

SUMMARY OF CONCLUSIONS

Management Board

Date: Tuesday 16 November 2021
Time: 14h00 – 18h00
Location: MS Teams
Contact: Frederiek.Vermeulen@esma.europa.eu 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 Chair's statement whereby she indicated a potential conflict of interest for agenda item 9 on the ESMA Chair's probationary period. She will leave the meeting and thus abstain from participating in the discussion and decision on the item.

3. Report by ESMA Chair, Executive Director and CCP Supervisory Committee Chair Discussion

The Chair reported on the organisation of the December Board, including the end of Anneli Tuominen's term as ESMA vice-chair and the upcoming election for her replacement.

The Executive Director reported on the:

- Ongoing audits concerning ESMA, namely the European Court of Auditors (ECA)'s ongoing a performance audit on the Single Market for investment funds; and
- Continued impact of COVID-19 on ESMA's activities, in particular that from 20 October 2021 missions and meetings with external participants are allowed, with restrictions remaining in place to ensure the safety of ESMA staff and visitors..

Conclusion: The Board took note of the report and suggested to discuss the outcome of the ECA's performance audit on the Single Market for investment funds at a future Board meeting.

4. Activity Report

- 1) Cover note Discussion

2) Presentation

Discussion

The Executive Director presented the activity report.

The Board discussed the activity report, in particular:

- How to focus efforts on key deliverables and the necessary prioritisation and resource allocation;
- The lack of flexibility of ESMA's funding structure, in particular in relation to the ability to act as a risk-based supervisor;
- The importance of promoting supervisory convergence to enhance investor protection in the area of sustainable finance (preventing greenwashing) and ESMA's contribution to the Money Market Funds Review; and
- The need for ESMA to continue to attract and maintain high-quality and specialised staff.

Conclusion: The Board took note of the report.

5. Data Reporting Service Providers (project update)

1) Presentation

Discussion

2) Report

Discussion

The Head of Data Reporting Unit presented the Data Reporting Service Providers project update.

The Board discussed the update, in particular the:

- Cost for entities of supervision by ESMA and by national competent authorities, and the difficulty in obtaining consistent and comparable data allowing for the appropriate levels of fees to be set;
- Importance of a timely adoption of the delegated acts (if necessary by splitting them and delay only the delegated act on fees);
- Proposal to follow a pragmatic approach so that, on 1 January 2022, the supervision would be handed over to ESMA only for the Approved Reporting Mechanisms (ARMs) and Approved Publication Arrangements (APAs) expected to be supervised by ESMA under the future delegated act, whereas the handover of supervision of those likely to be eligible for derogation would not be performed on 1 January 2022; and
- Need to communicate the pragmatic approach in a public statement.

Conclusion: The Board took note of the Data Reporting Service Providers project update and the proposed statement.

6. Update on 2021 and 2022 budgets and high-level discussion on 2023 planning

1) Presentation

Discussion

2) Note

Discussion

The Executive Director and the Head of Finance and Procurement Unit presented the update on 2021 and 2022 budgets and the high-level discussion on 2023 planning.

The Board discussed the update, in particular the:

- Complexity of ESMA’s fee structure;
- Reduction of fee funded revenues in relation to the supervision of Data Reporting Service Providers, Securitisation Repositories and Benchmark administrators; and
- Inclusion of upcoming mandates under European Commission legislative proposals, including the Digital Operational Resilience Act (DORA) and the Markets in Crypto-Assets Regulation (MICA), in the 2023 budget.

Conclusion: The Board discussed and provided support for the update on the 2021 and 2022 budgets and the high-level presentation of 2023 planning.

7. Away Day

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| 1) Presentation | Discussion |
| 2) Issues note | Decision |

The Chair presented the issues note on the 2021 Board of Supervisors away day.

Decision: The Board agreed that the discussion at the 2021 Board of Supervisors Away Day should be composed of discussions on (1) ESMA’s next strategic orientation including supervisory convergence and (2) investor protection in the context of markets in crypto assets. The Board also agreed that ESMA’s data strategy should be discussed at a future Board of Supervisors meeting.

8. Ethics & Integrity

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| 1) Presentation | Discussion |
| 2) Report on NCAs’ professional secrecy rules | Discussion |
| 3) Report on trading rules and practices of NCA staff | Discussion |

The Head of the Legal and Enforcement Department and the Legal Officers presented the outcome of the ethics and integrity surveys.

The Board discussed the surveys, in particular the:

- Benefit of developing benchmarks of minimum expectations regarding professional secrecy rules and trading rules and practices based on the results of the surveys; and
- Possibility for ESMA to use the results to identify good practices to that could be considered for ESMA staff.

Conclusion: The Board discussed the surveys and agreed to identify common minimum expectations in both draft reports as well as to perform a fatal flaw check with relevant national competent authorities and then share the results with the Board of Supervisors.

9. ESMA Chair

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| 1) Presentation | Discussion |
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2) ESMA Chair probationary period

Decision

The Vice-Chair presented the note on the ESMA Chair's probationary period.

Decision: The Board selected Derville Rowland (IE) and Erik Thedéen (SE) as reporting officers appointed to set the ESMA Chair's probationary period objectives.

10. ESMA's anti-fraud strategy 2022-2025

1) Cover note

Information

2) Strategy

Decision

Decision: The Board adopted ESMA's anti-fraud strategy 2022-2025.

11. A.O.B.

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Participants list

	Members
ESMA	Verena Ross
CZ	Vojtech Belling
IE	Colm Kincaid (alternate)
EL	Vassiliki Lazarakou
FR	Benoit de Juvigny (alternate)
PL	Magdalena Łapsa-Parczewska
SE	Malin Omberg (alternate)

Non-voting Members

Executive Director	Natasha Cazenave
European Commission	Anne Schaedle (alternate)

Observer

Vice-Chair	Anneli Tuominen
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ESMA

Summary of Conclusions	Frederiek Vermeulen Laura Weil
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Head of Legal and Enforcement Department	Sophie Vuarlot-Dignac
Head of Unit Data Reporting	Olga Petrenko
Head of Unit Finance and Procurement	Veronica Magrini
Legal Officer	Enrico Gagliardi
Legal Officer	Alessandro Generali

For the Management Board,

Done at Paris on 12 January 2022

Verena Ross

Chair

ANNEX:

OUTCOME OF WRITTEN PROCEDURES

Written Procedures (outcomes from 23 September to 16 November 2021)

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|---|-------------------|
| 1. Summary of conclusions – 3 September Management Board | 23 September 2021 |
| 1) Summary of conclusions | Decision |
| Decision: The Board adopted the summary of conclusions of the September 2021 Management Board. | |
| 2. Summary of conclusions – September Management Board | 5 November 2021 |
| 1) Summary of conclusions | Decision |
| Decision: The Board adopted the summary of conclusions of the September 2021 Management Board. | |