

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 27 January 2016
Time: 09h00 – 17h30
Location: ESMA, rue de Grenelle 103, 75007 Paris, France
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda BS/6 Decision

Decision: The agenda was adopted.

2. Summary of Conclusions

— 10 December 2015 meeting BS/2 Decision

Decision: The summary of conclusions of the 10 December 2015 meeting was adopted.

3. Report by Chair and Executive Director Oral Information

The Chair informed the meeting that during its confidential meeting the Board of Supervisors appointed Anneli Tuominen (FI) as vice-Chair for a period of 2.5 years with immediate effect.

The Chair reported on the

- Meeting with Olivier Guersent, Director General of the European Commission's Directorate for Financial Stability, Financial Services and Capital Markets Union, in particular the discussions on the potential MiFID II delay and the early legal review;
- January 2016 meeting of the Management Board and in particular the discussion on the Single Programming Document 2017-2019 and the upcoming Special Report by the European Court of Auditors (ECA) on CRA supervision;
- Ongoing equivalence discussion between EU and US authorities on the CCP supervisory frameworks and the impact on the expected timeline of the recognition of the relevant US CCPs;
- Meetings with Hong Kong and Japanese authorities and stakeholders;
- January 2016 Meeting of the Financial Stability Roundtable of the Economic and Financial Committee (EFC), in particular the Joint ESAs risk assessment and the work on the regulatory treatment of sovereign exposures;
- Activities of the Joint Committee in particular the work on the placement of financial instruments with depositors, and retail consumers (self-placement);
- Activities of the Securities and Markets Stakeholder Group (SMSG), in particular the call for applicants as part of the renewal process; and
- Support expressed by the European Parliament and Council of the European Union to delay the

application date of MiFID II. He also said that the European Commission would need to initiate a change in the Level 1 in that respect and underlined the importance of the timely adoption of the delegated acts and endorsement of Technical Standards.

The Executive Director reported on the:

- January 2016 meeting of the Financial Services Committee (FSC) and in particular the discussion on the European Commission’s green paper on retail financial services and the update provided by the ESAs on the development of the Technical Standards stemming from PRIIPs. She informed that a discussion on the green paper will take place during the March 2016 meeting of the Board of Supervisors;
- Upcoming Special Report on the supervision of credit rating agencies by the European Court of Auditors;
- Annual declaration of interests which will be launched in accordance with the Conflict of Interest Policy for Non-Staff; and
- Approval of the T2S Memorandum by the Governing Council of the European Central Bank (ECB) triggering the signature process.

The Board discussed the oral report by Chair and ED, in particular:

- In relation to the implementation timeline for MiFID/MiFIR whether the European Commission intends to maintain the MIFID transposition date;
- The potential overlap between the European Commission’s green paper on retail financial services and the implementation of MiFID/MiFIR and PRIIPs; and
- Whether ESMA should consider further work regarding regulatory activities for banks subject to BRRD/SRB.

The European Commission representative updated the Board that the college of Commissioners will discuss the delay of the entire MiFID II package and that both the delegated acts and technical standards were under discussion within the European Commission.

Conclusion: The Board took note of the oral report. It was agreed that the Investor Protection and Intermediaries Standing Committee (IPISC) should consider whether further work on self-placement is needed.

4. Post-Trading Standing Committee

- Report by Giuseppe Vegas BS/7 Information

Conclusion: Nicoletta Giusto presented the report and accompanying documents.

- Final Report on CSDR settlement discipline Annexes Decision
1a & 1b

The Board discussed the report, in particular the changes introduced following the so called early legal review by the European Commission’s Legal Service.

The European Commission representative disagreed with the Final Report and stated that ESMA had not sufficiently embedded the comments from the European Commission’s Legal Service.

According to ESMA staff all comments from the Legal Service were reflected in the report.

Decision: The Board adopted the Final Report on CSDR settlement discipline.

- Final Report on Bilateral Margins (3ESAs) Annexes Decision
2a & 2b

The Board discussed the Final Report on Bilateral Margins, in particular:

- The timing for posting margins for cash and securities;

- The threshold for non-netting jurisdictions; and
- The exemption for pension scheme arrangements.

The European Commission representative disagreed with the Final Report.

Decision: The Board adopted the Final Report on the condition that an exemption for pension scheme arrangements will be included. The Report will also be tabled for discussion by the Boards of Supervisors of EBA and EIOPA and will be presented for approval by written procedure by the Boards of the 3 ESAs.

- EMIR Q&A Annex 3 Decision

Decision: The Board adopted the EMIR Q&A.

5. Secondary Markets Standing Committee

- Report by Elisabeth Roegele BS/8 Information

Conclusion: Elisabeth Roegele presented the Report and accompanying documents.

- Opinion on amending the CRR ITS specifying main indices and recognised exchanges Annex 1 Decision

The Board received a revised draft Opinion including amendments following further discussion within the Secondary Markets Standing Committee (SMSC).

The European Commission representative expressed his disagreement with the draft Opinion as he believed that not including the Russell 3000 and Hang Seng indices might run counter to World Trade Organization (WTO) agreements.

Decision: The Board adopted the Opinion on amending the CRR ITS specifying main indices and recognised exchanges.

6. Market Integrity Standing Committee

- Report by Giuseppe Vegas BS/9 Information

Nicoletta Giusto presented the Report and accompanying documents. She also highlighted the co-operation of national competent authorities with the Single Supervisory Mechanism (SSM) in the context of market abuse regulation.

Conclusion: The Board decided that ESMA should discuss the co-operation with national competent authorities in the context of EU market abuse legislation further with the SSM leadership. The Board also agreed that the Market Integrity Standing Committee (MISC) should have an exchange of views how national competent authorities deal with the topic of disclosure by banks under the market abuse legislation.

- Consultation Paper on MAR Guidelines Annex 1 Decision

Decision: The Consultation Paper on MAR Guidelines was adopted.

- Discussion Paper on Benchmarks Regulation Annex 2 Discussion

Conclusion: The Board agreed with the Discussion Paper on the benchmark Regulation. The Discussion Paper will be published once ESMA receives the mandate from the European Commission which should follow shortly.

- Implications for the Market Abuse Regulation of a delay in MiFID Annex 3 Discussion II/MiFIR entry into application

The Board discussed the implications for the Market Abuse Regulation of a delay in MiFID/MiFIR entry into application.

Conclusion: The Board took note of the fact that not delaying the entry into application of the Market Abuse Regulation would de facto result in extending the already existing transitory period. It was agreed that no communication to EU institutions is needed on this as this is the consequence of the MiFID/MiFIR delay. The Market Data Standing Committee (MDSC) will follow-up as to whether further initiatives, such as a communication plan to the industry, are needed in close liaison with the Market Integrity Standing Committee (MISC).

7. Market Data Standing Committee

- Report by David Lawton BS/10 Information

Conclusion: David Lawton presented the Report and accompanying documents.

- EMIR Q&A Annex 1 Decision

Decision: The Board agreed with the EMIR Q&A.

8. Investment Management Standing Committee

- Report by Gareth Murphy BS/11 Information

Conclusion: Gareth Murphy presented the report.

- Statement on Closet Indexing Annex 1 Decision

The Board discussed the draft Statement on Closet indexing, in particular:

- Whether the practices are observed across the Union and whether further research is needed before issuing such a Statement;
- The potential impact on the market; and
- Ongoing and future initiatives taken by national competent authorities in the area.

Decision: The Board adopted the draft Statement subject to some drafting changes.

- UCITS Remuneration Guidelines Annex 2 Discussion

The Team Leader Asset Management presented the Note on the UCITS remuneration Guidelines.

The Board discussed the UCITS Remuneration Guidelines, in particular:

- The Guidelines and Opinion issued by the European Banking Authority (EBA);
- The policy and legal implications of the proportionality proposals and its cross-sectoral nature;
- Whether the proposed Guidelines, which includes allowing disapplication, might run counter to EU law; and
- Whether ESMA should delay the finalization of the Guidelines until there is further legal clarity.

Conclusion: The Board agreed that, considering the legal issues around disapplication and proportional application of the remuneration requirements, the IMSC was mandated to work and bring a proposal for the March 2016 meeting of the Board of Supervisors for a communication (letter or opinion) to the European Commission on the disapplication and proportional application of said requirements, noting that there are similar Guidelines under the Capital Markets Directive, the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for the Collective

Investment of Transferable Securities (UCITS). In the meantime the Guidelines will be finalized and presented to the Board of Supervisors during its March 2016 meeting for approval.

- UCITS Q&A Annex 3 Decision

Decision: The Board adopted the UCITS Q&A subject to a minor drafting amendment.

9. ESMA organisation

- Interim evaluation of the early legal review by the European Commission's Legal Services BS/12 Discussion

Conclusion: The Board decided to postpone the discussion on the interim evaluation of the legal review by the European Commission's Legal Services to the March 2016 meeting of the Board of Supervisors.

- 2016 Work Programmes
 - Cover Note BS/13 Information
 - 2016 Work Programme Annex 1 Decision
 - Regulatory Work Programme Annex 2 Decision
 - Supervisory Convergence Work Programme Annex 3 Decision

The Executive Director presented the 2016 Work Programmes by highlighting the minor changes that were introduced by the Management Board during its January 2016 meeting.

The Board discussed the report, in particular the work ESMA is conducting in relation to the European Commission's initiative to establish a Capital Markets Union and how this should be reflected in the Work Programme.

Decision: The Board adopted the 2016 Work Programme, the Regulatory Work Programme and the Supervisory Convergence Work Programme. The Board will also be provided with an update on the CMU related work ESMA is conducting during its March 2016 meeting.

- 2017-2019 Budgets and Work Programmes
 - Cover Note BS/14 Information
 - 2017-2019 Single Programming Document Annex 1a Decision
 - ESMA Risk Assessment Annex 1b Information
 - IT Maintenance costs Annex 2 Information

The Executive Director presented the 2017-2019 Single Programming Document by highlighting the discussions that took place during the January 2016 Management Board.

The Board discussed the Single Programming Document, in particular:

- Whether ESMA should reduce its outsourcing to external consultants in the field of IT;
- The number of staff involved in direct supervision activities; and
- The use of Key Performance Indicators (KPIs).

Decision: The Board adopted the 2017-2019 Single Programming Document. Karel Juras (CZ) voted against.

— Terms of Reference Standing Committees / permanent groups

○ Cover Note	BS/15	Information
○ Committee for Economic and Markets Analysis (CEMA)	BS/16	Decision
○ Commodity Derivatives Task Force (CDTF)	BS/17	Decision
○ Corporate Finance Standing Committee (CFSC)	BS/18	Decision
▪ Corporate Governance Working Group	BS/19	Decision
▪ Operational Working Group on Transparency Related Issues	BS/20	Decision
▪ Prospectus Operational Working Group	BS/21	Decision
○ Corporate Reporting Standing Committee	BS/22	Decision
▪ European Enforcement Coordination Sessions	BS/23	Decision
▪ IFRS Project Group	BS/24	Decision
▪ Audit Working Group	BS/25	Decision
○ Credit Rating Agencies Technical Committee	BS/26	Decision
○ Financial Innovation Standing Committee	BS/27	Decision
○ Market Data Standing Committee	BS/28	Decision
○ Market Integrity Standing Committee	BS/29	Decision
○ Investment Management Standing Committee	BS/30	Decision
▪ IMSC Operational Working Group	BS/31	Decision
○ Investor Protection and Intermediaries Standing Committee	BS/32	Decision
○ Information Technology Management and Governance Group	BS/33	Decision
○ Secondary Markets Standing Committee	BS/34	Decision
○ Post-Trading Standing Committee	BS/35	Decision
○ Supervisory Convergence Standing Committee	BS/36	Decision
○ Decision Repealing the establishment of the Review Panel	BS/37	Decision

The Board discussed the Terms of Reference of the Standing Committees and the permanent groups reporting to the Standing Committees, in particular:

- The explicit requirement of all Standing Committees to contribute to promoting supervisory convergence in line with ESMA's strategic orientation;

- Whether the mandate of the Corporate Reporting Standing Committee (CRSC) should include monitoring the developments in relation to integrated reporting; and
- The role of the Supervisory Convergence Standing Committee in relation to developing methodologies for developing peer reviews.

Decision: The Board adopted all terms of reference of the Standing Committees and the permanent groups reporting to the Committees as well as the Decision repealing the establishment of the Review Panel. It was agreed that reference should be made in the terms of reference of the Supervisory Convergence Standing Committee to its responsibility for the methodology of peer reviews. For the Corporate Reporting Standing Committee (CRSC) the terms of reference will include a reference to integrated reporting. It was noted that some editorial changes might need to be introduced when finalising the Terms of Reference.

- Annual update on Breach of Union Law Cases BS/38 Discussion

The Head of Legal, Convergence and Enforcement Department presented the annual update on Breach of Union Law cases.

The Board discussed the reported and in particular the exchanges taking place between national competent authorities and ESMA as part of Breach of Union Law cases.

Conclusion: The Board took note of the update.

10. Supervisory Convergence Standing Committee

- Report by Lourdes Centeno BS/39 Information

Conclusion: Lourdes Centeno presented the Report and accompanying documents.

- Follow-up Peer Review Report Money Market Fund Guidelines Annex 1 Decision

Decision: The Board adopted the Follow-up Peer Review Report.

- Principles for stakeholder engagement Annex 2 Discussion

Decision: The Board decided to postpone the discussion of the principles on stakeholder engagement to the March 2016 meeting of the Board of Supervisors.

11. TR data quality

- Data Quality Action Plan BS/40 Decision
- Update on TR data quality Annex 1 Information

The Head of Supervision Department presented the TR data quality dashboard to the Board, in particular the work on data validation, trades reconciliation and monitoring of aggregated public data.

David Lawton, Chair of the Market Data Standing Committee (MDSC), presented the activities reported by national competent authorities with regard to the Data Quality Action Plan. The meeting was informed that the Luxembourgish CSSF also participated in the first data quality review.

Decision: The Board took note of the updates and agreed with the plan which means that that ESMA staff will ask national competent authorities to provide relevant information to allow a more detailed update on national supervisory activities performed for discussion during the May 2016 Board of Supervisors.

Conclusion: The Board took note of the Update.

12. Corporate Finance Standing Committee

- Report by Gerard Rameix BS/41 Information

Conclusion: Gerard Rameix presented the Report and accompanying documents.

- Opinion on the equivalence of the Turkish Prospectus Regime Annex 1 Decision

Decision: The Board adopted the Opinion on the equivalence of the Turkish Prospectus Regime.

13. Corporate Reporting Standing Committee

- Report by Hannelore Lausch BS/42 Discussion

Hannelore Lausch presented the Report and accompanying documents by highlighting the proposal to amend the existing International Financial Reporting Standard (IFRS) on insurance contracts to address the temporary consequences of the different effective dates of IFRS 9 – *Financial Instruments* and the new insurance contracts standard.

Conclusion: The Board agreed with the proposed position that the application of IFRS 9 should not be delayed beyond what is needed to mitigate possible effects of different effective dates of IFRS 9 and the new Standard for insurance contracts that are currently in the scope of IFRS 4.

- Country-by-Country Reporting Annex 1 Decision

The Board discussed the interaction between the Transparency Directive and Accounting Directive for country-by-country reporting by issuers admitted for trading to an EU regulated market if such a report is also drawn up by its parent undertaking on a consolidated basis.

The European Commission representative stated to be against the interpretation proposed by ESMA staff due to the implications with ongoing equivalence work.

Decision: The Board adopted the proposed ESMA position, i.e. the exemption in the Accounting Directive to publish a reference to the consolidated report prepared by the parent undertaking is not applicable to these issuers listed on an EU regulated market. Elisabeth Roegele (DE) and Karel Juras (CZ) voted against the interpretation proposed by ESMA staff.

14. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine Van Cauwenberge
Bulgaria	Vladimir Savov (alternate)	
Czech Republic	Karel Juras (alternate)	
Denmark	Birgitte Sogaard Holm	Hanne Rae Larsen
Germany	Elisabeth Roegele	Hannelore Lausch Matthias Köhl
Estonia	Andre Nomm	
Ireland	Cyril Roux	Gareth Murphy Cian Murphy
Greece	Charlampos Gotsis	Anastasia Maltoudi
Spain	Lourdes Centeno	Antonio Mas
France	Gerard Rameix	Benoit de Juvigny Françoise Buisson
Croatia	Pierre Matek	
Italy	Nicoletta Giusto (alternate)	
Cyprus	Demetra Kalogerou	Liana Ioannidou

Latvia	Sandis Andersmits (alternate)	
Lithuania	Vilius Sapoka (alternate)	
Luxembourg	Simone Delcourt (alternate)	
Hungary	Gergo Szeniczey (alternate)	
Malta	Marianne Sciculuna	
Netherlands	Gerben Everts (alternate)	Ellen Boelema
Austria	Klaus Kumpfmuller	Andrea Kuras-Goldmann
Poland	Marek Szuszkiewicz	Joanna Kott
Portugal	Carlos Tavares	Cristina Dias
Romania	Misu Negritoiu	Raluca Tariuc
Slovenia	Milos Cas	Sabina Bešter
Slovakia	Ivan Barri	Tomas Ambra
Finland	Jarmo Parkkonen	Ville Kajala
Sweden	Martin Noreus	Oskar Ode
United Kingdom	David Lawton (alternate)	Eleftheria Apostolidou

Non-voting members

ESMA Chair	Steven Maijor	
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European Commission	Martin Merlin	
EIOPA	Tim Shakesby	
EBA	Adam Farkas	
ESRB	Francesco Mazzaferro	

Observers

Iceland	Sigurveig Guðmundsdóttir	
Liechtenstein	Marcel Loetscher	
Norway	Anne Merethe Bellamy	

ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Resources Department	Nicolas Vasse
Head of Legal, Convergence and Enforcement Department	Sophie Vuarlot-Dignac
Team Leader Investor Protection	Salvatore Gnoni
Team Leader Asset Management	Richard Stobo
Team Leader Post-Trading	Fabrizio Planta



Done at Amsterdam on 23 March 2016

Steven Maijor

Chair

For the Board of Supervisors