

SUMMARY OF CONCLUSIONS

Joint meeting of the Board of Supervisors and the Securities and Markets Stakeholder Group

Date: 6 July 2017
Time: 09:00 – 12:30
Location: ESMA, CS60747 – 103, rue de Grenelle, 74345 Paris
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1. Opening remarks

The ESMA Chair emphasised the importance of having joint meetings with the SMSG. The SMSG Chair also expressed the high importance that the SMSG attaches to having the possibility to meet with the ESMA Board of Supervisors and to exchange views on high level issues.

2. Product intervention under MiFID

SMSG member, Professor Veerle Colaert presented the SMSG paper on product intervention powers under MiFIR. The purpose of the paper is to provide opinion on two legal questions, secondly to summarize and compare Member States' measures already taken before MiFIR, and thirdly to indicate issues where intervention by ESMA is considered desirable in order to e.g. promote supervisory convergence. The legal questions deal with the issue of who should apply the MiFIR product intervention powers and secondly if pre-MiFIR Member state product intervention measures could be grand-fathered.

ESMA Board Member Jean Paul Servais, Chair of FISC, welcomed the report noting that a majority of member states share the objectives of the investor protection and product intervention possibilities. He noted that there are no single solutions and that disclosure, self-regulation and banning all could serve different purposes.

3. ESAs review

SMSG member Professor Jennifer Payne, presented the SMSG advice to the European Commission on the ESA review. The SMSG paper was designed to gather evidence on the operation of the ESAs, focusing on tasks and powers, governance, supervisory architecture and funding issues.

ESMA Board member and Vice-Chair Anneli Tuominen provided comments regarding the ESA review highlighting the main aspects of the ESMA response to a select number of questions to the ESA review: There were no fundamental changes proposed to the existing supervisory structures. ESMA believes, however, that adjustments are needed to support implementation of the CMU and because of Brexit. There should be a more formal role for ESMA in international settings and third country rules would need to be re-assessed. ESMA has implemented effective supervision of CRAs and trade repositories and stands ready to assume new responsibilities. Supervisory convergence is a key task for which additional tools are needed.

The Group also raised a question on what type of interaction the SMSG could have with the ESMA consultative working groups of ESMA, containing different stakeholders connected to several of the various standing committees that ESMA has.

The ESMA Chair concluded that the SMSG could have access to CWG agendas in order to gain insights to work taking place in those groups.

4. UK leaving the European Union

ESMA Board members Elisabeth Roegele and Martin Moloney presented the various aspects of the ESMA's supervisory convergence principles in the context of Brexit – principles of authorisation and relocation, outsourcing/delegation and the establishment of the supervisory coordination network.

SMSG member Mark Hemsley presented some views on the MiFID II environment in a post Brexit world.

SMSG member Jarkko Syyrila presented his views on the ESMA work in relation to the supervisory convergence work related to Brexit.

The SMSG and the ESMA Board of Supervisors debated the need for the ESMA opinions.

The ESMA Chair stated that the timing aspect of the opinions had been considered critical, and that it was important to provide guidance to the market before the summer. The opinions contain reference to existing regulation. The ESMA Chair also drew the attention to the very high UK market share in some sectors and the liquidity fragmentation risks attached to Brexit.