European Securities and Markets Authority

18 June 2013 | Conference Centre Albert Borshette, Brussels

DG Agri Expert Group

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Agenda

- **Overview of ESMA**
- EU policy making process
- EMIR
- MiFID II
- MAD/MAR

Lessons from the crisis

- Macro-prudential supervision (systemic stability oversight) and micro-prudential supervision (institutions and markets) require better pan-EU coordination

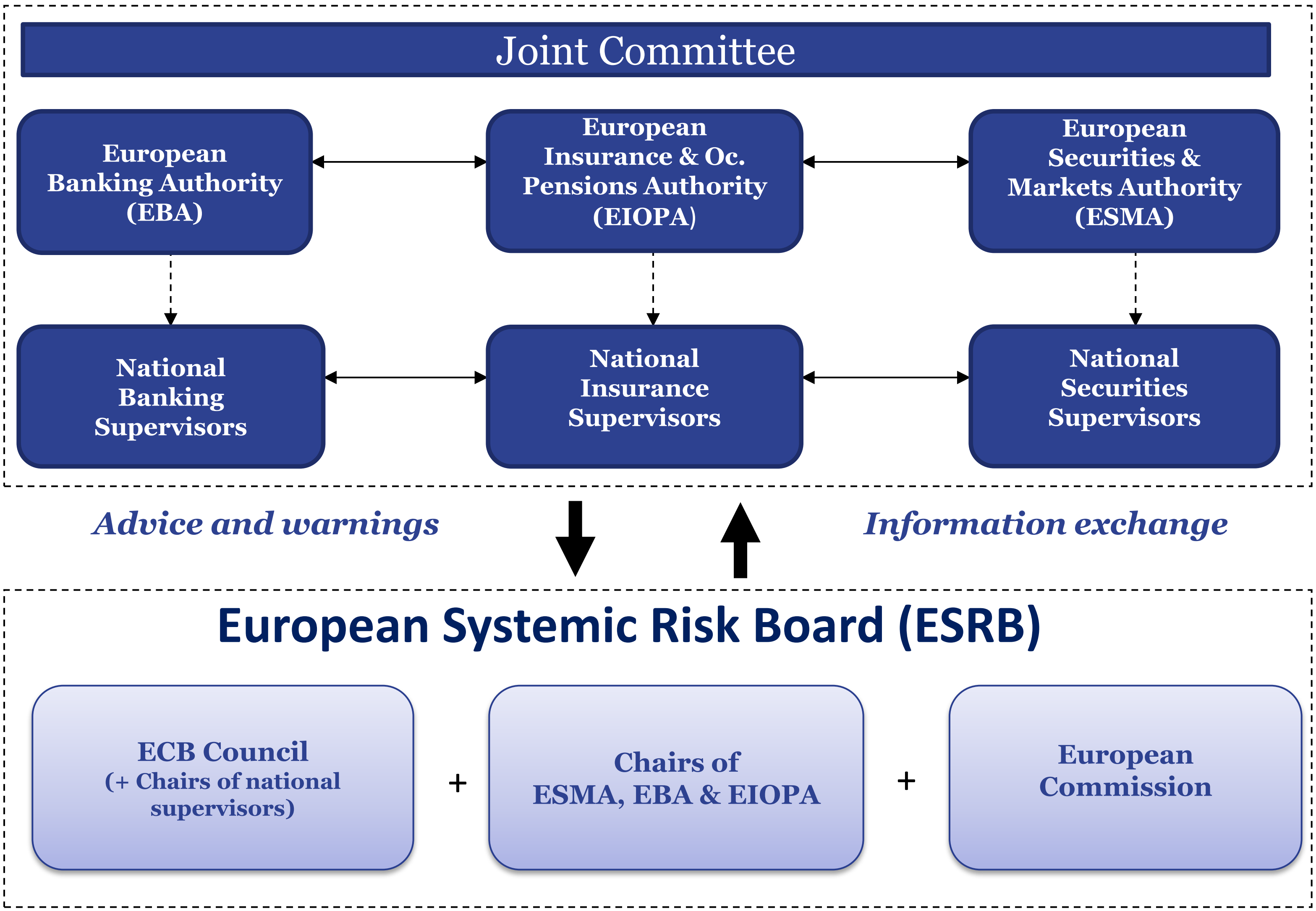
Since 1 January 2011, three new European Supervisory Authorities (‘ESAs’):

- European Banking Authority (EBA)
- European Securities and Markets Authority (ESMA)
- European Insurance and Occupational Pensions Authority (EIOPA)

The ESAs have:

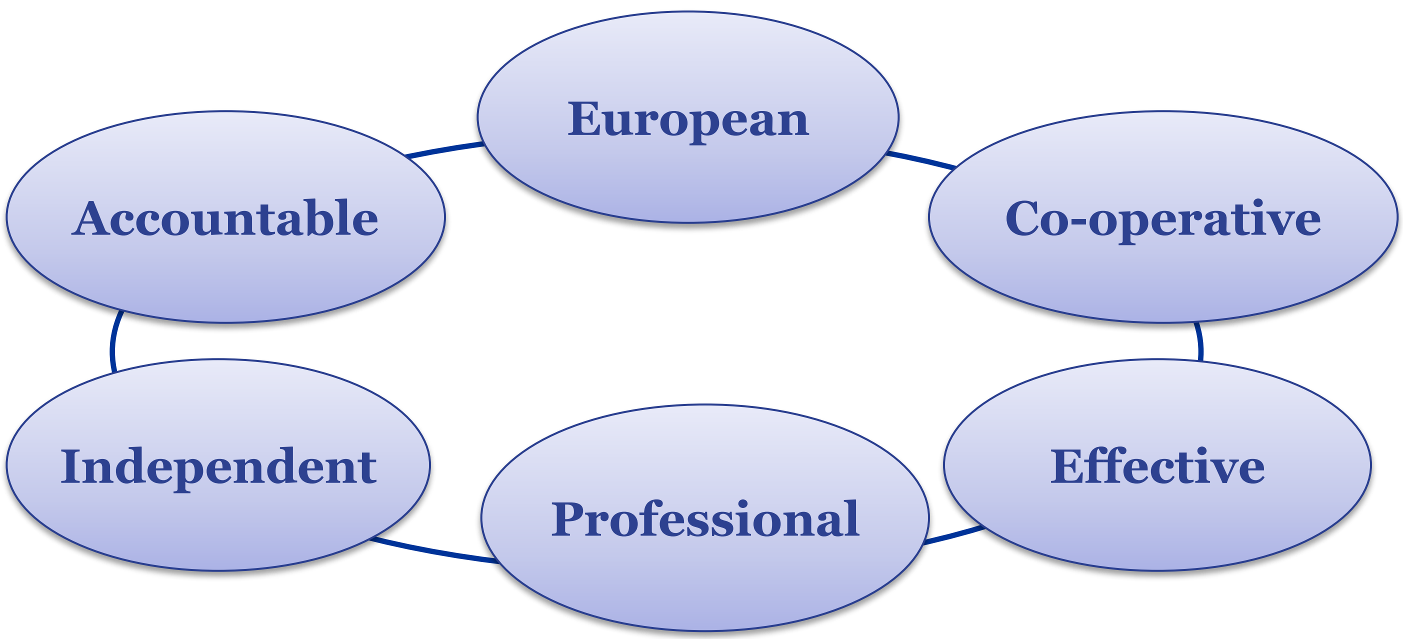
- Legal personality under EU Law, Management Board, Board of Supervisors, Board of Appeal, Independent Chair
- Coordinated approach of cross-sectoral issues (Joint Committee)
- Stakeholder liaison through SMSG, CWG and consultations
- New powers

European System of Financial Supervision



Mission statement

ESMA's mission is to enhance the protection of investors and reinforce stable and well functioning financial markets in the European Union. As an independent institution ESMA achieves this mission by building the single rule book for EU financial markets and ensuring its consistent application and supervision across the EU. ESMA contributes to the supervision of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.



Governance

Board of Appeal

Management Board

Ensuring that the Authority is run effectively and can perform the tasks assigned to it.

Composition:
Chair
6 BoS members
European Commission

Board of Supervisors

Key decision-making body

Composition:
Chair
Heads of NCAs
EBA
EIOPA
ESRB
European Commission
Observers

Securities and Markets Stakeholder Group

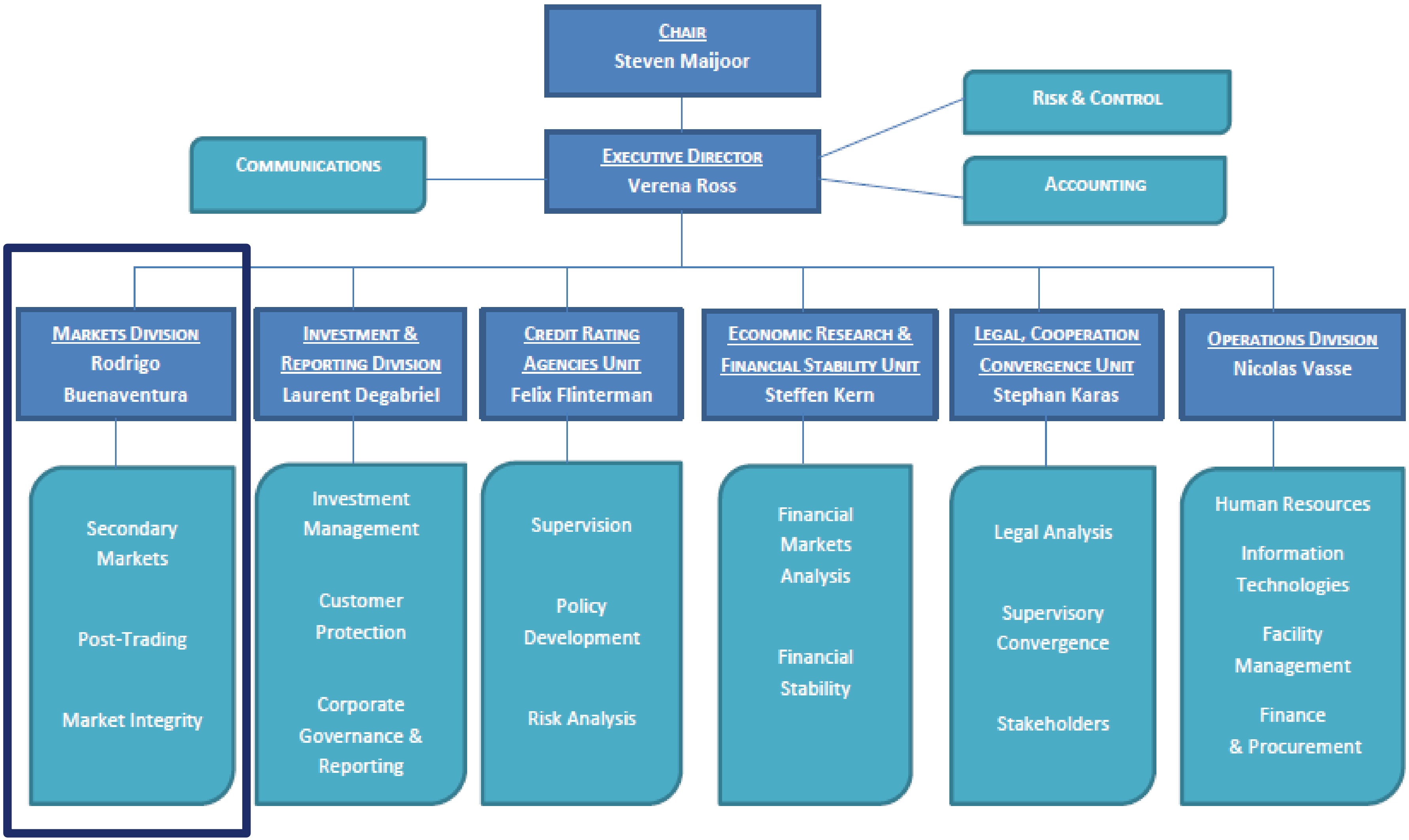
Standing Committees

Key preparation bodies

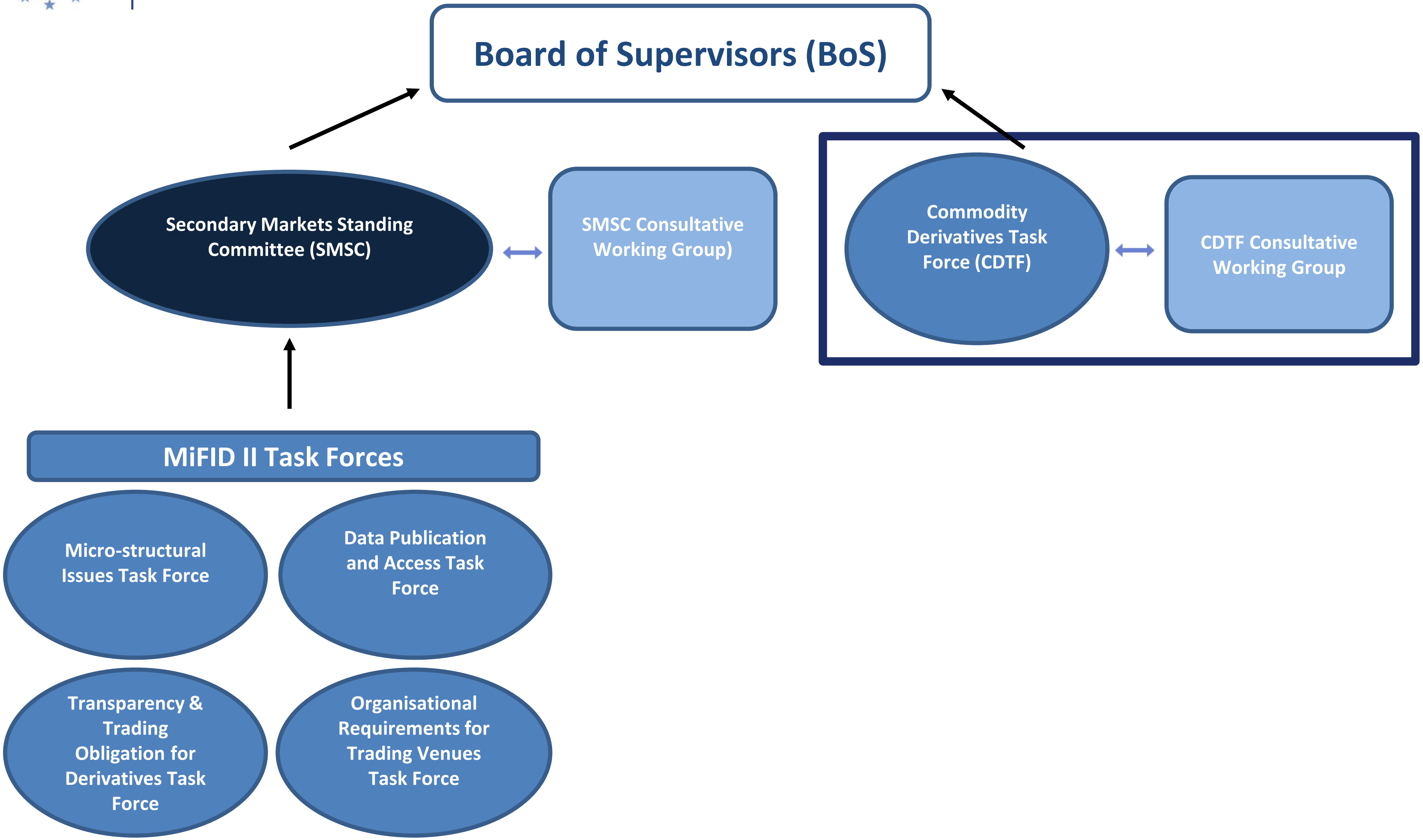
Composition:
Staff from ESMA,
BoS members & observers

Consultative Working Groups

Internal organisation of ESMA



Secondary markets' task forces and committees



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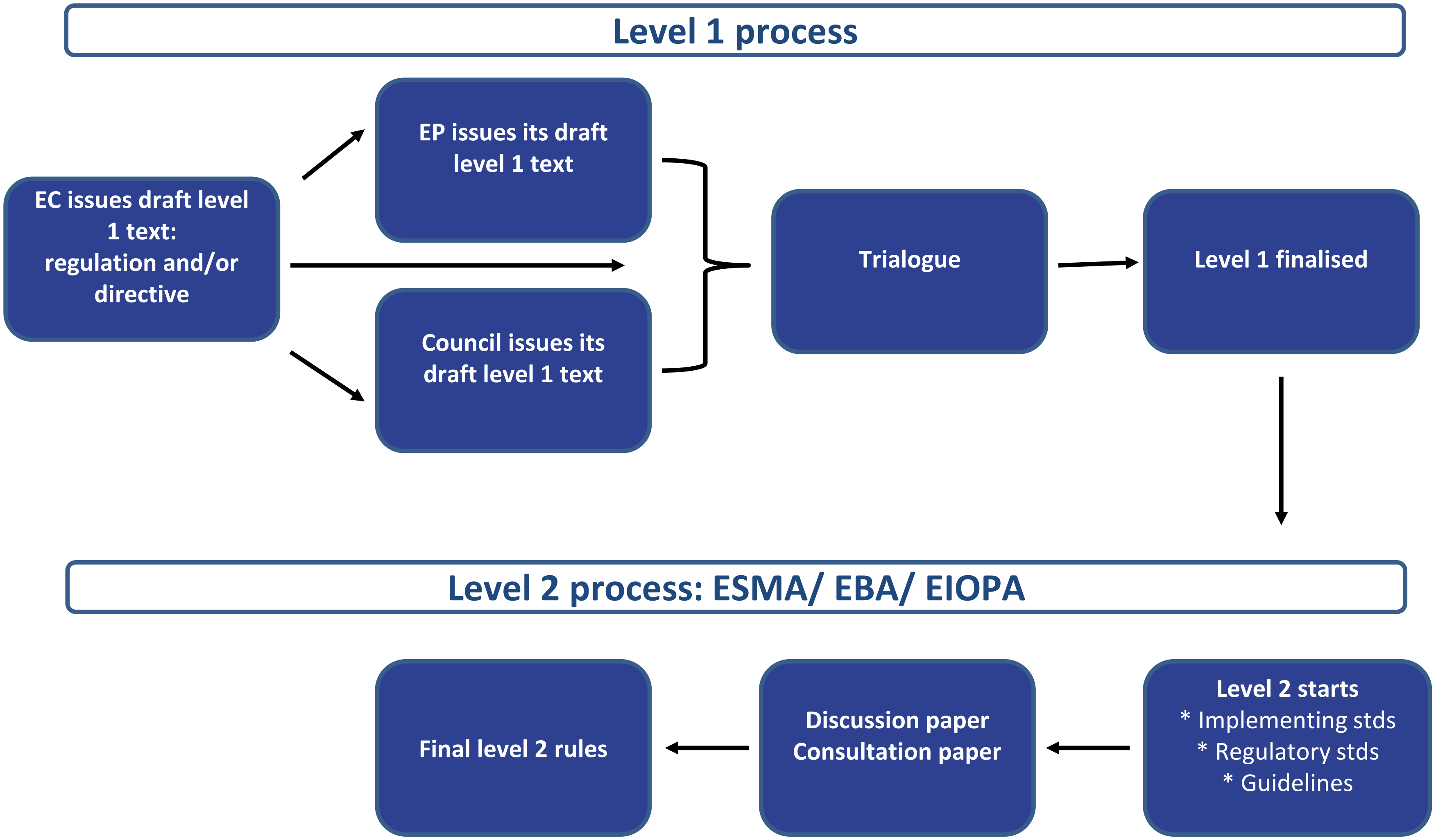
EU policy making process



EU – level 2

- EC: delegated acts, implementing acts
- ESMA:
  - Regulatory Technical Standards (RTS)
    - RTS are delegated acts prepared by ESMA
    - Council and EP may revoke the delegation or object to the RTS
  - Implementing Technical Standards (ITS)
    - ITS are implementing acts prepared by ESMA to provide uniform application of provisions
    - No EP / Council right to revoke powers
  - RTS/ITS process:
    - ESMA drafts RTS/ITS, analyses costs & benefits and consults SMSG and others
    - ESMA forwards draft RTS/ITS to EC
    - EC forwards draft RTS/ITS to the EP and Council
    - EC has 3 months to endorse, amend or reject
    - For RTS, EP and Council have set timeframe to object
    - Once adopted, RTS/ITS are binding and directly applicable across EU
  - Guidelines

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EMIR - overview

EMIR sets the following overarching obligations:

- certain OTC derivative contracts* must be cleared through CCPs (“clearing obligation”)
- OTC derivatives not cleared through a CCP must apply risk mitigation techniques
- **all derivative contracts** by **all counterparties** must be reported to Trade Repositories (“reporting obligation”)

*** OTC derivative: execution does not take place on a Regulated Market (EMIR, Art.2)**

EMIR – clearing obligation

- Certain OTC derivatives must be cleared through a CCP
- Applicability to Non Financial Counterparties (NFCs)
  - **NFC thresholds**
    - Thresholds are set by class (credit, equity, interest rate, foreign exchange, commodity)
    - Clearing threshold for commodity derivative contracts: EUR 3 billion in gross notional
    - NFC becomes a "NFC+" if rolling average position over 30 days exceeds the threshold
  - **Derivative contracts which are objectively measurable as reducing risks directly related to commercial activity or treasury financing activity excluded from threshold calculation**
    - Broad definition of hedging*
    - Hedging permitted if it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS)
    - If doesn't fall under IFRS, may still qualify as hedging under EMIR e.g. proxy hedging etc.

*** See Commission delegated regulation (EU) No 149/2013, article 10**

EMIR – risk mitigation

- Counterparties must have appropriate risk mitigation procedures and arrangements where OTC derivative transactions not cleared by a CCP
- Delegated Regulation (149/2013) sets out requirements on:
  - timely confirmation, portfolio reconciliation and compression, dispute resolution
  - apply to NFCs even if they do not exceed the clearing threshold
  - daily marking to market also applies to NFCs+
- Further level 2 measures to be developed on collateral exchange
  - awaiting the work of the Working Group on Margin Requirement (WGMR) (initiative of the BIS (BCBS) and IOSCO)
  - will apply to financial counterparties and NFCs+

EMIR – reporting obligation

- All derivative contracts – OTC and exchange traded - by all counterparties must be reported to TRs which were entered into:
  - before 16 August 2012 and remain outstanding on that date or
  - on or after 16 August 2012
- Timeline for reporting to a TR
  - interest rate/ credit derivative contracts must be reported by 1 July 2013 if a TR has registered by 1 April 2013 or, if not, 90 days after the registration of such TR
  - other classes (including commodity derivatives) to be reported by 1 January 2014 if a TR registered by 1 October 2013, or, if not, 90 days after the registration of such TR
  - if no TR available, report directly to ESMA

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MiFID II – Changing landscape

Trading Venues			Off Venue Trading	
Regulated Markets (RMs)	**Multi-lateral trading facilities MTFs**	**Organised trading facilities OTFs**	**Systematic Internalisers SIs**	**"Pure" OTC**
Exists under MiFID today e.g. exchanges LME, CME	Exists under MiFID today e.g. BATs	**New concept** proposed by EC under MiFID II e.g. broker crossing networks	Exists under MiFID today **but** only for equities. MiFID II substantially revises SI concept.	Permitted OTC activity will be considerably **narrowed** under MiFID II - ad hoc, occasional, irregular

Clearing-eligible and sufficiently liquid derivatives must be traded on these venues

Clearing-eligible and sufficiently liquid derivatives cannot be traded in SIs or OTC

Pre- and post-trade transparency requirements apply

MiFID II – Transparency requirements

- MiFID II extends transparency requirements to non-equities
  - bonds, derivatives, structured finance products (SFPs), emission allowances
  - requirements apply to RMs, MTFs, OTFs, SIs
- Pre-trade transparency (MiFIR)
  - trading venues to provide a bid/offer spread and depth of trading interest on a continuous basis during normal trading hours
  - SIs must make public firm quotes when they are prompted for a quote by a client or they agree to provide a quote
  - waivers may be permitted in some circumstances e.g. large-in-scale
  - calibration at level 2
- Post-trade transparency (MiFIR)
  - RMs/MTFs/OTFs/SIs must make public price, volume and time transaction executed as close to real time as technically possible
  - deferred publication may be permitted in some circumstances e.g. large-in-scale
  - calibration at level 2
- ESMA's role and work

MiFID II – Position limits & reporting

- Position limits (article 50, MiFID II)
  - quantative thresholds for maximum size of positions in commodity derivatives
- Position reporting (article 60, MiFID II)
  - members and participants of trading venues (RMs, MTFs, OTFs) to report to the trading venue their positions and those of their clients
  - trading venues
    - to make public a weekly report of aggregate positions held by different categories of traders
    - Provide competent authorities with a complete breakdown of positions upon request
  - categories of traders: investment firms, investment funds, other financial institutions, commercial undertakings, emission allowance auction operators
- ESMA’s role and work

MiFID II – New regulatory powers

- National Competent Authorities (NCAs) can
  - request information on size/purpose of a derivatives position
  - require persons to reduce their positions/exposure
  - for commodity derivatives, limit ability to enter into transactions.
- ESMA
  - will have comparable powers to NCAs **but** may only exercise these in limited circumstances
  - will facilitate and coordinate national position management limits and measures

MiFID II - Exemptions

- Deletion of exemption (article 2.1.k)
  - main business consists of dealing on own account in commodities and/or commodities derivatives
- Ancillary activity exemption narrowed (article 2.1.l)
  - MiFID II will not apply to persons who
    - deal on own account in commodity derivatives excluding persons who deal on own account by executing client orders; or
    - provide investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of their main business
  - provided that the activity is ancillary to the main business when considered on a group basis and that the main business is not the provision of investment services.
- ESMA’s role and work
  - develop regulatory standards with criteria for determining when an activity is “ancillary”
  - the extent to which an activity is “*objectively measurable as reducing risks directly related to the commercial activity or treasury financing activity*” will be taken into account

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- MAD II/MAR extends scope to:
  - instruments traded solely on MTFs and the new category of OTFs (whereas today MAD applies to instruments admitted to trading /traded on Regulated Markets only)
  - related OTC traded financial instruments which may impact the underlying market e.g. CDS;
  - emissions allowances; and
  - spot commodity markets which impact financial instruments and vice versa
- Strengthens enforcement & investigatory powers against market abuse by setting minimum standards and reducing national discretions
  - creates single, directly applicable EU rulebook enforced by national administrative sanctions (via MAR)
  - requires Member States to introduce criminal sanctions for intentional insider dealing and market manipulation (via MAD II)
- Coordinates action and enhances cooperation between regulators with ESMA playing an important role

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Thank you for your time