



Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 9 February 2017
Time: 9.00 – 17.00
Location: ESMA, 103 rue de Grenelle, 75007 Paris
Contact: jacob.lonnqvist@esma.europa.eu T: +33 1 58 36 43 39

1. Report from the Steering Committee

The SMSG Chair Rüdiger Veil informed the Group of the collaboration with the EBA stakeholder group (BSG) on the advice on suitability. There have also been contacts with the EIOPA stakeholder groups in order to investigate the possibilities for the Chairs and Vice-Chairs of the different stakeholder groups to meet and produce work in common although no feedback has been received from the OPSG.

2. Recent Market Developments

René Karsenti presented his views on what changes the UK decision to leave the European Union could lead to for the European Capital Markets. He focused his observations on market access, freedom of movement, transition arrangements, financial stability, and possibilities for market participants to prepare.

Mark Hemsley gave a preparation of key issues facing the UK in the face of Brexit, including challenging legal issues, questions related to immigration, border control aspects and other. He gave some views on the possibility of existing third country regimes to be applied in the current situation.

The Group discussed various aspects of UK leaving the EU following on from the presentations given.

ESMA Executive Director Verena Ross explained that ESMA had begun work in summer in order to analyse the impact of the UK referendum result on the EU securities markets and on ESMA.

Jean Berthon presented a report from better finance on pension savings.

The Group discussed various findings and methodological issues related to the report.

ESMA explained that it had begun work on pension related questions in relation to investment funds and Priips that are relevant in relation to private pensions regime (the so called 29th regime) on which ESMA had provided advice to the European Commission consultation.

3. Suitability of management body working group

The rapporteur Paul Koster thanked the working group and reminded of the SMSG consultation reply and the joint statement that the SMSG had agreed with the EBA Stakeholder group. The rapporteur reflected on some of the main considerations of the working group, like the need for ex-ante approval of management that can be time-consuming, and the relatively prescriptive style of the questionnaire.

ESMA thanked the SMSG for the consultation reply and commented on the issues raised by the SMSG at the meeting.

4. Joint Work with other Stakeholder Groups

The SMSG reflected on the challenges in organising joint work with other Stakeholder Groups regarding consultations with a tight deadline. The SMSG decided that the rapporteur or the SMSG Chair might set a shorter deadline than 10 calendar days for approval in written procedure. The deadline should be at least five calendar days.

5. 2017 Supervisory Convergence Work Programme

ESMA presented its supervisory convergence work programme for 2017, including ensuring sound implementation of key new EU legislation in preparation of MiFID 2/MiFIR and MAR, data quality aspects, investor protection issues in the context of cross-border provision of services, effective convergence in CCP supervision as priority areas for the coming year. ESMA mentioned that possible changes to the convergence priorities might become necessary given the Brexit.

The SMSG discussed various aspects of supervisory convergence work it would find useful to undertake for ESMA. Suggestions included i.a. aspects in relation to ETFs, aspects of functioning in the market, non-floating shares, issues in relation to MiFID or PRIIPs, and interactive single rulebook.

The SMSG Chair thanked ESMA for the presentation and concluded that the SMSG would come back to some of the items such as ETFs in its discussion in the April meeting.

6. Best Execution peer review follow-up

ESMA presented its conclusions as regards a follow-up peer review on best execution showing that while improvements had taken place in some respects compared to the initial peer review, NCAs did not always regard supervision of best execution rules being a high priority.

The SMSG Chair thanked ESMA for the presentations on Supervisory convergence and best execution.

7. Big Data

ESMA presented a Joint Committee discussion paper on Big Data, being a transversal topic with potentially important consequences for financial markets.

The SMSG members discussed various aspects of the discussion papers such as definition and scope.

The SMSG decided to set up a working group to be coordinated by Antonio Mele.

8. Possible SMSG own initiative reports

The SMSG discussed possible “own initiative reports” it may want to undertake based on proposals tabled and presented by SMSG members as follows:

- Securities lending. The ESMA Chair mentioned that work on this topic would be of most value to ESMA if it could feed into the ESMA peer review planned for the second part of the year. A number of SMSG members declared they were interested in conducting work on the topic to be coordinated by Jean Berthon. The SMSG decided to set up a Working Group which would in a first step focus on a possible divergent application of the UCITS Guidelines.
- Financial guidance outside the scope of MiFID/supervisory convergence. A number of members declared they were interested in working on this topic, to be coordinated by Christiane Hölz.
- Contribution to the COM consultation on Capital Markets Union Mid-Term Review 2017. The SMSG concluded that it might also provide input to a debate on CMU at a later point in time with the Working Group on SME coordinated by Giovanni Petrella.
- Financial Supervisory Architecture in Europe. Numerous members of the SMSG declared they were interested in contributing to the work. Jennifer Payne will function as rapporteur for this work stream.
- Financial literacy. It was noted that ESMA has a limited mandate in the area of financial literacy. The Group decided to come back to this topic at a future meeting for a more detailed discussion.
- As a separate topic, Kerstin Hermansson raised that industry believed there were numerous outstanding issues on the MiFID implementation. The Group decided to collect issues for a discussion at the upcoming April SMSG meeting.

The SMSG Chair invited members to join the Working Groups thus set up and thanked the members who had volunteered for coordinating the different work streams.

9. Question and Answers (Q&As) policy

ESMA - head of department Mette Sicard Filtenborg - outlined the position of ESMA as regards Q&As. ESMA sees Q&As as a key convergence tool enabling ESMA to provide time-sensitive clarifications on matters within its remit in order to promote common supervisory approaches and practices in the Union. ESMA needs to use Q&As as quick and flexible supervisory tools. Q&As are not legally binding.

ESMA furthermore demonstrated its web-site re-design intended to provide an easy access to Q&As for stakeholders.

The ESMA Chair emphasised that all Q&As are decided on by the ESMA Board of Supervisors, where also the European Commission is present and can raise any possible concerns regarding consistency with the Level 1 text. He also mentioned possible unfairness in case one were to consider introducing very short consultation periods.

SMSG members Jennifer Payne, Veerle Colaert and Rüdiger Veil outlined the legal interpretation of Q&As in the respective member states of the United Kingdom, Belgium and Germany.

10. Product Intervention Working group

Veerle Colaert informed the group on progress made in the Working Group on product intervention. The SMSG discussed the expansion of the work to UCITS, being financial instruments, as well as an involvement of EBA as regards structured deposits and EIOPA as regards insurance products.

The SMSG Chair thanked the group and the rapporteur for the work done.

11. SME Working Group

Giovanni Petrella informed the SMSG of progress made within the Working Group that had been recently begun on SME, stating that the work would be divided into crowdfunding and SME growth markets issues.

12. Share-holder rights directive

ESMA outlined its work in relation to the Shareholder Rights Directive, noting that it has a somewhat limited mandate in this respect. In the past ESMA has provided the European Commission with input in relation to proxy advisors, directors' remuneration and shareholder identification and communication. ESMA is currently working on a report including recommendations on shareholder identification and communication across the EEA, providing the results of a study in three parts dealing with shareholder identification, entitlement to vote and other rights and the transmission of information between issuers and shareholders.

The ESMA Chair clarified that ESMA could share the report with the SMSG when finished as it could be relevant for future work on CMU.

13. AOB

There were no other business.

SMSG ATTENDANCE 9 FEBRUARY 2017

ALEXAKIS	Christos	Present
BAUR	Georg	Present
BENINK	Harald	Present
BERTHON	Jean	Present
CHRISTOV	Lubomir	Excused
COLAERT	Veerle	Present
CORLEY	Elizabeth	Excused
DZIEMASZKIEWICZ	Bartosz	Excused
ECHARRI	Javier	Present
HEMSLEY	Mark	Present
HERMANSSON	Kerstin	Present
HÖLZ	Christiane	Present
KARSENTI	René	Present
KOSTER	Paul	Present
KRISPER	Bostjan	Present
LITVACK	Eric	Present
MELE	Antonio	Present
NIJDAM	Christophe	Present
PAYNE	Jennifer	Present
PETRELLA	Giovanni	Present
RIESS	Rainer	Present
ROGERSON	Lindsey	Present
ROMANO	Anna Maria	Present

SANTILLAN	Ignacio	Excused
SERVAT	Jean-Marc	Present
SYRILÄ	Jarkko	Present
VAN ELSSEN	Greg	Present
VEIL	Rüdiger	Present
VERVLIET	Chris	Present
WARD	Tim	Present