

ESMA REGULAR USE

3 November 2021 ESMA22-106-3571

SUMMARY OF CONCLUSIONS

Board of Supervisors

Date: Tuesday 21 and Wednesday 22 September 2021

Time: 14h00 – 18h00 (Tuesday) and 9h00 – 12h00 (Wednesday)

Location: Conference call

Contact: <u>frederiek.vermeulen@esma.europa.eu</u> Tel: +33 1 58 36 43 37

1. Adoption of agenda

Decision

Decision: The agenda was adopted.

2. Confirmation of absence of conflict of interests

Decision

Decision: The Board endorsed the Interim 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 Interim Chair, Executive Director and CCP Supervisory Committee Chair

Oral

Discussion

The Interim Chair reported on:

- The Council of the European Union's planning to identify the candidate to be appointed as ESMA Chair;
- The fact that she will represent ESMA at the annual Hearing of the Chairs of the European Supervisory Authorities (ESAs) at the European Parliament Committee on Economic and Monetary Affairs (ECON Committee);
- Her recent meeting with European Commissioner Mairead McGuinness together with ESMA's Executive Director and the Chair of the CCP Supervisory Committee, in particular the discussions related to the development of the Capital Markets Union, the impact of the United Kingdom's withdrawal and ESMA's fee levying structure;
- The September 2021 Management Board meeting, in particular its discussions on the European Commission Internal Audit Service's report on human resources and ethics and ESMA's related action plan, on the renewal of the Board of Appeal's membership and on ESMA's 2022 Annual Work Programme;
- The activities of the Securities and Markets Stakeholder Group (SMSG), in particular its advice on the Call for Evidence on Digital Finance and on the 2022 annual work programme, as well as its response to the European Commission's consultation on the future Retail Investment Strategy;
- The activities of the European Systemic Risk Board (ESRB), in particular the joint ECB-ESRB Project
 Team on climate risks and the ESRB Recommendation on money market funds; and



 The way forward on the Taxonomy-related product disclosures regulatory technical standards, in particular the inclusion of a second key performance indicator excluding sovereign exposures to sit alongside the original KPI.

The Executive Director reported on:

- The September 2021 Financial Services Committee (FSC) meeting, in particular the risk update, as well as the European Commission's work on the renewed sustainable finance strategy and the EU Green Bond Standard proposal;
- The activities of the Joint Committee, in particular the upcoming Joint Consumer Protection Day, the receipt of a call for advice from the European Commission under the PRIIPs Regulation and the delivery by the Court of Justice of the EU of a judgment on the validity of EBA Guidelines;
- ESMA's international activities, in particular the International Organization for Securities Commission's (IOSCO) work relating to Open-Ended Funds and MMF policy recommendations;
- ESMA's participation in the Network for Greening the Financial System (NGFS);
- The continued impact of COVID-19 on ESMA's activities, in particular that from 20 September 2021 ESMA staff has returned to working from the office for at least one day a week, but that meetings remain conducted virtually for the time being; and
- EU advance for Data Reporting Service Providers and Benchmarks ESMA received from the EU budget, in particular the fact that ESMA has provided the European Commission Services with a detailed overview of the budget implementation as well as of the deliverables paid under the EU advance and is waiting to hear back from the Commission Services.

The Chair of the CCP Supervisory Committee reported on the progress in the assessment of third-country Tier 2 central counterparties (CCPs).

The Board discussed the oral report, in particular the way forward on the Taxonomy-related product disclosures regulatory technical standard.

4. Call for Advice on Digital Finance

1) Interim findings Discussion

The Chair of the Financial Innovation Standing Committee and the Head of Unit Innovation, Products and Technology presented the interim findings on the Call for Advice on Digital Finance.

The Board discussed the interim findings, in particular:

- Risks identified, namely related to cybersecurity, and how the Digital Operational Resilience Act (DORA) regulation will help address some of the risks identified;
- The appropriate methods for the determination of jurisdiction for a digital entity; and
- The importance of ensuring consistency within the different ongoing initiatives related to digital finance and the input gathered from competent authorities.

Conclusion: The Board discussed the interim findings.

5. Report on NCAs' independence

1)	Presentation	Discussion
2)	Cover note	Discussion
3)	Report	Decision
4)	Summaries of NCA responses	Information



The Chair of the Supervisory Convergence Standing Committee presented the report on national competent authorities' (NCAs) independence.

The Board discussed the report, in particular the:

- Differing set-up and mandates of NCAs' across the EU:
- Importance of coordination with the other European Supervisory Authorities (ESAs); and
- Need to develop assessment criteria on the independence of national authorities as a next step considering the criteria used for central banks, the IOSCO principles and the criteria published by EIOPA.

Decision: The Board adopted the report on NCAs' independence.

6. 2021 Supervisory Convergence Heatmap

Presentation
 Cover note
 Discussion
 2021 Heatmap Report
 Decision

The Chair of the Supervisory Convergence Standing Committee presented the 2021 Supervisory Convergence Heatmap.

The Board discussed the heatmap, in particular the growing risks linked to crypto assets and cybersecurity.

Decision: The Board adopted the 2021 Heatmap Report subject to drafting amendments.

7. Union Strategic Supervisory Priorities

1) Presentation Discussion

2) Union Strategic Supervisory Priorities

Decision

The Chair of the Supervisory Convergence Standing Committee presented the Union Strategic Supervisory Priorities (USSPs).

The Board discussed the USSPs and noted the importance of ensuring that the USSPs continually remain of Union-wide relevance.

Decision: The Board adopted the Union Strategic Supervisory Priorities.

8. Peer Review Work Plan

1) Presentation Discussion

2) Cover note Discussion

3) Peer Review Work Plan 2022-2023

The Team Leader Supervisory Convergence presented the Peer Review Work Plan 2022-2023.

The Board discussed the work plan, in particular the:

Decision



- Scope of the peer review on outsourcing and delegation which will be set as part of its mandate;
- How to conduct on-site visits in the context of COVID-19 restrictions.

Decision: The Board adopted the Peer Review Work-Plan 2022-2023.

9. 2022 Annual Work Programme

Presentation Discussion
 Cover note Discussion
 2022 Annual Work Programme Decision
 European Commission Opinion on ESMA's 2022-2024 Information Programming Document

The Executive Director presented the 2022 Annual Work Programme.

The Board discussed the Annual Work Programme, in particular:

- ESMA's activities in the area of data reporting and management; and
- The importance of promoting supervisory convergence, in particular the frequency of common supervisory actions and the expected follow-up by national competent authorities.

Decision: The Board adopted the 2022 Annual Work Programme.

10. 2022 Board of Supervisors Planning

Presentation
 Note
 Discussion

The Team Leader Governance and Strategy presented the note on 2022 Board of Supervisors planning.

The Board discussed the note, in particular the:

- Principle according to which half of meetings should be organised virtually;
- Implementation of this principle and the extension of its application to ESMA groups;
- Need to avoid an unnecessary multiplication of meetings and to consider how best to address the
 possibility of hybrid meetings; and
- Use of in-person meeting to focus on strategic discussions.

Decision: The Board approved the note on 2022 Board of Supervisors planning.

11. Written Procedure Outcome Disclosure

Presentation
 Note
 Template
 Discussion
 Decision

The Team Leader Governance and Strategy presented the note on written procedure outcome disclosure.



The Board discussed the note, in particular the importance of providing transparency on decisions adopted by the written procedure.

Decision: The Board endorsed the suggested way forward. The summaries of conclusions of ESMA's Board of Supervisors and Management Board will, from September 2021 onwards, contain an annex disclosing the outcomes of written procedures adopted since the previous Board meeting.

12. MiFID II Review Report on algorithmic trading

1)	Presentation	Discussion
2)	Cover note	Discussion
3)	Review report	Decision

The Chair of the Secondary Markets Standing Committee presented the MiFID II review report on algorithmic trading.

The Board discussed the review report, in particular the:

- Scope of the obligation for third-country high frequency trading (TC HFT) firms accessing EU markets to apply for authorisation in the European Union and the need to ensure they are subject to appropriate regulation and supervision; and
- Appropriate requirements regarding the resumption of trading after a disruptive incident.

Scope of the obligation to apply for authorisation:

	Option 1 (Extension obligation to apply for authorisation to TC HFT firms on EU trading venues when they use DEA)	Option 2 (Extension obligation to not apply for authorisation to TC HFT firms on EU trading venues when they use DEA)	Abstention
Jean-Paul Servais (BE)		Х	
Mariyan Ivanov (BG)	X		
Karel Juras (CZ)		Х	
Karen Dortea Abelskov (DK)		Х	
Marcus Hein (DE)	Х		
Andre Nõmm (EE)	X		
Derville Rowland (IE)	Х		
Vassiliki Lazarakou (EL)	Х		
Rodrigo Buenaventura (ES)		Х	



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Robert Ophèle (FR)		Х	
Ante Žigman (HR)		X	
Carmine di Noia (IT)	Х		
George Theocharides (CY)	Х		
Girts Ruda (LV)			X
Ruta Merkeviciute (LT)			
Claude Marx (LU)		X	
Krisztián Csáky (HU)		Х	
Christopher Buttigieg (MT)	Х		
Jos Heuvelman (NL)	Х		
Eduard Mueller (AT)	X		
Magdalena Łapsa- Parczewska (PL)	Х		
Gabriela Figueiredo Dias (PT)		Х	
Oana Stefanoiu (RO)			
Anka Čadež (SL)	X		
Tomas Ambra (SK)	Х		
Armi Taipale (SU)	Х		
Erik Thedéen (SE)		Х	
Anneli Tuominen (ESMA)			х

Timeframe for resumption of trading:

	Option 1 (Reconsider whether the two- hour target remains	Option 2 (Reconsider whether such a precise timespecific target remains appropriate)	Abstention
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	the appropriate timeframe)		
Jean-Paul Servais (BE)		Х	
Mariyan Ivanov (BG)	Х		
Karel Juras (CZ)	Х		
Karen Dortea Abelskov (DK)			
Marcus Hein (DE)	X		
Andre Nõmm (EE)	X		
Derville Rowland (IE)		Х	
Vassiliki Lazarakou (EL)	Х		
Rodrigo Buenaventura (ES)	Х		
Robert Ophèle (FR)		X	
Ante Žigman (HR)	X		
Carmine di Noia (IT)	X		
George Theocharides (CY)	Х		
Girts Ruda (LV)	X		
Ruta Merkeviciute (LT)			
Claude Marx (LU)		X	
Krisztián Csáky (HU)	Χ		
Christopher Buttigieg (MT)		X	
Jos Heuvelman (NL)		Х	
Eduard Mueller (AT)	X		
Magdalena Łapsa- Parczewska (PL)	Х		
Gabriela Figueiredo Dias (PT)	Х		



Oana Stefanoiu (RO)			
Anka Čadež (SL)	X		
Tomas Ambra (SK)	X		
Armi Taipale (SU)	Х		
Erik Thedéen (SE)		Х	
Anneli Tuominen (ESMA)	Х		

Decision: The Board adopted the MiFID II Review Report on algorithmic trading. It agreed that the obligation to apply for authorisation should apply to third-country high-frequency trading firms accessing EU trading venues through direct electronic access and that the report should refer to the need to reconsider whether the two-hour target remains the appropriate timeframe.

13. CSDR settlement discipline regime – way forward

1)	Presentation	Discussion
2)	Note	Decision

The Chair of the Post-Trading Standing Committee presented the note on the way forward on the CSDR settlement discipline regime.

The Board discussed the note, in particular:

- Importance for ESMA to write to the European Commission setting out its position on the design and implementation of a potential postponement of the buy-in regime, and of doing so in a timely manner as there is a high need for clarity; and
- Whether the dates of application of the individual CSDR settlement regime requirements can be decoupled.

Decision: The Board agreed to send the letter to the European Commission and invited the Post-Trading Standing Committee to further discuss policy options.

14. Implementation CCP Resolution package

1) Presentation Discussion2) Issues note Discussion

The Independent Member of the CCP Supervisory Committee presented the note on the implementation of the CCP resolution package.

The Board discussed the note, in particular the breadth of the definition of valuer independence.

Conclusion: The Board discussed the implementation of the CCP resolution package.

15. Benchmarks Network

1) Benchmarks Network Report

Information



Conclusion: The Board took note of the benchmarks network report.

2) Final report on the Guidelines on the methodology in exceptional circumstances

Decision

Decision: The Board adopted the final report on the guidelines on the methodology in exceptional circumstances.

16. Corporate Reporting Standing Committee

1) CRSC Report Information

Conclusion: The Board took note of the CRSC report.

2) Comment Letters on the IASB Agenda Consultation

o EFRAG Decision

o IASB Decision

Decision: The Board approved the comment letters on the IASB agenda consultation.

17. CRA Network

1) CRA Network Report

Information

Conclusion: The Board took note of the CRA network report.

2) Assessment of ESMA Findings on ESG Disclosures by Credit Rating Agencies

o Letter Decision

o Presentation Information

Decision: The Board took note of the presentation and approved the letter on the assessment of ESMA findings on EDG disclosures by credit rating agencies.

3) Opinion on Access and Use of Credit Ratings under CRAR

Decision

Decision: The Board adopted the opinion on access and use of credit ratings under CRAR.

18. Data Standing Committee

DSC Report

Information

Conclusion: The Board took note of the DSC report.

2) EMIR Q&As

Decision

Decision: The Board adopted the EMIR Q&As.

3) SFTR Q&As

Decision

Decision: The Board adopted the SFTR Q&As.

19. Investor Protection and Intermediaries Standing Committee



1) IPISC Report Information

Conclusion: The Board took note of the IPISC report.

2) Consultation paper on the review of MIFID II best execution reports

Decision

Decision: The Board adopted the consultation paper on the review of MiFID II best execution reports.

3) Survey on knowledge and competence requirements for staff providing advice

Information

Conclusion: The Board took note of the survey on knowledge and competence requirements for staff providing advice.

20. Market Integrity Standing Committee

1) MISC Report Information

Conclusion: The Board took note of the MISC report.

2) Impact of CJEU rulings on NCAs' access to traffic data and way forward

Decision

Decision: The Board approved the note on the impact of CJEU rulings on NCAs' access to traffic data.

3) Consultation paper on the short selling review

Decision

Decision: The Board adopted the consultation paper on the short selling review.

4) Statement on investment recommendations

Decision

Decision: The Board adopted the statement on investment recommendations,

21. Post Trading Standing Committee

1) PTSC Report

Information

Conclusion: The Board took note of the PTSC report.

2) Final report on Guidelines on settlement fails reporting

Decision

Decision: The Board adopted the final report on guidelines on settlement fails reporting.

22. Secondary Markets Standing Committee

1) SMSC Report

Information

Conclusion: The Board took note of the SMSC report.

2) MiFID II Q&As

Decision

Decision: The Board adopted the MiFID II Q&As.

23. Securitisation Network



1) Securitisation Network Report

Information

Conclusion: The Board took note of the securitisation network report.

2) Terms of Reference Securitisation Data Task Force

Decision

Decision: The Board adopted the terms of reference of the securitisation data task force.

24. Supervisory Convergence Standing Committee

1) SCSC Report

Information

Conclusion: The Board took note of the SCSC report.

2) Enforcement Network work plan 2022

Decision

Decision: The Board adopted the Enforcement Network work plan 2022.

3) Inventory of Enforcement Measures and Sanctions

Decision

Decision: The Board adopted the inventory of enforcement measures and sanctions.

25. Memorandum of Understanding with the US Securities and Exchange Commission (SEC) in relation to the recognition in the EU of US CCPs

1) Cover note

Information

2) Memorandum of Understanding

Decision

Conclusion: The Board adopted the Memorandum of Understanding with the US Securities and Exchange Commission (SEC) in relation to the recognition in the EU of US CCPs.

26. Update on ESMA's 2021 Equivalence Monitoring Exercise

1) Note

Information

Conclusion: The Board took note of the update on ESMA's 2021 Equivalence Monitoring Exercise

27. ESMA's IT implementation Report 2020

1) Cover note

Information

2) Report

Information

Conclusion: The Board took note of ESMA's IT implementation report 2020.

28. A.O.B.



Participants list Voting members

Member State	Representative	Accompanying Person
Belgium	Jean-Paul Servais	
Bulgaria	Mariyan Ivanov (alternate)	
Czech Republic	Karel Juras (alternate)	
Denmark	Karen Dortea Abelskov	
Germany	Marcus Hein	
Estonia	Andre Nomm	
Ireland	Derville Rowland	
Greece	Vasiliki Lazarakou	
Spain	Rodrigo Buenaventura	
France	Robert Ophèle	
Croatia	Ante Žigman	
Italy	Carmine di Noia (alternate)	
Cyprus	George Theocharides	
Latvia	Girts Ruda (alternate)	



Lithuania	Ruta Merkeviciute (alternate)	
Luxembourg	Claude Marx	
Hungary	Krisztián Csáky (alternate)	
Malta	Christopher Butigieg	
Netherlands	Jos Heuvelman (alternate)	
Austria	Eduard Mueller	
Poland	Magda Lapsa-Parczewska	
Portugal	Gabriela Figueiredo Dias	
Romania	Oana Stefanoiu (alternate)	
Slovenia	Anka Čadež	
Slovakia	Tomáš Ambra (alternate)	
Finland	Armi Taipale (alternate)	
Sweden	Erik Thedéen	
Interim Chair	Anneli Tuominen	

Non-voting members

European Commission	Ugo Bassi	
ЕВА	Anne Tiedemann (alternate)	



EIOPA	Kai Kosik (alternate)	
ESRB	Francesco Mazzaferro	
Iceland	Páll Friðriksson (alternate)	
Liechtenstein	Reto Degen (alternate)	
Norway	Anne Merethe Bellamy	
EFTA Surveillance Authority	Marta Margret Runarsdottir (alternate)	

ESMA

Executive Director	Natasha Cazenave		
Summary of Conclusions	Frederiek Vermeulen		
	Laura Weil		
Chair of the CCP Supervisory Committee	Klaus Löber		
Chair of the Financial Innovation Standing Committee	Birgit Puck		
Chair of the Post Trading Standing Committee	Carmine di Noia		
Chair of the Supervisory Convergence Standing Committee	Jos Heuvelman		
Chair of the Secondary Markets Standing Committee	Robert Ophèle		
Independent Member of the CCP Supervisory Committee	Nicoletta Giusto		



Head of the Governance and External Affairs Department	Roxana de Carvalho
Head of Unit Innovation, Products and Technology	Claudia Guagliano
Team Leader Supervisory Convergence	Dora Blanchet
Team Leader Strategy and Governance	Frederiek Vermeulen

Done at Paris on 3 November 2021

Anneli Tuominen

Vice-Chair

For the Board of Supervisors



ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 7 July to 22 September 2021)

1. Summary of conclusions – 20 May Board of Supervisors

12 July 2021

1) Summary of conclusions

Decision

Decision: The Board adopted the summary of conclusions of the May 2021 Board of Supervisors.

2. Public statement on the supervisory approach on the MiFIR access provisions for exchange traded derivatives (ETDs)

13 July 2021

1) Public statement

Decision

Decision: The Board adopted the Public statement on the supervisory approach on the MiFIR access provisions for exchange traded derivatives (ETDs).

3. Letter to IFRS Foundation - Changes to the Constitution for a future ISSB

20 July 2021

1) Letter

Decision

Decision: The Board adopted the letter to the IFRS Foundation – Changes to the Constitution for a future International Sustainability Standards Board.

4. RTS 2 Annual Review Report for MiFID II/ MiFIR

22 July 2021

1) Review report

Decision



Decision: The Board adopted the Annual Review Report for MiFID II/MiFIR RTS 2.

	Approval	Objection	Abstain
Jean-Paul Servais (BE)	х		
Maria Filipova (BG)	Х		
Karel Juráš (CZ)	Х		
Karen Dortea Abelskov (DK)	х		
Thorsten Poetsch (DE)	Х		
Derville Rowland (IE)	Х		
Andre Nõmm (EE)	Х		
Vasiliki Lazarakou (EL)	Х		
Rodrigo Buenaventura (ES)	Х		
Robert Ophèle (FR)	х		
Ante Žigman (HR)			Х
Paolo Savona (IT)			
Demetra Kalogerou (CY)			Х
Santa Purgaile (LV)	Х		
Jekaterina Govina (LT)	х		
Claude Marx (LU)	х		
Gergő Szeniczey (HU)	Х		
Christopher P. Buttigieg (MT)	Х		
Jos Heuvelman (NL)	х		
Eduard Müller (AT)	Х		
Magdalena Łapsa-Parczewska (PL)	Х		
Gabriela Figueiredo Dias (PT)	Х		
Gabriel Gradinescu (RO)	х		
Tomáš Ambra (SK)	х		
Anka Čadež (SI)	Х		
Armi Taipale (FI)	х		
Malin Omberg (SE)	х		

5. Final Report with Taxonomy-related Product Disclosure RTS

29 July 2021

1) Final report

Decision



Decision: The Board adopted the joint ESAs Final Report with draft RTS on taxonomy-related product disclosures.

	Approval	Objection	Abstain
Jean-Paul Servais (BE)	х		
Maria Filipova (BG)	х		
Karel Juráš (CZ)			Х
Karen Dortea Abelskov (DK)	х		
Thorsten Poetsch (DE)	х		
Derville Rowland (IE)	х		
Andre Nõmm (EE)	Х		
Vasiliki Lazarakou (EL)			Х
Rodrigo Buenaventura (ES)	Х		
Robert Ophèle (FR)	х		
Ante Žigman (HR)			Х
Paolo Savona (IT)			Х
Demetra Kalogerou (CY)			Х
Santa Purgaile (LV)	Х		
Jekaterina Govina (LT)	х		
Claude Marx (LU)	х		
No response received (HU)			Х
Christopher P. Buttigieg (MT)	х		
Jos Heuvelman (NL)	Х		
Eduard Müller (AT)			×
Magdalena Łapsa-Parczewska (PL)			Х
Gabriela Figueiredo Dias (PT)	Х		
Gabriel Gradinescu (RO)	Х		
Tomáš Ambra (SK)	Х		
Anka Čadež (SI)	Х		
Armi Taipale (FI)	х		
Malin Omberg (SE)	х		



6. Mandate for the peer review on the supervision of CSDs

30 July 2021

1) Mandate Decision

Decision: The Board adopted the mandate for the peer review on the supervision of central securities depositories (CSDs).

7. ESMA Report on the use of FinTech by CSDs

2 August 2021

1) Report Decision

Decision: The Board adopted the report on the use of FinTech by central securities depositories (CSDs).

8. Joint Committee 2021 Autumn Report on Risks and Vulnerabilities in the EU Financial System

13 August 2021

 Joint Committee 2021 Autumn Report on Risks and Vulnerabilities in the EU Financial System Decision

Decision: The Board adopted the 2021 Autumn Report on Risks and Vulnerabilities in the EU Financial System.

9. ESMA Report on Trends, Risks and Vulnerabilities (TRV) No. 2, 2021

20 August 2021

1) TRV No.2 2021

Decision

2) TRV Statistical Annex

Decision

Decision: The Board adopted the ESMA Report on Trends, Risks and Vulnerabilities (TRV) No. 2, 2021 and the TRV Statistical Annex.

10. Summary of conclusions - 8 July 2021

10 September

2021

1) Summary of conclusions

Decision

Decision: The Board adopted the summary of conclusions of the July 2021 Board of Supervisors.