

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: 16 December 2020
Time: 09h00 – 17h30
Location: Conference call
Contact: frederiek.vermeulen@esma.europa.eu Tel: +33 1 58 36 43 37

1. Adoption of agenda Decision

Decision: The agenda was adopted.

The Chair informed the meeting that during its confidential session the Board of Supervisors (re-) appointed

- Derville Rowland (IE) as Member of the Management Board for a second term;
- Vojtech Belling (CZ) and Vassiliki Lazarakou (EL) as Members of the Management Board for a first term; and
- Jos Heuvelman as Chair of the Supervisory Convergence Standing Committee and the Senior Supervisors Forum.

2. Confirmation of absence of conflict of interests Decision

Decision: The Board endorsed the 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. Oral Report by Chair and Executive Director Information

The Chair reported on:

- The ongoing discussions between the United Kingdom and the European Union and in particular the potential market impact of the end of the transition period and the future co-operation with the UK authorities;
- The submission of the shortlisted candidates for the position of ESMA Chair to the Council of the European Union and the European Parliament and the ongoing informal hearings;
- His meeting with Mairead McGuinness, European Commissioner for Financial Stability, Financial Services and Capital Markets Union, and in particular the discussions on the recruitment of the next ESMA Chair and Executive Director, the set-up of the CCP Supervisory Committee and the importance of public entities being involved in setting non-financial reporting standards;

- His interactions with Members of the European Parliament, in particular the hearing on ESMA's Fast Track Peer Review on the application of the ESMA Guidelines on Enforcement of Financial Information by BaFin and the Financial Reporting Enforcement Panel (FREP);
- The activities of the European Systemic Risk Board (ESRB), in particular the possible extension of the recommendation on the restriction of dividend distributions;
- The activities of the International Organization of Securities Commissions (IOSCO) and the Financial Stability Board (FSB), in particular the IOSCO Board meeting, the Financial Stability Engagement Group (FSEG) and IOSCO's sustainable finance task force;
- The outcome of the December 2020 Management Board meeting;
- The upcoming publication in the Official Journal of the European Union of a vacancy notice to become Member of the Board of Appeal;
- The activities of the Securities and Markets Stakeholder Group (SMSG), in particular the upcoming joint meeting between the Board of Supervisors and the SMSG;
- Activities of the Joint Committee, in particular the discussions on the European Commission's Digital Finance Strategy and accompanying legislative proposals and the blockchain pilot regime;
- The revised Q&A process following the ESA review, in particular the questions submitted to the European Commission which have not yet been responded to;
- The ongoing discussions between the US Commodity Futures Trading Commission (CFTC) and ESMA to establish a Memorandum of Understanding; and
- The planned adoption of the Regulation on CCP recovery and resolution, including provisions on the establishment of a CCP Resolution Committee.

The Executive Director reported on the:

- Impact of the COVID19-pandemic on ESMA's activities, in particular the continued teleworking by ESMA Staff; and
- December 2020 meeting of the Financial Services Committee (FSC), in particular on the discussions on ESMA's response to the ESRB's recommendation concerning liquidity in investment funds.

The Board discussed the oral report, in particular the timing for finalisation of the Memorandum of Understanding between the US CFTC and ESMA.

Conclusion: The Board took note of the report.

4. Enhancing enforcement of financial information under the Transparency Directive

1) Presentation

Discussion

The Head of Investors and Issuers Department presented how the Transparency Directive could be enhanced, taking into account the findings of ESMA's Fast Track Peer Review on the application of the ESMA Guidelines on Enforcement of Financial Information by BaFin and FREP.

The Board discussed the presentation, in particular:

- The importance of consistent application of International Financial Reporting Standards (IFRS) within the European Union;
- The need for a strong and clear governance framework for supervisory bodies of financial reporting, in particular highlighting independence;
- Whether supervision could be shared between public and private entities and/or partially delegated and, if so, how to ensure a clear identification of responsibilities;
- How to enhance information exchange at national and European level;
- Whether the existing Guidelines on Enforcement of Financial Information could be strengthened through a requirement in EU law to develop Regulatory Technical Standards;

- The further increasing relevance of non-financial information (such as alternative performance measures and in relation to sustainable finance), in particular how to harmonise such reporting requirements at EU and international level and the supervision required in that respect; and
- The opportunities coming with the European Single Electronic Format (ESEF) for users of financial information and how ESMA can contribute to further enhance the information made available in a European Single Access Point (ESAP).

Conclusion: The Board discussed the presentation by highlighting the need for a strong governance framework at national and EU level and for improving the exchange of information. The Board supported the idea of a requirement in EU law to develop Regulatory Technical Standards on Enforcement of Financial Information. It was agreed that a more focused note should be prepared for discussion with the Board of Supervisors on the basis of the issues identified in the presentation.

5. Sustainable Finance

1) ESG Disclosures (SFDR RTS)

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| ○ Cover Note | Discussion |
| ○ Presentation | Discussion |

The Head of Investors and Issuers Department presented the note on ESG disclosures.

The Board discussed the note, in particular:

- The level of granularity of the proposed disclosure requirements;
- Whether further guidance will be needed by the European Commission and/or the European Supervisory Authorities (ESAs) to ensure consistent application; and
- The discussions that took place at the European Insurance and Occupational Pensions Authority (EIOPA) Board of Supervisors.

Conclusion: The Board took note of the update and the fact that a Final Report including the Regulatory Technical Standards will be presented to the Board of Supervisors in January 2021. The Board invited ESMA Staff to further liaise with the European Commission Services on the fact that most of the requirements in the Sustainable Finance Disclosure Regulation (SFDR) will apply from 10 March 2021 onwards.

2) IFRS Foundation Consultation Paper on Sustainability Reporting

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| ○ Cover Note | Discussion |
| ○ Comment Letter | Decision |
| ○ ESAs Chairs letter in response to the IFRS Foundation's consultation on sustainability reporting | Information |

The Head of Issuers and Investors Department presented the comment letter to the IFRS Foundation's consultation paper on sustainability reporting.

The Board discussed the comment letter, in particular the:

- Importance of non-financial and financial reporting for EU financial markets whilst maintaining international alignment; and
- Need for a good co-operation between the European Supervisory Authorities and the IFRS Foundation.

Decision: The Board adopted the comment letter to the IFRS Foundation and took note of the letter sent by the Chairs of the European Supervisory Authorities.

6. Scope of the analysis of short selling measures and Short Selling Regulation review

- 1) Issues Note Discussion

Elisabeth Roegele presented the note on the scope of the analysis of short selling measures and the Short Selling Regulation review.

The Board discussed the note, in particular the need:

- For the European Commission to review the Short Selling Regulation, including the opportunity to provide clarity and legal certainty to market participants and competent authorities; and
- To share assessments and studies on the impact of short selling measures among national competent authorities to contribute to a harmonised approach on short-selling measures across the EU.

Conclusion: The Board agreed with the suggested way forward and invited ESMA Staff to set-up a workshop to share assessments and studies on the impact of short-selling measures.

7. Algorithmic Trading

- 1) Cover Note Discussion
- 2) Consultation paper for the MiFID II review report on algorithmic trading Decision

Robert Ophele presented the consultation paper for the MIFID II review report on algorithmic trading.

The Board discussed the report, in particular the authorisation of direct electronic access (DEA) users.

Decision: The Board adopted the Consultation paper for the MiFID II review report on algorithmic trading favouring an approach not to authorise any direct electronic access users.

	authorising all Tier 1 DEA users (EU & non-EU)	not authorising any DEA user	Abstain
Jean-Paul Servais (BE)		X	
Dimitar Koychev (BG)	X		
Vojtech Belling (CZ)		X	
Theodor Joachim Christensen (DK)		X	
Elisabeth Roegele (DE)			X
Andre Nõmm (EE)	X		

Derville Rowland (IE)	X		
Vasiliki Lazarakou (EL)	X		
Rodrigo Buenaventura (ES)		X	
Robert Ophele (FR)		X	
Ante Žigman (HR)	X		
Carmine Di Noia (IT)			X
Demetra Kalogerou (CY)	X		
Ieva Ose (LV)		X	
Vaidas Cibas (LT)		X	
Claude Marx (LU)		X	
Gergő Szeniczey (HU)		X	
Christopher Buttigieg (MT)		X	
Jos Heuvelman (NL)		X	
Eduard Mueller (AT)	X		
Magdalena Łapsa-Parczewska (PL)		X	
Tiago Matias (PT)		X	
Florentina Boboc (RO)	X		
Milos Cas (SL)		X	
Peter Tkáč (SK)	X		
Anneli Tuominen (SU)		X	
Erik Thedeén (SE)		X	
Steven Maijoor (ESMA)		X	

8. ESMA's approach to proportionality

1) Presentation

Discussion

Magdalena Łapsa-Parczewska presented ESMA's approach to proportionality.

The Board discussed the presentation, in particular:

- The need for the Advisory Committee to focus on ex-post assessments of existing ESMA acts whilst avoiding topics that might be impacted by ongoing discussions or review of the underlying EU law;
- The development of an assessment methodology whilst applying it in parallel on ESMA's Guidelines on Product Governance;
- The need to consider proportionality in relation to reporting requirements other than AIFMD reporting; and
- The involvement of market participants through the Securities and Markets Stakeholder Group (SMSG).

Conclusion: The Board discussed ESMA's approach to proportionality whilst confirming the Advisory Committee's existing mandate to focus on ex-post assessments. The Board welcomed the choice of the ESMA Guidelines on Product Governance as a first example. The Board invited the Advisory Committee on Proportionality to consider a second reporting related topic other than AIFMD reporting.

9. 2022-2024 Planning

1) Cover Note

Discussion

2) Draft Programming Document 2022-2024

Discussion

The Executive Director presented the 2022-2024 Programming Document.

The Board discussed the 2022-2024 Programming Document, in particular whether further work should be considered to promote supervisory convergence in relation to the Market Abuse Regulation.

Conclusion: The Board discussed the Programming Document 2022-2024 which will be further developed and presented for adoption during the January 2021 Board of Supervisors meeting.

3) IT Work programme 2021-2024

Decision

The Executive Director presented the IT Work Programme 2021-2024.

The Board discussed the IT Work Programme, in particular the increase of the backlog of deprioritised projects, i.e. how to address the growing number of projects which are deprioritised given the limited capacity and budget of ESMA and NCAs.

Decision: The Board approved the IT Work programme 2021-2024.

10. MiFID II enforcement

1) Presentation

Discussion

The Team Leader Investor protection presented the experience with enforcing MIFID and potential ideas to enhance such enforcement.

The Board discussed the presentation, in particular:

- The upcoming report on the application of administrative/criminal sanctions and the need to harmonise the MiFID II/MiFIR requirements to be prepared by the European Commission, its interlinkages with other EU Acts and whether sufficient experience has been gained in supervising the MiFID II requirements;
- The importance of market participants to comply with legal requirements;

- Whether national competent authorities should be empowered with settlement powers or the power of redress;
- The pros and cons of introducing financial incentives to whistle-blowers; and
- ESMA's role in fostering consistent enforcement.

Conclusion: The Board instructed the Investor Protection and Intermediaries Standing Committee (IPISC) and the Enforcement Network to develop more detailed proposals for discussions with the Board of Supervisors in January 2021, in particular in relation to (i) whistle blowers and (ii) potential new measures such as giving national competent authorities the power of redress or empowering national authorities with settlement powers.

11. AIFMD - leverage

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| 1) Cover Note | Discussion |
| 2) Guidelines on leverage (art.25 AIFMD) | Decision |

Decision: The Board adopted the Guidelines on leverage.

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| 3) Procedure for imposing leverage limits (article 25 AIFMD) | Decision |
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Decision: The Board adopted the procedure for imposing leverage limits.

12. Financial Stability at international level

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| 1) Presentation | Discussion |
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Conclusion: The Board took note of the presentation on ESMA's financial stability related activities at international level.

13. Annual Report on Equivalence Monitoring

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| 1) Cover Note | Discussion |
| 2) Report | Decision |

Decision: The Board approved the Annual Report on Equivalence Monitoring.

14. 2020 fee collection and 2021 Opening budget

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| 1) Cover note | Decision |
| 2) 2020 budget amendment – Revenue | Decision |
| 3) 2020 budget amendment – Expenditure | Decision |

The Executive Director presented the 2020 fee collection and 2020 budget amendment. She particularly highlighted the need to lower the 2020 revenue from Securitisation Repositories (SR) fees with 35 000 EUR due to a change in assumption in relation to the activities to be provided by a securitisation repository.

Decision: The Board agreed with the 2020 budget amendments including lowering the 2020 fee income by 35 000 EUR and the corresponding expenditure, as mentioned by the Executive Director.

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| 4) 2021 budget – Revenue | Decision |
| 5) 2021 budget – Expenditure | Decision |
| 6) 2021 NCAs contributions | Decision |

The Executive Director presented the 2021 opening budget including the concern highlighted by the European Commission representative during the December 2020 Management Board on the ongoing discussions between the European Commission Services and ESMA on the accounting treatment of the EU advance for ESMA’s direct supervisory mandates under the ESA review.

Decision: The Board agreed with the 2021 opening budget except for the income related to the EU advance for ESMA’s supervisory mandates representing 1,1 million EUR (and corresponding expenditure) on which ESMA Staff will come back in writing on the outcome of the discussions with the European Commission Services.

15. MIFIR Third Country Regime

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| 1) Cover Note | Information |
| 2) Report on ESMA’s resources needs arising from MiFIR third country regime | Decision |

Decision: The Board adopted the Report on ESMA’s resources needs arising from MiFIR third country regime subject to drafting changes. A revised report will be shared with the Board of Supervisors for information.

16. UK withdrawal from the European Union

- 1) Issues Note

The Head of Governance and External Affairs Department presented the note on the UK withdrawal from the EU by highlighting:

- ESMA’s activities in monitoring potential market and organisational impact at the end of the transition period;
- The continued need for close co-operation with the UK authorities;
- The ongoing discussions in relation to the memorandum of understanding on information sharing concerning Clearing Members and CSD participants;
- The upcoming publication of a Q&A on OTC requirements and reporting issues under the European Markets Infrastructure Regulation (EMIR); and
- That status of Gibraltar after the UK’s withdrawal.

The European Commission representative provided the Board of Supervisors with an update on the ongoing discussions between the EU and the United Kingdom.

Rodrigo Buenaventura (ES) highlighted the need to clarify the position of Gibraltar following the United Kingdom’s withdrawal from the European Union.

Conclusion: The Board took note of the update. The Board asked ESMA Staff to report to a future Board meeting on the status of Gibraltar.

17. SSR Decision on lowering the threshold

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| 1) Cover Note | Information |
| 2) Decision | Decision |

Decision: The Board adopted the Decision to extend the lower threshold for reporting net short positions.

	Agree	Disagree	Abstain
Jean-Paul Servais (BE)	X		
Dimitar Koychev (BG)	X		
Vojtech Belling (CZ)		X	
Theodor Joachim Christensen (DK)		X	
Elisabeth Roegele (DE)	X		
Andre Nõmm (EE)	X		
Derville Rowland (IE)	X		
Vasiliki Lazarakou (EL)	X		
Rodrigo Buenaventura (ES)	X		
Robert Ophele (FR)	X		
Ante Žigman (HR)	X		
Carmine Di Noia (IT)	X		
Demetra Kalogerou (CY)			X
Ieva Ose (LV)	X		
Vaidas Cibas (LT)	X		

Claude Marx (LU)	X		
Gergő Szeniczey (HU)	X		
Christopher Buttigieg (MT)	X		
Jos Heuvelman (NL)			X
Eduard Mueller (AT)	X		
Magdalena Łapsa-Parczewska (PL)	X		
Tiago Matias (PT)	X		
Florentina Boboc (RO)	X		
Milos Cas (SL)	X		
Peter Tkáč (SK)			X
Anneli Tuominen (SU)	X		
Erik Thedeén (SE)		X	
Steven Maijoor (ESMA)	X		

3) Decision for EFTA States

Decision

Decision: The Board adopted the Decision for EFTA States.

18. Commodity Derivatives Task Force

1) CDTF Report

Information

Conclusion: The Board took note of the CDTF Report.

2) Supervisory briefing on the application of the hedging exemption for position limits

Decision

Decision: The Board adopted the supervisory briefing on the application of the hedging exemption for position limits.

19. Data Standing Committee

- 1) DSC Report Information

Decision: The Board took note of the DSC Report.

- 2) Final Report on EMIR Refit Decision

Decision: The Board adopted the Final Report on EMIR Refit.

- 3) Revised FIRDS engagement framework Decision

Decision: The Board endorsed the revised FIRDS engagement framework.

- 4) Revised TREM methodology

- TREM analytical tests Decision
- TREM technical tests Decision
- TREM template analytical results Decision

Decision: The Board adopted the revised TREM methodology.

- 5) FITRS data quality report Decision

Decision: The Board adopted the FITRS data quality report.

- 6) Double Volume Cap data quality report Decision

Decision: The Board adopted the Double Volume Cap data quality report.

- 7) EMIR Q&A Decision

Decision: The Board adopted the EMIR Q&A.

- 8) Corrections of the Guidelines on Reporting under Articles 4 and 12 SFTR Decision

Decision: The Board adopted the corrections to the Guidelines on Reporting under Articles 4 and 12 SFTR.

20. Financial Innovation Standing Committee

- 1) FISC Report Information

Conclusion: The Board took note of the FISC Report.

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| 2) Guidelines on outsourcing to cloud service providers | Decision |
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Decision: The Board adopted the guidelines on outsourcing to cloud service providers.

21. 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) Guidelines on MMF stress test – 2020 update | Decision |
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Decision: The Board adopted the 2020 update on the guidelines on MMF stress test.

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| 3) AIFMD Memorandum of Understanding with the Astana
Financial Service Authority (AFSA) – Republic of
Kazakhstan | Decision |
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Decision: The Board adopted the AIFMD Memorandum of Understanding with the Astana Financial Service Authority (AFSA) – Republic of Kazakhstan.

22. 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 IPISC Report.

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| 2) Terms of Reference Crowdfunding Task Force | Decision |
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Decision: The Board adopted the Terms of Reference of the Crowdfunding Task Force.

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| 3) Q&As on costs and changes | Decision |
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Decision: The Board adopted the Q&As.

23. 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.

- 2) Annual report on accepted market practices Decision

Decision: The Board adopted the annual report on accepted market practices.

- 3) Annual report on administrative and criminal sanctions under MAR Decision

Decision: The Board adopted the annual report on administrative and criminal sanctions under MAR.

24. Post-Trade Standing Committee

- 1) PTSC Report Information

Conclusion: The Board took note of the PTSC Report.

- 2) Report on the clearing solutions for pension scheme arrangements Decision

Decision: The Board adopted the report on the clearing solutions for pension scheme arrangements.

25. Secondary Markets Standing Committee

- 1) SMSC Report Information

Conclusion: The Board took note of the SMSC Report.

- 2) Updated opinion on waivers from pre-trade transparency. Decision

Decision: The Board adopted the updated opinion on waivers from pre-trade transparency.

26. A.O.B.

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Participants list

Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	
Bulgaria	Dimitar Koychev (alternate)	
Czech Republic	Vojtech Belling	
Denmark	Theodor Joachim Christensen (alternate)	
Germany	Elisabeth Roegele	
Estonia	Andre Nõmm	
Ireland	Derville Rowland	
Greece	Vassiliki Lazarakou	
Spain	Rodrigo Buenaventura	
France	Robert Ophèle	
Croatia	Ante Žigman	
Italy	Carmine Di Noia (alternate)	
Cyprus	Demetra Kalogerou	
Latvia	Ieva Ose (alternate)	
Lithuania	Vaidas Cibas (alternate)	

Luxembourg	Claude Marx	
Hungary	Gergő Szeniczey	
Malta	Christopher Buttigieg	
Netherlands	Jos Heuvelman (alternate)	
Austria	Eduard Müller	
Poland	Magdalena Łapsa-Parczewska	
Portugal	Tiago Matias (alternate)	
Romania	Florentina Boboc (alternate)	
Slovenia	Milos Cas	
Slovakia	Peter Tkáč	
Finland	Anneli Tuominen	
Sweden	Erik Thedeen	
ESMA Chair	Steven Maijoor	

Non-voting members

European Commission	Ugo Bassi	
EBA	Anne Tiedemann (alternate)	
EIOPA	Kai Kosik (alternate)	

ESRB	Francesco Mazzaferro	
Iceland	Unnur Gunnarsdottir	
Liechtenstein	Reto Degen (alternate)	
Norway	Geir Holen (alternate)	
EFTA Surveillance Authority	Jonina Larusdottir (alternate)	

ESMA

Executive Director	Verena Ross – not for item 6
Summary of Conclusions	Frederiek Vermeulen
Head of Investors and Issuers Department	Evert van Walsum
Head of Governance and External Affairs Department	Roxana De Carvalho
Head of Risk Assessment and Economics Department	Steffen Kern
Team Leader Investor Protection	Salvatore Gnoni

Done at Paris on 25 January 2021

Steven Maijor

For the Board of Supervisors