforts to deploy the entire supervisory convergence toolkit to improve functioning of the financial markets; and
- pros and cons of centralising supervision of specific market actors at EU level and any recommendation that can be made in this respect.

Conclusion: The Board discussed the Note and initial draft recommendations. The Board will re-discuss the recommendations of the Task Force in a next Board meeting.

5. MiFIR Review

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| 1) Presentation | Discussion |
| 2) Note on MiFIR Review | Discussion |

The Head of the Markets Standing Committee presented a note on the MiFIR review.

The Board discussed the note, and in particular the:

- need for urgent clarification to the market from both the European Commission and ESMA on the application of the transitional provisions under the MiFIR review before the application of the revised MiFIR on 28 March 2024;
- areas where the European Commission is expected to provide its interpretative guidance and areas in which ESMA can supplement such guidance; and
- need for close monitoring of the application of MiFIR requirements, standing ready to provide further supervisory guidance if needed.

Conclusion: The Board discussed the note on the MiFIR Review. The Board decided that ESMA should provide information to the market in an effort to provide clarity on transitional provisions under the MiFIR review. ESMA should prepare a public statement to accompany envisaged interpretative guidance to be published by the European Commission.

6. CTP selection procedure

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| 1) Presentation | Discussion |
| 2) Note on CTP selection procedure | Decision |

The Head of the Markets and Digital Innovation Department presented a note on the CTP selection procedure.

The Board discussed the CTP selection procedure, in particular the role of the Board of Supervisors in the selection procedure and specifically in the evaluation of offers.

Conclusion: The Board adopted the note on CTP selection procedure, and decided there should be no formal involvement of the Board of Supervisors in the evaluation of offers.

7. Shortening the settlement cycle

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| 1) Presentation | Discussion |
| 2) Feedback report on the shortening of the settlement cycle | Decision |

The Chair of the Markets Standing Committee (MSC) presented a feedback report on the shortening of the settlement cycle.

The Board discussed the feedback report and in particular the:

- results of the consultation process, including negative feedback on shortening the cycle to T+0;
- clear direction of travel of shortening the settlement cycle to T+1 expressed publicly by the European Commission, while acknowledging the need for further collection of evidence to support future cost-benefit analysis;
- concerns expressed by the funds industry on the implication of the decision of the US authorities to proceed with the shortening of the settlement cycle and the need to provide clarity to the fund industry from a supervisory perspective in a common convergent way;
- specificities of the European market structure that raise additional questions compared to other jurisdictions; including the effect on Member States whose currency is not the Euro;
- need for close coordination with the other jurisdictions in Europe (such as UK and Switzerland);
- importance of transparency to the market on the timeline and sufficient length of implementation period;
- importance of supervisory convergence activities; and

- Importance of improving post-trading infrastructure processes before the decision is implemented (in particular same day affirmations and reducing settlement fails).

Decision: The Board adopted the feedback report on the shortening of the settlement cycle. The Board asked the IMSC to consider possible implications of the US move to shorter settlement cycle on the funds from a supervisory convergence perspective. The Board also agreed to conduct further analysis before developing the formal report to the Commission later in 2024.

8. Joint Committee Opinion on SFDR

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| 1) Presentation | Discussion |
| 2) Progress report on Joint Committee Opinion on SFDR Level 1 framework | Discussion |

The Head of Investor Protection and Sustainable Finance Department presented the progress report on the Joint Committee Opinion on the future SFDR Level 1 framework.

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

- need for simplification of the SFDR framework with preference for two categories for sustainability investments, with strict objective criteria;
- need for further work on possible sustainability indicator(s);
- The merits of mandatory disclosure of Principal Adverse Impact (PAI) for all products in comparison with product warnings for non-sustainable products; and
- importance of a consistent view of what the sustainable investment consists of in the interim period before a complete taxonomy is developed (including social element).

Conclusion: The Board discussed the Joint Committee Opinion on the future SFDR Level 1 framework. Following the feedback from other ESAs, the Opinion will be adjusted and submitted to the Joint Committee and subsequently to the Boards of Supervisors of the 3ESAs for approval.

9. Supervision of greenwashing: direction for the final report

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

The Chair of the Sustainability Standing Committee (SSC) presented the note on the supervision of greenwashing, including the direction of travel for the final report.

The Board discussed the Note, and in particular the:

- practices of NCAs that already go beyond simply checking the existence of sustainability-related disclosures, supporting the need to exercise critical scrutiny, with a risk-based approach;
- need for a gradual, step-by-step approach in building supervision, highlighting that both market players and NCAs need to gain in maturity and are on a journey;
- importance of supervisory convergence in this area and of building common practices and cooperation, including through training programmes and sharing SupTech tools;
- challenges to data collection and data quality as well as possible opportunities to strengthen direct reporting by market participants to NCAs and/or to purchase data sources at EU level;
- importance of both off-site analysis and on-site inspections; and

- level of supervisory ambition and the speed of possible enforcement, with a view to manage short-term expectations by stakeholders.

Conclusion: The Board discussed the note on the supervision of greenwashing. Based on the discussion ESMA will develop the final report for discussion in the next Board meeting.

10. Revised framework of convergence tools

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) Framework | Decision |
| 4) Interactive decision aid | Information |

The Chair of the Senior Supervisors' Forum (SSF) presented the framework and interactive decision aid of the revised framework of convergence tools.

Decision: The Board adopted the framework and interactive decision aid of the revised framework of convergence tools and supported the active use.

11. EMIR Third-country Pension Scheme Arrangement exemption from the clearing obligation

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| 1) Presentation | Discussion |
| 2) Deprioritisation statement | Decision |

The Head of the Markets and Digital Innovation Department presented the Deprioritisation statement.

Decision: The Board adopted the Deprioritisation statement, coordinating deprioritising of the supervisory actions on the application of the EMIR clearing obligation for third-country Pension Scheme Arrangements in light of the upcoming implementation of EMIR 3.0.

12. First package of technical standards under Markets in Crypto Assets (MiCA) Regulation

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| 1) Presentation | Discussion |
| 2) Cover note | Discussion |
| 3) Final report | Decision |

The Chair of the Digital Finance Standing Committee (DFSC) presented the note and final report on the First package of technical standards under the Markets in Crypto Assets (MiCA) Regulation.

The Board discussed the final report including the first package of technical standards under MiCA, and in particular (i) the requirement to present results of external audits of ICT systems at the authorisation

stage and (ii) the scope of information to be collected regarding the reputation of members of the management body and shareholders with qualifying holdings (QHs).

Decision: The Board agreed to require the provision of the results of external audits of ICT systems at the authorisation stage. Vojtěch Belling (CZ), Jos Huevelman (NL), Agata Gawin (PL) and Tomáš Ambra (SK) abstained. With regards to the information regarding the reputation of members of the management body and shareholders, the Board confirmed the approach proposed in the Consultation Paper (no limitation of the information collected to certain areas of the law). Vojtěch Belling (CZ), Andrea Gentilini (LU), Kristaps Soms (LV), Agata Gawin (PL) and Tomáš Ambra (SK) abstained.

Finally, the Board adopted the First package of technical standards under Markets in Crypto Assets (MiCA) Regulation.

13. EMIR 3 Level 2 mandates

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| 1) Note | Information |
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Conclusion: The Board endorsed the Note on EMIR 3 Level 2 mandates.

14. Risk Standing Committee

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| 1) Cover note | Information |
| 2) ESMA Market report on securities lending markets | Decision |

Decision: The Board approved the ESMA Market report on securities lending markets.

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| 3) TRV Article: Social media sentiment: influence on EU equity prices | Decision |
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Decision: The Board adopted the TRV Article: Social media sentiment: influence on EU equity prices.

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| 4) TRV Article: Crypto-assets: Exploring market structure | Decision |
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Decision: The Board adopted the TRV Article: Crypto-assets: Exploring market structure.

15. Supervision Policy Committee

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| 1) Cover note | Information |
| 2) Consultation paper on the revision to CRAR RTS Methodologies and Annex of CRAR | Decision |

Decision: The Board adopted the consultation paper on the revision to CRAR RTS Methodologies and Annex of CRAR.

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| 3) Consultation paper on the first batch of RTS under EU Green Bond Regulation | Decision |
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Decision: The Board adopted the consultation paper on the first batch of RTS under EU Green Bond Regulation.

16. Digital Finance Standing Committee

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| 1) Cover note | Information |
| 2) Final report on MiCA technical standards on cooperation | Decision |

Decision: The Board adopted the Final report on MiCA technical standards on cooperation.

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| 3) Consultation paper on MiCA draft regulatory technical standards on market abuse and MiCA guidelines on investor protection and operational resilience | Decision |
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Decision: The Board adopted the consultation paper on MiCA draft regulatory technical standards on market abuse and MiCA guidelines on investor protection and operational resilience.

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| 4) Supervisory briefing on decentralised finance under MiCA | Decision |
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Decision: The Board adopted the supervisory briefing on decentralised finance under MiCA.

17. 2024 Prioritisation of international engagement and coordination with NCAs

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| 1) Cover note | Information |
| 2) Presentation | Information |

Conclusion: The Board endorsed the 2024 Prioritisation of international engagement and coordination with NCAs.

18. Data Standing Committee

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| 1) Cover note | Information |
| 2) 2023 Report on quality and use of data | Decision |

Decision: The Board adopted the 2023 report on quality and use of data.

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| 3) Subscription of Derivatives Service Bureau's (DSB) form | Decision |
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Decision: The Board agreed to the signature of the Subscription of Derivatives Service Bureau's (DSB) form.

19. Issuers Standing Committee

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| 1) Cover note | Information |
| 2) Supervisory briefing on prospectus supervision | Decision |

Decision: The Board adopted the Supervisory briefing on prospectus supervision.

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| 3) 2023 Corporate reporting enforcement and regulatory report | Decision |
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Decision: The Board adopted the 2023 Corporate reporting enforcement and regulatory report.

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| 4) Comment letter to the IASB on Financial Instruments with Characteristics of Equity (FICE) | Decision |
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Decision: The Board adopted the Comment letter to the IASB on FICE.

20. Markets Standing Committee

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| 1) Cover note | Information |
| 2) Note on ESMA analysis on the automatic Net Short Positions (NSPs) reporting | Decision |

Decision: The Board adopted the Note on ESMA analysis on the automatic NSPs reporting.

21. 2023 Accounts

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| 1) Cover note | Information |
| 2) Provisional 2023 Accounts | Information |
| 3) Report on budgetary and financial management | Information |
| 4) Representation Letter 2023 Provisional Accounts | Information |
| 5) Report from Baker Tilly | Information |

Conclusion: The Board took note of the Provisional 2023 Accounts and the Report on budgetary and financial management.

22. Governance matters

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| 1) Cover note | Information |
| 2) Overview of ESMA Groups | Information |

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

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| 3) Delegations: Overview and annual update on the exercise of the delegations to the ESMA Chair | Information |
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Conclusion: The Board took note of the overview and annual update on the exercise of the delegations to the ESMA Chair.

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| 4) Terms of Reference for the Group of Experts on CCP Stress Testing (revised) | Decision |
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Decision: The Board adopted the Terms of Reference for the Group of Experts on CCP Stress Testing.

5) Terms of Reference of the Integrated Reporting Task Force

Decision

Decision: The Board adopted the Terms of Reference for the Integrated Reporting Task Force.

23. A.O.B.

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Participants list

Voting Members

Member State	Representative
Belgium	Jean-Paul Servais Antoine van Cauwenberge (ad-hoc alternate)
Bulgaria	Mariya Filipova Mariyan Ivanov (alternate)
Czech Republic	Vojtěch Belling Karel Juráš (alternate)
Denmark	Karen Dorte Abelskov Marcus Jensen (alternate)
Germany	Thorsten Pöttsch Jens Fürhoff (alternate)
Estonia	Andre Nõmm
Ireland	Derville Rowland Patricia Dunne (alternate)
Greece	Vasiliki Lazarakou Michail Fekkas (alternate)

Spain	Rodrigo Buenaventura Montserrat Martínez Parera (alternate)
France	Marie-Anne Barbat-Layani
Croatia	Ante Žigman Anamarija Staničić (alternate)
Italy	Carlo Comporti
Cyprus	George Theocharides George Karatzias (alternate)
Latvia	Kristaps Soms (alternate)
Lithuania	Vaidas Cibas
Luxembourg	Claude Marx Andrea Gentilini (alternate)
Hungary	Gergő Szeniczey Gabor Laki (alternate)
Malta	Christopher P Buttigieg Lorraine Vella (alternate)
Netherlands	Jos Heuvelman

Austria	Eduard Müller Birgit Puck (alternate) Andrea Kuras-Goldmann (ad-hoc alternate)
Poland	Piotr Koziński Agata Gawin (alternate)
Portugal	Luís Laginha de Sousa
Romania	Maria Gabriela Horga (alternate)
Slovenia	Anka Cadež Sabina Bešter (alternate)
Slovakia	Tomáš Ambra (alternate)
Finland	Armi Taipale
Sweden	Per Nordkvist
ESMA Chair	Verena Ross

Non-voting members

European Commission	Ugo Bassi
ESRB	Francesco Mazzaferro

EIOPA	Kai Kosik
EBA	Adrien Rorive
EFTA Surveillance Authority	Marta Margrét Ö. Rúnarsdóttir
Iceland	Björk Sigurgísladóttir Páll Friðriksson (alternate)
Liechtenstein	Reto Degen
Norway	Anne Merethe Bellamy Geir Holen (alternate)

ESMA

Executive Director	Natasha Cazenave
Chair of CCP Supervisory Committee	Klaus Löber
Head of Governance and External Affairs Department	Roxana de Carvalho
Head of Markets and Digital Innovation Department	Carsten Ostermann
Head of Investor Protection and Sustainable Finance Department	Evert van Walsum
Summary of Conclusions	Tomáš Borovský

Done at Paris on 22 April 2024

[signed]

Verena Ross

Chair

For the Board of Supervisors

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 24 January 2024 to 19 March 2024)

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| 1. Joint Report on 2023 stocktaking of BigTech direct financial services provision | 29 January 2024 |
| 1) Joint Report | Decision |

Decision: The Board adopted the Joint Report.

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| 2. ESMA's public statement on the deprioritisation of supervisory actions on the obligation to publish RTS 28 reports in light of the agreement on the MiFID II/MiFIR review | 9 February 2024 |
| 1) ESMA's public statement | Decision |

Decision: The Board adopted the ESMA's draft public statement on the deprioritisation of supervisory actions on the obligation to publish RTS 28 reports in light of the agreement on the MiFID II/MiFIR review.

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| 3. Summary of Conclusions – January 2024 Board of Supervisors | 29 February 2024 |
| 1) Summary of Conclusions | Decision |

Decision: The Board adopted summary of conclusions of the January 2024 Board of Supervisors meeting.

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| 4. Joint ESA Questions and Answers (Q&As) under the PRIIPs Regulation | 7 March 2024 |
| 1) Joint ESA Q&As | Decision |

Decision: The Board adopted the joint ESA Q&As under the PRIIPs Regulation.