



## SUMMARY OF CONCLUSIONS

### Management Board

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**Date:** 18 June 2012  
**Time:** 14:00 – 18:00h  
**Location:** Finanstilsynet, Copenhagen  
**Contact:** verena.ross@esma.europa.eu T: +33 1 58 36 51 13

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No Items

**1. Adoption of agenda** *MB/27* *decision*

The Chair welcomed Board members to the Finanstilsynet premises. The Chair noted that Philip Sudeck had been appointed as Karl-Burkhard Caspari's alternate for the June Management Board and Board of Supervisors meetings.

**Decision:** The agenda was adopted.

**2. Summary of conclusions of April meeting** *MB/28* *decision*

**Decision:** The summary of conclusions was approved.

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

The Chair reported on:

- the appointment of Fernando Restoy as Deputy Governor of the Bank of Spain, which will give rise to an election in September to fill the resulting vacancy;
- a letter sent to Commissioner Barnier to ask for the Commission's agreement in principle to a delay in the delivery of one of the EMIR technical standards in order for joint international work to be taken into account;
- the start of preliminary talks with the Commission on the 2013 review of the European System of Financial Supervision and recent proposals for a banking union;
- the appointment of Sir William Blair as the president of the Board of Appeal;



- ESRB meetings, and in particular ESMA's role in work on stress testing;
- the IOSCO Annual Conference and ESMA's appointment as an associate member of IOSCO;
- bilateral visits to Ireland, Belgium, Slovenia and Poland;
- correspondence with the Chairman of Consob regarding the allocation of responsibilities regarding credit rating agencies;
- the UK Government challenge to Article 28 of the Short Selling Regulation regarding ESMA's power to extend short selling measures to other countries;
- a proposal for a Management Board away day on 10 September to consider longer-term strategic issues, in particular considering ESMA's direction, 2013 strategy and organisational structure, and the governance model.

The Executive Director reported on:

- the commitment of nearly 50% of the 2012 budget with actual spending at 20% and an aim of a 85-90% budget execution rate for 2012;
- the current state of recruitment, including plans to appoint an IT team leader and CRA team leader, and plans for a further twelve vacancies to be launched over the summer, with the expectation that 96 out of the planned 101 staff members would in place by the end of the year;
- the 2013 budget and establishment plan, noting that DG MARKT had committed to preparing a *fiche financiere* for CRA3 which increases the establishment plan from 145 staff to the 160 previously expected; the Commission's reduction by approximately €300 000 of the Union contribution; the recruitment challenge which would be one of the items for discussion at the Management Board away day;
- the need for MiFID2 preparation to get under way;
- effectiveness of staff exchanges between national competent authorities following the results of a survey of NCAs which indicated approximately 100 short study visits, with secondments being largely restricted to the ESAs and to the UK FSA, probably reflecting language difficulties;
- CRA supervisory work, including three on-going CRA registration applications and one recently approved registration, the implementation of the recently-adopted delegated act on fees, work on perimeter issues, and the publication of the latest CEREP report; the Executive Director noted that ESMA was still awaiting the adoption of the Commission's delegated act on enforcement issues;
- work on permanent solutions for the Omnibus I website registers following publication of a number of temporary solutions by creating links on ESMA's website to NCA websites / registers;
- a visit from the EC internal audit service which would look at ESMA's IT systems and at prep-

aration of a risk assessment to identify areas for future internal audit reviews; and

- receipt of the draft final report from the Court of Auditors to which ESMA will be preparing a response.

#### 4. **Standing Committees structure and election of Chairs** *BS/75 Discussion*

The Chair presented the proposal for standing committees of the Board of Supervisors.

The Board discussed the proposal, in particular the appropriate forum for work on sectoral and horizontal cooperation issues, the desirability of avoiding overlap between committees and the effectiveness of having co-chairs for the IT Management Group.

**Conclusion:** The Board's preference was that horizontal cooperation issues should not be incorporated into the Review Panel. The paper will be revised on the basis of the discussion, listing possible options and a clear distinction of tasks, which are currently dealt with in ESMA-Pol. The CRA Technical Committee's terms of reference should also be reviewed. Further thought would be given to ESMA staff chairing the ITMG alone.

#### 5. **Annual accounts / Audit 2011**

- Annual accounts *MB/32 decision*
- Court of Auditors report and ESMA response *MB/29 information*
- Repayment of the 2011 surplus *MB/30 information*

The Executive Director presented the annual accounts for approval, noting that they had been audited by the Court of Auditors which had given a clean report with a number of comments.

The Board discussed the Court of Auditors report, in particular the comments raised on ESMA's selection process. Members reiterated the importance of fair recruitment processes and solid figures in ESMA documents.

The Executive Director explained the Commission's proposal for repayment of the 2011 surplus which had been confirmed in a letter from Jonathan Faull, and his willingness to consider sympathetically such a solution for future years if necessary. The Executive Director noted that ESMA was considering having a third call for payments from NCAs in order to more closely align requests for payment with the expected budget outturn. The Board discussed the proposal and the need to achieve legal certainty.

Emil Paulis (EC) noted that it was important that Jonathan Faull's letter should not be understood as saying that the budget should be spent for the sake of achieving a good budget outturn. The Chair and Executive Director noted that ESMA had already been criticised by the Court of Auditors for not spending its entire budget, and similar messages had been received recently from DG BUDG.

**Decision:** The Board approved the 2011 annual accounts without additional comments.

## 6. Report on Draft 2013 work programme

MB/31

Discussion

The Executive Director set out the proposed 2013 work programme.

The Board discussed the programme, in particular:

- the need to look at how the organisation should support the activities while continuing to grow;
- the need for further information on how much resource the main work streams will require;
- the need for further emphasis on cooperation (eg urgent issues groups, multilateral memorandum of understanding); and
- the basis for the revenue figures on page 18.

The Chair noted his view that convergence, supervisory consistency and consumer protection were areas where ESMA should be particularly precise on what it planned to achieve because, unlike development of the single rulebook, they do not have explicit deadlines that drive work. The Executive Director explained that if the work programme follows the format proposed, the idea would be that the 2013 annual report would also reflect that structure.

**Conclusion:** It was agreed to revise the document as discussed, including further information on resources. It would then be brought to the Boards for decision in September. The regulatory work programme would be developed for adoption at the end of 2012. The revised draft work programme would be used as a basis for discussion at the Management Board away day.

## 7. IT – exchange of views on coordination by ESMA

BS/78

Discussion

The Director of Operations presented the report on questions raised by a competent authority regarding ESMA's role in harmonising reporting formats and standards, and in potentially centralising data collection development work.

The Board discussed the issues, in particular:

- the potential burden for smaller authorities if systems are developed centrally which could be significantly more expensive for their needs, although the centralisation proposals had been made by a relatively small authority due to concerns about the cost of developing duplicate systems in each Member State;
- the greater scope for harmonising reporting in areas where data is not currently collected;
- the existing challenges, to which being more ambitious would add; and
- the need to focus on ESMA having an infrastructure that enables it to receive the reports envisaged in Omnibus I and other legislation, before looking at other possibilities.

The Executive Director explained that the lead time for the issues raised in the paper are so long that if ESMA wanted to develop such systems the issue would need to start being considered now. The

Chair noted that the model in sectoral legislation was increasingly becoming one where, while national competent authorities collect data, ESMA, the ESRB and other authorities also have access to some or all of the data.

The Executive Director noted that, following a request from one member, information had been circulated to the Board regarding IT security issues.

**Conclusion:** ESMA still has a number of IT tasks that need to be completed urgently. The Management away day could consider, if a project using a more centralised model for data collection and sharing should be envisaged at this stage.

**8. Rules of Procedure Management Board** *MB/33 & Decision  
Annex 1*

The Chair reported on the proposed amendments to the rules of procedure.

**Decision:** The Board adopted the revised rules of procedure (Decision ESMA/2012/MB/46).

**9. HR implementing rules** *MB/34 & decision  
Annexes 1,  
2, 3, 4*

The Executive Director presented the HR implementing rules for adoption following approval received from the Commission.

**Decision:** The Board adopted the rules presented (Decisions ESMA/2012/MB/42, ESMA/2012/MB/43, ESMA/2012/MB/44, ESMA/2012/MB/45).

**10. Budget transfers** *MB/35 information*

One member queried the need for a transfer to cover 2011 canteen costs from the 2012 budget.

**Conclusion:** The Board noted the budget transfers and asked for further information to be provided regarding budget transfer 428, and general costs of catering for staff / visitors.

**11. Finance decisions** *MB/36 decision*

The Head of Operations presented the finance decisions for approval which were designed to reflect the decision taken by the Board in April to reprioritise the IT projects.

One member queried the change in material resources for secure exchange of electronic documents on investigations listed in Annex 1 to the decision. The Head of Operations explained that an additional €20 000 had been assigned for an external security audit following a recommendation from the ITMG.

**Decision:** The decision was approved subject to amending the figure of €3 811 750 in Article 2 to €3 812 750 to reflect the correct total of items listed in that Article (Decision ESMA/2012/MB/47). The Board asked for copies of previous supporting reports to be provided with future financing decisions to support the Board in reaching its decisions.



**12. Update on the extension of the premises** *MB/37* *discussion / decision*

The Head of Operations presented an update on work on extending ESMA's premises, noting:

- a market study undertaken which shows that prices in the area have increased by 5-10%;
- the rental to another company of the 2<sup>nd</sup> floor of ESMA's wing of 103 rue de Grenelle shortly before discussions with the landlord took place;
- discussions with the Commission regarding the process given the budgetary impact, which will involve DG BUDG, as well as potential discussions with the Council and Parliament;
- the need for work on procurements for an architect to be started which would ultimately be followed by a procurement for building works, noting that the procurement does not itself commit ESMA to any costs; and
- the need to start to rent from 1 January 2013 in order to move in on 1 May 2013.

**Decision:** The Board noted the proposals and the market study, together with the risk of moving ahead with the procurement while also undertaking the necessary discussions with the EU institutions. The Board agreed that the Executive Director should proceed with preparing the extension of the premises on the basis of the proposals discussed.

**13. Revision of the reimbursement policy for external persons** *MB/38* *decision*

The Executive Director explained the proposed changes to ESMA's reimbursement policy to facilitate the use of short-term secondees.

**Decision:** The Board agreed to the revised policy.

**14. Board of Supervisors forward agenda** *MB/39* *information*

**15. Future meetings** *information*

- 10 September 2012 (pm) (Paris)
- 5 November 2012 (pm) (Nicosia, Cyprus)
- 17 December 2012 (pm) (Paris)

**Decision:** The Board agreed to extend the 10 September meeting to start at 10.30h in order to discuss the strategic issues mentioned in the Chair and Executive Director's reports and the IT issues considered in the meeting.



## PARTICIPANT LIST

	<b>Members</b>	<b>Advisers</b>
ESMA	Steven Maijoor (Chair)	
DE	Philipp Sudeck (alternate)	
EE	Raul Malmstein	Gerle Reinumägi
LU	Jean Guill	
AT	Kurt Pribil	Andrea Kuras-Goldmann
UK	David Lawton (alternate)	Cristina Frazer

European Commission	Emil Paulis
Vice-Chair	Carlos Tavares Manuel Costa
Executive Director	Verena Ross
Head of Operations	Nicolas Vasse
Accountant	Christine Kleinsasser (Item 5)
Summary of conclusions	Jonathan Overett Somnier

Steven Maijoor  
Chair