

## SUMMARY OF CONCLUSIONS

### Board of Supervisors

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**Date:** 26 March 2019  
**Time:** 09h00 – 17h00  
**Location:** ESMA, rue de Grenelle 103, 75007 Paris, France  
**Contact:** [frederiek.vermeulen@esma.europa.eu](mailto:frederiek.vermeulen@esma.europa.eu) Tel: +33 1 58 36 43 37

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**1. Adoption of agenda** Decision

**Decision:** The agenda was adopted.

**2. Oral Report by Chair and Executive Director** Information

The Chair reported on:

- The outcome of the discussions by the EU Institutions on the main legislative files, such as the (i) review of the operations of the European Supervisory Authorities (ESAs), (ii) the EMIR review, (iii) Investment Firm Review, (iv) EMIR Refit, (v) Sustainable Finance and the (vi) cross-border distribution of investment funds;
- His meeting with the European Commission Vice-President Valdis Dombrovskis and the Vice-President's meeting with ESMA staff;
- The activities of the European Systemic Risk Board (ESRB), in particular the scenarios developed for ESMA's CCP and MMF stress-tests and the upcoming report on exchange-traded funds;
- The activities of the International Organization of Securities Commissions (IOSCO), in particular the outcome of the February 2019 Board meeting and the work carried out by the Market-Fragmentation Follow-up Group;
- The activities of the Joint Committee, in particular the work carried out under the European Commissions' FinTech Action plan and the report on the cross-border supervision of financial services;
- The March 2019 meeting of the Management Board, in particular the discussions on the 2018 preliminary accounts, ESMA's cloud strategy and the topics to be discussed during the May 2019 Away Day;
- The activities of the risk-free rate working group, in particular the recommendations regarding the transition from EONIA to €STER; and
- The European Commission's inaugural event of the European Forum for Innovation Facilitators (EFIF).

The Executive Director reported on the

- Next Senior Supervisors Forum meeting which will focus on risk-based supervision in the investment firm sector;

- Inclusion of MIFID II and MIFIR in the Interactive Single Rulebook on ESMA's website; and
- Appointment of the new Head of the Supervision Department.

### 3. UK's withdrawal from the European Union

- 1) Update Note Discussion

The Executive Director presented the update note.

The Board discussed the note, in particular the

- Cooperation between EU27 prudential regulators and the UK Financial Conduct Authority (UK FCA) for matters related to MiFID and the link to the MMoU between EEA NCAs and the FCA;
- ESMA's recent activities in relation to the trading obligation for shares; and
- Activities of the Supervision Coordination Network.

**Conclusion:** The Board took note of the need for co-operation between certain prudential regulators and the UK FCA but decided that, as this is only relevant for a few Member States, those authorities should not be included in the ESMA MMoU. It was agreed that ESMA should further discuss the implementation of the trading obligation (for shares and derivatives) with the UK FCA and if needed bring the topic back for further discussion with the Board of Supervisors.

- 1b) Recent Developments

The Head of Corporate Affairs Department presented the recent developments and their impact in relation to the UK's withdrawal and the steps to be taken in relation to a potential no-deal on 12 April 2019.

The following documents were presented to the Board for adoption during the meeting to address the required change of date from 29 March to 12 April:

- A decision repealing the existing decisions to recognise the CCPs and CSDs established in the UK and delegating to the ESMA Chair the adoption of new recognition decisions of UK CCPs and the UK CSD;
- A decision delegating to the ESMA Chair the agreement and signature of MoUs related to ESMA's monitoring of the on-going compliance with recognition conditions by CCPs and by the CSD established in the UK;
- A decision repealing the existing withdrawal decisions and delegating to the ESMA Chair the power to adopt new withdrawal decisions regarding the registration of credit rating agencies and trade repositories established in the UK; and
- A joint ESA letter on the draft Technical Standards in relation to the clearing obligation and bilateral margining respectively and addressing the extension of the period referred to in Article 50(3) of the Treaty.

**Decision:** The Board took note of the next steps and adopted the Decisions and the joint ESA letter.

- 2) National contingency measures – MiFiD – UCITS/AIFMD Discussion

The Head of Investors and Issuers Department presented the national contingency measures.

The Board discussed the national contingency measures, and noted that these measures should not grant any passport in other Member States.

**Conclusion:** The Board took note of the report. National competent authorities will be invited to share factual comments on the report.

- 3) Voluntary Supervisory Colleges Discussion

The Head of Legal, Convergence and Enforcement presented the proposed voluntary supervisory colleges.

The Board discussed the proposal, in particular:

- The significant contribution to supervisory convergence by similar groups within ESMA;
- Whether the colleges should be organised on a thematic basis or for individual firms;
- The involvement of prudential competent authorities and third country supervisors; and
- The role of ESMA staff and the legal basis of the colleges under the ESMA Regulation.

**Conclusion:** The Board supported the idea of setting up voluntary supervisory colleges focusing on individual firms. The Board decided to set-up a working group which should report back to the Board in July 2019 with a concrete proposal taking into account the steer to focus on investment firms at this moment and considering the precise role of the colleges and ESMA staff and the co-operation with the Single Supervisory Mechanism (SSM) and third country supervisory authorities. Jean-Paul Servais (BE) preferred to link this initiative with the implementation of the review of the ESAs and of the Investment Firms Regime, and he expressed reservations regarding the adequacy of the legal basis.

#### 4) Access to trading venues and CCPs under MIFID II

- Cover Note & Q&A Decision

Elisabeth Roegele presented the Q&A on the access by third-country trading venues and CCPs to trading venues and CCPs established in the EU under MIFID II (Article 38 of MiFIR) in the light of the UK's withdrawal.

The Board discussed the Q&A, in particular whether the Q&A should be made public.

**Decision:** The Board adopted the Q&A which will also be made public in line with ESMA's existing practices.

#### 5) Cooperation agreements

- Cover Note Discussion
- Multilateral Memorandum for the supervision of clearing members and CSD participants Discussion
- Supervisory briefing for participation of UK authorities in CCP colleges as observer Decision

Nicoletta Giusto presented (i) the Multilateral Memorandum for the supervision of clearing members and CSD participants and the (ii) supervisory briefing for participation of UK authorities in CCP colleges as observer.

**Decision:** The Board adopted (i) the Multilateral Memorandum for the supervision of clearing members and CSD participants and the (ii) supervisory briefing for participation of UK authorities in CCP colleges as observer. The Board tasked the Executive Director with the negotiation of the Multilateral Memorandum for the supervision of clearing members and CSD participants with the Bank of England and the Prudential Regulation Authority (PRA).

- 6) Supervisory cooperation with UK authorities after the UK's withdrawal from the Union Discussion

The Head of Corporate Affairs Department presented the proposed model of supervisory cooperation with the UK authorities after the UK's withdrawal from the Union.

The Board discussed the supervisory cooperation, in particular:

- The importance of aligning the approach between the ESAs;
- The role of the Chair in deciding on the participation of UK experts and representatives in the meetings; and
- Sharing information with and involvement of the Board of Supervisors in relation to the regulatory dialogue with the UK authorities.

**Conclusion:** The Board took note of the suggested way forward.

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| 7) Data operational plan | Information |
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**Conclusion:** The Board took note of the data operational plan.

#### 4. CCP stress-test

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| 1) Cover Note                                  | Discussion  |
| 2) Framework                                   | Decision    |
| 3) ESRB scenarios for the ESMA CCP stress-test | Information |

Robert Ophele presented the Framework on the CCP stress-tests.

The Board discussed the note, in particular the

- Likelihood of the different scenarios, in particular of the holding period;
- Involvement of the Board of Supervisors in developing the scenarios; and
- Communication of the stress-test results.

**Decision:** The Board adopted the Framework for CCP stress-tests and took note of the ESRB scenarios for the ESMA CCP stress-test. The Board highlighted the need to prepare the communication of the stress-test results.

#### 5. Cross-border cooperation on issues with investor protection implications

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| 1) Issues Note | Decision |
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The Head of Investors and Issuers Department presented the cross-border cooperation issues with investors protection implications.

The Board discussed the note, in particular

- Whether further amendments to EU law are needed to encourage cross-border cooperation, also taking into consideration the absence of collaboration platforms, such as those introduced for EIOPA, in the ESMA Regulation;
- The actual exchange of information between national competent authorities in relation to investor protection issues; and
- Whether the ad-hoc groups should be chaired by ESMA staff or a national competent authority staff member.

**Decision:** The Board welcomed the idea of ad-hoc groups stimulating cross-border cooperation in cases with investor protection implications and decided that such groups should be set-up by the Board and be chaired by ESMA staff. ESMA staff was invited to further consider how the information exchange between national competent authorities could be enhanced. Jean-Paul Servais (BE) mentioned that some reflections on item 3.2 could also be taken into account in this context.

#### 6. Product Intervention Powers

- 1) Cover Note Discussion

Gerben Everts presented the third renewal of the CFD decision and the opinions on the national measures.

- 2) Opinion on national measures proposed by the UK FCA Decision

**Decision:** The Board adopted the opinion on national measures proposed by the UK FCA.

- 3) Opinion on national measures proposed by the AFM (Binary options) Decision

**Decision:** The Board adopted the opinion on national measures proposed by the AFM on binary options.

- 4) Opinion on national measures proposed by the AFM (CFDs) Decision

**Decision:** The Board adopted the opinion on national measures proposed by the AFM on CFDs.

- 5) Opinion on national measures proposed by KNF Decision

The Board discussed the opinion on national measures proposed by KNF, in particular whether national measures should be “as stringent as” ESMA’s measure or “close to” ESMA’s measures.

**Decision:** The Board adopted the opinion on national measures proposed by KNF deciding that national measures should be “as stringent as” ESMA’s measures.

- 6) CFD Decision – agreement on third renewal Decision

**Decision:** The Board adopted the Renewal Decision. Vojtěch Belling (CZ) abstained. Liana Ioannidou (CY) supported the renewal of the measures on CFDs for an additional period of three months, but reiterated CySEC's concerns regarding the leverage ratio and suggestion that it might be more appropriate for it to be set at a slightly higher level. The Chair highlighted the need to supplement ESMA’s decisions by national measures.

## 7. Sustainable Finance governance

- 1) Issues Note Decision
- 2) Mandate on short-termism Information

The Head of Corporate Affairs Department presented the note on the governance framework around ESMA’s sustainable finance activities.

The Board discussed the proposed governance, in particular the

- Need for ESMA to play a pro-active role in this area;
- Importance of working together with European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA); and
- Interaction with existing Standing Committees.

**Decision:** The Board decided to set-up a network on sustainable finance. A call for chair and candidates will follow shortly.

## 8. Cyber-risk follow-up

- 1) Cover Note Discussion

The Team Leader of Innovation and Products presented the advice.

The Board discussed the joint ESA advice, in particular the need to consider the impact on ongoing initiatives at national level.

- 2) Joint ESA Advice on the need for legislative improvements to ICT risk management requirements Discussion

**Conclusion:** The Board endorsed the Joint ESA advice on the need for legislative improvements to ICT risk management requirements. The Joint ESA advice will be presented to the Boards of the 3 ESAs for adoption in written procedure.

- 3) Joint ESA Advice on a coherent cyber resilience testing framework Discussion

**Conclusion:** The Board endorsed the Joint ESA advice on a coherent cyber resilience testing framework. The Joint ESA advice will be presented to the Boards of the 3 ESAs for adoption in written procedure.

#### 9. Publication of inside information by collective investment undertakings without legal personality traded on venue under MAR

- 1) Cover Note Discussion
- 2) Q&A Decision

Nicoletta Giusto presented the Q&A on the publication of inside information by collective investment undertakings without legal personality traded on a venue under MAR.

The Board discussed the Q&A, in particular

- Whether further work is needed on issues linked to the Q&A;
- The interaction with the MAR review; and
- The enforcement of the Q&A.

**Decision:** Following a vote the Board adopted the Q&A. 15 Members voted in favour, 4 disagreed and 4 abstained.

#### 10. Update on the administrative arrangement for the international transfer of data

- 1) Update on draft administrative arrangement for the transfer of personal data Discussion
- 2) Administrative Arrangement Decision
- 3) Oversight Mechanism Information

The Head of the Legal, Convergence and Enforcement Department presented the update on the administrative arrangement for the international transfer of data.

**Decision:** The Board took note of the update on the draft administrative arrangement for the transfer of personal data and endorsed the administrative arrangement.

## 11. Commodity Derivatives Task Force

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| 1. CDTF Report | Information |
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**Conclusion:** The Board took note of the CDTF Report.

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| 2. Q&As | Decision |
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**Decision:** The Board adopted the Q&As.

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| 3. Procedures for ESMA's Position Management Powers | Decision |
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**Decision:** The Board adopted the procedures for ESMA's Position Management Powers.

## 12. Corporate Finance Standing Committee

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| 1) CFSC Report | Decision |
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**Conclusion:** The Board took note of the CFSC Report and agreed with the suggested way forward on the interaction of the legislative proposal on SME listings and the advice.

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| 1) Final Report on Guidelines on Risk Factors | Decision |
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**Decision:** The Board adopted the Final Report on Guidelines on Risk Factors.

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| 2) Final Report on the technical advice to the European Commission in relation to the minimum content of exempted documents | Decision |
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**Decision:** The Board adopted the Final Report on the technical advice to the European Commission in relation to the minimum content of exempted documents.

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| 3) Q&As on the implementation of the Prospectus Regulation | Decision |
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**Decision:** The Board adopted the Q&As on the implementation of the Prospectus Regulation.

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| 4) Q&A on the update of information in registration documents (RDs) and universal registration documents (URDs) | Decision |
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**Decision:** The Board adopted the Q&A on the update of information in relation to registration documents (RDs) and universal registration documents (URDs). Francois Kauthen (LU) disagreed with the Q&A.

## 13. Corporate Reporting Standing Committee

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

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| 2) Report on enforcement and regulatory activities of European accounting enforcers in 2018 | Decision |
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**Decision:** The Board adopted the Report on enforcement and regulatory activities of European accounting enforcers in 2018.

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| 3) Comment letter on the European Commission's public consultation on the update of the non-binding guidelines on non-financial reporting | Decision |
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**Decision:** The Board adopted the comment letter on the European Commission’s public consultation on the update of the non-binding guidelines on non-financial reporting.

#### 14. Data Standing Committee

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

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| 2) MIFIR Q&A | Decision |
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**Decision:** The Board adopted the MIFID Q&A.

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| 3) Updated TREM data quality methodology | Decision |
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**Decision:** The Board adopted the updated TREM data quality methodology.

#### 15. Investment Management Standing Committee

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

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| 2) Consultation paper on disclosure RTS under Article 25 of the ELTIF Regulation | Decision |
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**Decision:** The Board adopted the consultation paper on disclosure RTS under Article 25 of the ELTIF Regulation.

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| 3) Report on UCITS sanctions | Decision |
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**Decision:** The Board adopted the Report on the UCITS sanctions.

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| 4) UCITS Q&A | Decision |
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**Decision:** The Board adopted the UCITS Q&A.

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| 5) AIFMD Q&A | Decision |
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**Decision:** The Board adopted the AIFMD Q&A. Robert Ophele (FR) disagreed and expressed a preference to deal with the issue as part of the upcoming AIFMD review.

#### 16. Investor Protection and Intermediaries Standing Committee

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

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| 2) Supervisory Briefing on appropriateness | Decision |
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**Decision:** The Board adopted the supervisory briefing on appropriateness.

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| 3) MIFID II Q&As | Decision |
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**Decision:** The Board adopted the MIFID II Q&As. Ilona Pieczyńska-Czerny (PL) abstained for the question on reverse solicitation. On the Q&A in relation to best-execution, Elisabeth Roegele (DE) and Gerben Everts (NL) abstained.

## 17. Market Integrity Standing Committee

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

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| 2) Internal Procedure on the adoption of ESMA's advice to competent authorities on benchmarks | Decision |
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**Decision:** The Board adopted the internal procedure on the adoption of ESMA's advice to competent authorities on benchmarks.

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| 3) Supervisory briefing on the disclosure of inside information on shareholders' potential transactions | Decision |
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**Decision:** The Board adopted the supervisory briefing on the disclosure of inside information on shareholders' potential transactions.

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| 4) MAR Q&A | Decision |
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**Decision:** The Board adopted the MAR Q&A.

## 18. Post-Trading Standing Committee

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

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| 2) Statement on Refit implementation for small financial and non-financial counterparties | Decision |
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**Decision:** The Board adopted the statement on Refit implementation for small financial and non-financial counterparties.

## 19. Secondary Markets Standing Committee

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

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| 2) MIFID II Q&As | Decision |
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**Decision:** The Board adopted the MIFID II Q&As.

## 20. European Commission's initiative to establish a Capital Markets Union

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| 1) Update Note | Information |
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**Conclusion:** The Board took note of the update on the European Commission's initiative to establish a Capital Markets Union.



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

**Conclusion:** The Board decided that ESMA should step-up its activities linked to promoting supervisory convergence in relation to ICO and security tokens.

## Participants list

### Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	Antoine van Cauwenberge
Bulgaria	Marian Ivanov (alternate)	
Czech Republic	Vojtěch Belling	Karel Juras
Denmark	Karen Dorte Abelskov	Anne Bruun
Germany	Elisabeth Roegele	David Dietrich
Estonia	Andre Nomm	
Ireland	Colm Kincaid (alternate)	Cormac Staunton
Greece	Charalampos Gotsis	Vasiliki Koularmani
Spain	Sebastian Albella	Ana Martinez Pina Antonio Mas
France	Robert Ophele	Benoit de Juvigny Viet-Linh Nguyen
Croatia	Ante Zigman	
Italy	Carmine Di Noia (alternate)	Nicoletta Giusto
Cyprus	Liana Ioannidou (alternate)	
Latvia	Gunta Razāne	

Lithuania	Mindaugas Salcius	
Luxembourg	Claude Marx	Françoise Kauthen
Hungary	Krisztián Csáky (alternate)	
Malta	Marianne Scicluna	Christopher Buttigieg
Netherlands	Gerben Everts (alternate)	Fleur de Roos
Austria	Klaus Kumpfmüller	Andrea Kuras-Goldmann
Poland	Ilona Pieczyńska-Czerny (alternate)	Joanna Kott
Portugal	Gabriela Figueiredo Dias	Rita Oliveira Pinto
Romania	Leonardo Badea	Raluca Alina Tariuc
Slovenia	Miloš Čas	Sabina Bešter
Slovakia	Tomas Ambra (alternate)	Adam Nadasky
Finland	Anneli Tuominen	Eeva Granskog
Sweden	Erik Thedeen	Fredrik Elmberg
United Kingdom	Andrew Bailey	Cristina Frazer

#### Non-voting members

ESMA Chair	Steven Maijor	
European Commission	Ugo Bassi	Ellen Boelema

EBA	Anne Tiedemann	
EIOPA	Kai Kosik	
ESRB	Francesco Mazzaferro	
Iceland	Pall Fridriksson (alternate)	
Liechtenstein	Reto Degen	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marco Uccelli	

## ESMA

Executive Director	Verena Ross
Summary of Conclusions	Frederiek Vermeulen
Head of Investors and Issuers Department	Evert van Walsum
Head of Corporate Affairs Department	Roxana De Carvalho
Head of Markets Department	Fabrizio Planta
Head of Risk Analysis and Economics Department	Steffen Kern
Team Leader Financial Innovation	Claudia Guagliano

Done at Paris on 23 April 2019



Steven Maijor

For the Board of Supervisors