

SMSG - End of Term Report 2024



Foreword

The Securities and Markets Stakeholder Group (MSG) was established in April 2011 under ESMA's founding Regulation to help facilitate consultation with stakeholders in all areas relevant to ESMA's tasks.

The fifth mandate of the MSG was launched in July 2020 and has come to an end in June 2024.

With this report, the MSG wants to (i) inform the public of its functioning and output, and (ii) ensure an efficient transfer of knowledge and experience to future members of the MSG. This report summarises the work and key achievements of the Group during the fifth mandate, assesses the Group's current functioning, as well as the impact of its work, and makes a number of recommendations in that regard.

During the current mandate period, the Group produced 44 papers in the form of public opinions, statements, pieces of advice and own initiative reports. More details on these papers are included in this report. The full papers are available on the [MSG section of the ESMA website](#).

We hope to have assisted ESMA in continuously developing, refining and improving the regulation and supervision of European financial markets.

30 June 2024

[signed]

Veerle Colaert

Chair

[signed]

Rainer Riess

Vice Chair

[signed]

Christiane Hölz

Vice Chair

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1 Executive Summary

This report marks the end of term of the fifth mandate period of the Securities and Markets Stakeholder Group (MSG). It covers the period from 1 July 2020 to 30 June 2024. The MSG wishes to share its experiences with the public with a view to full transparency and enhancing the functioning of the MSG and the European System of Financial Supervision of which it is a part. The report covers three areas: (i) the role, composition and functioning the MSG, (ii) an activity report, summarizing the work of the MSG during this mandate period; and (iii) a self-assessment report on the role of the MSG in ESMA's regulatory work.

The MSG wishes to highlight the following key elements of the report.

First, the MSG is convinced that consensus advice is the most valuable to ESMA, as it optimally assists ESMA in finding balanced solutions in view of divergent views in the market. The added value and strength of MSG advice, on top of the plethora of input from individual interest groups, lies in the MSG's ability to overcome discord and to find meaningful common positions between the different constituencies represented in the group. The MSG has the expertise and atmosphere of constructive debate and trust, necessary to find such consensus and compromise solutions.

Second, the MSG deems it important to not only respond to formal consultations from ESMA, but to also provide own initiative input if important matters come up. Providing advice on consultations obviously is the MSG's most important task. During its fifth mandate, the MSG has provided written advice in response to 32 formal requests for advice on ESMA consultations. The MSG provided "own initiative advice" on 9 important topics, including the Wirecard case, the impact of inflation on investor protection, depositary receipts and geopolitical risks, the MSG's role in the Breach of Union Law procedure, and Greenwashing. The MSG moreover has an established practice of providing oral input on a wide array of current market developments during its meetings with ESMA.

Third, the MSG is of the opinion that it is important to further improve cooperation between the different Stakeholder Groups of the ESAs, in view of the increasing number of cross-sectoral fields of regulation (PRIIPs, sustainable finance, FinTech, DORA ...). During the fifth mandate, increased cooperation between Stakeholder Groups has resulted in 6 Joint Stakeholder Group advice to the ESAs. Such cooperation is, however, still highly contingent on individual MSG members which are also member of another stakeholder group. The current MSG would encourage the next group to formalise this cooperation.

Finally, the MSG remains concerned about changes to the composition of the group introduced by Regulation (EU) 2019/2175. The strict fixation of numbers of industry representatives on the one hand, and employee, consumer, users of financial services and SME representatives on the other hand gives insufficient flexibility to ESMA in composing the MSG. Moreover, the MSG regrets the reduction of the number of academics in the

group, considering the crucial role of academics, both in providing expertise and as neutral mediators facilitating common positions.

1 Role, composition and functioning of the SMSG

1.1 Role

1.1.1 Legislative mandate

1. The ESMA Regulation¹ has established the Securities and Markets Stakeholder Group (SMSG) to help facilitate consultation with stakeholders in areas relevant to the tasks of ESMA as laid down in the ESMA Regulation. ESMA contributes to improving the functioning of the internal market, ensuring the integrity, transparency, efficiency and orderly functioning of financial markets, strengthening international supervisory coordination, preventing regulatory arbitrage and promoting equal conditions of competition, ensuring that the taking of investment and other risks are appropriately regulated and supervised, enhancing customer and investor protection, and enhancing supervisory convergence across the internal market (art. 1 (5)). This field of tasks and activities also determines the work of the SMSG. The SMSG should be consulted on ESMA's work concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial market participants, concerning guidelines and recommendations (art. 37 (1)). The SMSG may, moreover, submit advice to ESMA on any issue related to the tasks of ESMA (art. 37 (5)).

1.1.2 Developments

2. In its first years, ESMA has mainly aimed at strengthening regulation and creating a level-playing field (so-called single rulebook work). By the end of 2016, ESMA had delivered many of the key elements required for the single rulebook, in particular on the MiFID - and MAR-regime. ESMA has since then focused more and more on supervisory convergence, while the review process of some of these frameworks has also started. In addition, ESMA had to deal with new challenges, such as the UK's decision to leave the EU, the COVID 19 outbreak, the implementation of the Sustainable Finance Action Plan and the Digital Finance Package.
3. These developments have obviously also impacted the work of the SMSG. The SMSG considers as one of its main tasks to provide high-level advice to ESMA on the preparation of standards, proposals of delegated acts and the issuance of guidelines/recommendation. During its fifth term, the SMSG responded to 32 requests for advice in regard of formal consultations from ESMA. Moreover, the SMSG has provided written feedback on 2 draft Annual Work Programmes of ESMA. In addition, the SMSG also deems it important to contribute on its own initiative, in order to bring concerns to ESMA's attention that its members deem important in view of developments in European financial markets or EU regulation. With 9 "own initiative" reports (on the Wirecard case, the impact of inflation on investor protection, Depositary receipts and geopolitical risks,

¹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010), as amended.

the SMSG's role in the Breach of Union Law Procedure, Greenwashing, two own initiative responses to Commission consultations and two own initiative responses on ESMA calls for evidence), and oral presentations of important market developments in all our meetings with ESMA (see Part 2.2 below) the SMSG has built further on this second strategic focus.

4. The SMSG has always stressed the need for cross-sectoral consistency in rulemaking at all levels of the Lamfalussy procedure. During the last term, the SMSG has reached out to and cooperated with the other Stakeholder Groups, to strengthen this message of cross-sectoral consistence by producing 7 pieces of joint advice with the other Stakeholder Groups on cross-sectoral issues, such as the MICAR and DORA consultations. Such cooperation is, however, still highly contingent on individual SMSG members which are also member of another stakeholder group. The SMSG would encourage the next SMSG to formalize this cooperation, for instance by appointing a representative for contacts with other stakeholder groups on issues of joint interest.

1.2 Composition

5. Until 31 December 2019, art. 37 ESMA Regulation required that the SMSG be composed of 30 members, representing in balanced proportions financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs. At least five of its members had to be independent top-ranking academics. Ten of its members had to represent financial market participants. The members of the SMSG had to be appointed by the Board of Supervisors, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors had to ensure an appropriate geographical and gender balance and representation of stakeholders across the Union, to the extent possible. As of 1 January 2020, article 37 ESMA Regulation was amended, to provide that 'The Securities and Markets Stakeholder Group shall be composed of 30 members. Those members shall comprise of: (a) 13 members representing, in balanced proportions, financial market participants operating in the Union; (b) 13 members representing employees' representatives of financial market participants operating in the Union, consumers, users of financial services and representatives of SMEs; and (c) four members who are independent top-ranking academics. Since then, the number of industry representatives equals the number of employee, consumer, users of financial services and SME representatives, and the number of academics has decreased from 'at least 5' (in practice there were 6) to exactly 4.
6. Together with the other Stakeholder Groups, the previous SMSG has issued a Joint Position Paper highlighting the following concerns in respect of the new composition of the stakeholder groups: (i) a lack of flexibility for the Board of Supervisors in composing a balanced representation of stakeholder (fixed numbers of industry and user-side) representatives; and (ii) the reduction in of the number of academics, who play an important mediating role in the SMSG. The letter was sent to the ESAs, the European Commission, the European Parliament and the Council. On 24 January 2020 the SMSG received a reply from Mr John Berrigan, acting Director General of FISMA, on behalf of Executive Vice President Dombrovskis, thanking the Stakeholder Groups for the Joint Opinion, indicating that the amendments referred to were not part of the original

Commission Proposal, and referring to the fact that the Commission would assess the ESAs' framework in the next evaluation which was foreseen for 2022. On 20 March 2020 the SMSG received a reply from Mr Othmar Karas, vice-president of the European Parliament and co-rapporteur for the European Parliament of the ESA-Review, indicating that the Position Paper would be fully taken into account when the European Parliament will engage in further discussions on the founding regulations of the ESAs and inviting the Stakeholder Groups to continue to inform the European Parliament on our experience and the practical consequences of the changes of the recent review on the work of the Stakeholder Groups. In response to the End of Term Questionnaire (Section 3) many members repeated the same concerns: (i) need for an adequate representation of industry and user-side members and (ii) concern relating to the reduced number of academics.

7. For the list of members of this SMSG group, and the category they represent see Annex 1. The members represent the following categories mentioned in Art. 37(2) ESMA Regulation, here provided in alphabetical order with the number of members in each category:
 - Academics (4)
 - Consumers (7)
 - Financial Institution Employees (1)
 - Financial Market Participants (13)
 - Small and Medium Enterprises (2)
 - Users of financial Services (3)
8. On 15 April 2024, 21 members (70%) are men and 9 (30%) are women. According to the ESMA Regulation, the Board of Supervisors should, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union (art. 37(3)).

1.3 Functioning

9. The SMSG has adopted amended Rules of Procedure on 27 January 2023 (see annex II). In this section we will give an overview of the way in which the SMSG functions in practice.

1.3.1 Steering Committee

10. According to the SMSG Rules of Procedure, the SMSG appoints a chair and up to two vice-chairs at the beginning of its mandate period. Together, they constitute the Steering Committee that oversees the work of the SMSG, prepares the agenda for meetings, leads the SMSG meetings, and generally acts as the interface between the SMSG and ESMA.
11. The SMSG appointed Veerle Colaert (Academic) as chair and Christiane Hölz (Users of Financial Services) and Rainer Riess (Financial Market Participant) as vice-chairs.
12. The SMSG considers it has proven beneficial to have an academic chairing the group with two vice chairs representing the industry and the users, to reflect diverse backgrounds in the Steering Committee.

1.3.2 Working Groups

13. In order to efficiently prepare its written reports, and in view of the frequency of consultations and sometimes short deadlines, SMSG reports are usually prepared in working groups, which appoint a rapporteur.
14. Every working group is composed of members volunteering to participate. The Steering Committee, however, ensures that if the issues at stake are relevant for different interest groups, all interest groups are adequately represented in a Working Group. Working groups typically hold their meetings via conference calls.
15. There are two types of Working Groups. Ad hoc Working Groups are composed to deal with specific consultations, requests for advice, or own initiative issues. For important ongoing topics the SMSG has worked in the past with standing Working Groups (e.g. MiFID, Brexit), which convened via conference call on a more regular basis and were ready to provide input to ESMA whenever needed. During the last mandate of the SMSG, no standing Working Groups have been set up, even though in practice, ongoing topics (MiCAR, DORA, Sustainable finance) were typically dealt with by Working Groups composed of more or less the same members. The next SMSG may want to consider whether to re-introduce standing Working Groups in regard of important ongoing themes, such as sustainable finance and MiCAR.

1.3.3 Adoption of reports – striving for consensus

16. Once a Working Group has reached agreement on a draft, the draft report is sent to the full group. Ideally the draft is discussed with the full group at the next SMSG meeting, and adopted, if need may be, after amendments.
17. However, with sometimes very tight deadlines for responses to consultations, it is often not possible to wait for the next meeting to discuss and adopt a report. The Steering Committee then decides to send the draft report to the full group for adoption in written procedure. However, this kind of communication cannot replace the value and outcome of oral discussions during SMSG meetings, which allow for a much deeper and detailed discussion. It is therefore unfortunate that the majority of responses has had to be adopted in written procedure during this mandate of the SMSG, due to short deadlines. The SMSG is of the opinion that this is a regrettable evolution, and that consultation periods should be sufficiently long to allow all stakeholders to provide their input to come to a common SMSG advice. On certain occasions it proved impossible to provide a joint position due to very short deadlines and ESMA asked for individual responses from SMSG members instead. The SMSG is, however, of the opinion that this way of working should be exceptional as it may result in more unbalanced, narrowly-focused input, and dilutes the consensus-building value of the SMSG.
18. The SMSG believes that its advice is most valuable to ESMA when it reflects a consensus of the different constituencies it represents. During its consultations, as well as via other formal and informal channels, ESMA receives a lot of one-sided input from market participants and interest groups directly. The added value and strength of the SMSG, therefore, lies in its ability to overcome discord and to find meaningful common positions.

The SMSG's work is founded on the belief that consensual advice offers the highest value to ESMA. The SMSG Rules of Procedure therefore stipulate that the Group, as far as possible, shall take decisions by consensus. In exceptional circumstances where it proves impossible to reach consensus and one third of the Group's members or the members representing one group of stakeholders present consider that their views are not adequately reflected in an advice to be issued by the Group, art. 7(3) of the Rules of Procedures – with reference to Article 37(5) of the ESMA Regulation – allows those members to issue a separate advice. Such a separate advice may state the names of the members whose views it reflects. The SMSG has never been compelled to do this. In case consensus proved impossible, the current group has rather preferred to include minority opinions, supported by at least three members, in the advice. In response to the End of Term questionnaire (cf Section 3), some members have indicated that if consensus cannot be found, this should not be considered as a problem, but it would be important to accurately describe the different viewpoints in SMSG advice to ESMA. The current Steering Committee has, however, strived to avoid including minority opinions and to find a consensus advice instead, through discussions or mediation. It is convinced that the SMSG has in its group the expertise and atmosphere of constructive debate and trust, necessary to help finding consensus and if needed compromise solutions, which is the best way to assist ESMA in finding a balanced solution in view of divergent views in the market. Allowing to readily include minority opinions in SMSG advice to ESMA, might undermine the drive and openness to seek consensus in the group.

1.3.4 Meetings

19. According to the ESMA Regulation, the SMSG shall meet at least four times a year. However, the Group has deemed it appropriate to have five annual meetings and recommends to maintaining this number of meetings, evenly spread over the year. Two of those meetings include a half day meeting with ESMA's full Board of Supervisors (see below para 23).
20. Until the Covid 19 crisis, all meetings took place at ESMA's premises in Paris. During the Covid 19 crisis, meetings had to be held virtually. This has complicated the start of this SMSG mandate, since the new members of the group had never physically met, which made it more difficult to understand each other and find common ground. After the Covid 19 crisis, ESMA has adopted a policy of reducing travels for its own staff as well as for its advisory bodies, for sustainability reasons. Since 2021, at least half of the SMSG meetings are in Paris, whereas the other meetings are held virtually. At least one of the meetings with the Board of Supervisors is held physically in Paris. The SMSG is of the opinion that online meetings work technically well, even though this format is clearly less efficient than a real-life meeting. Online meetings are shorter (two sessions of 2 hours instead of a full day of meeting from 9 to 5), leaving less time to discuss all relevant themes, and make it more difficult for SMSG members to connect, interact and reach consensus. Responding to the End of Term Questionnaire (see Section 3), some members have pointed out that joint- BOS-SMSG meetings are not suited for online meetings, due to the large number of participants and the lower level of discussions. The SMSG is therefore of the opinion that it is of the utmost importance to keep regular physical meetings in Paris, and to organize

joint BOS-SMSG meetings physically to the extent possible. During physical meetings, members have had the possibility to access the meeting remotely in case of impossibility to join physically. Responding to the End of Term Questionnaire (Section 3), some members have pointed out that this should remain the exception, and that members joining online should keep their cameras on at all times. The next SMSG may want to pick this up and discuss how to deal with this.

21. Non-industry not for profit members of the SMSG receive a set reimbursement for participation in the meetings, which covers a compensation per meeting including preparatory work, and for physical meetings also transport (economy) and accommodation. The current compensation levels are, however, not in line with current practices of EU organizations when hiring experts. The SMSG recommends to bring the SMSG compensation levels in line with those practices.
22. The goal of the meetings is (i) to exchange views between the SMSG and ESMA, (ii) to discuss topics on which the SMSG may want to provide advice to ESMA and, if the case may be, set up working groups, and (iii) to discuss and adopt draft reports to ESMA. ESMA is keen to hear SMSG Presentations on Recent Market Developments and areas in need of supervisory convergence, while the SMSG much appreciates ESMA's presentations on upcoming consultations, which serve as a basis for further discussion.
23. Twice a year the SMSG meetings are extended over two days, in order to allow for a joint meeting between the SMSG and the ESMA Board of Supervisors (BOS), before or after the regular SMSG meeting. At the joint meeting, the SMSG discusses key issues directly with members of the Board. The SMSG has developed the tradition to hold a preparatory SMSG-only meeting (without ESMA staff) before a meeting with the Board of Supervisors (BOS) to allow for a detailed preparation and recommends maintaining this practice in the future. ESMA has the possibility to invite a representative of the European Commission to its BOS meetings. During the past SMSG mandate, a Commission representative has attended 1 joint BOS-SMSG meeting. The SMSG recommends to explicitly consider before each meeting with the BOS whether it would be useful – in view of the topics on the agenda - to ask for attendance of a Commission representative.
24. The SMSG highly values the opportunity to discuss its draft reports with ESMA's Chair, Executive Director and staff members working on particular themes, who are always present at the SMSG meetings. The SMSG welcomes this as expressions of ESMA's strong commitment to the SMSGs work.
25. While all SMSG reports are published on ESMA's website, and the relevant SMSG reports are always attached to the final version of ESMA's guidelines, in previous mandates of the SMSG it was not always clear how ESMA had dealt with its advice, and especially its own initiative advice. During the current mandate, ESMA has consistently indicated how SMSG advice has been taken into account in its work, by (i) explicitly referring to SMSG advice in its feedback statements, where relevant, and (ii) giving oral feedback on all SMSG reports during the SMSG meetings. Acting on the request of the previous SMSG, ESMA now also explicitly clarifies which suggestions were taken into account / adopted and which were not (and why). The group highly values this feedback, which makes the SMSG's work all the more relevant and visible.

1.3.5 Cooperation with ESMA and with other Stakeholder Groups/user groups in the financial services area

26. The SMSG highly values its relationship with ESMA and its staff. As stated above, the participation of ESMA's Chair and its Executive Director as well as its staff in our meetings shows a genuine interest in our advice. ESMA also shared information in respect of ESMA's direct supervisory duties and has systematically given feedback to the SMSG on issues on which the SMSG has provided comments. Moreover, upon SMSG request, ESMA now gives a yearly overview on Breach of Union Law (BUL) complaints and procedures.
27. As an area for further improvement, as also suggested in the End-of-Term Report of the previous SMSG mandate, an earlier involvement of the SMSG in ESMA's consultation process would benefit the efficient functioning of the SMSG. The SMSG as an internal body of ESMA is bound by confidentiality and thus could be formally involved even before a public consultation process is being launched. This would enable the group to discuss more of its advice papers also in physical meetings. Such an early involvement is particularly important in regard of consultations from the joint committee of the ESAs. The SMSG has taken important steps to coordinate its advice with the other stakeholder groups. Reaching consensus between stakeholder groups is, however, very time-consuming. An early involvement of the Stakeholder Group in the consultation plans of the joint committee of the ESA's could be part of the solution.
28. In order to allow for a smooth cooperation, it would be very helpful if the email-addresses and telephone numbers of the chairs and vice-chairs of all Stakeholder Groups would be communicated to the Steering Committees of all Stakeholder Groups at the start of the new mandates. The SMSG recommends that during its next mandate, the SMSG further pursues possibilities for increased cooperation, especially in regard of MiCAR and sustainable finance consultations. The Steering Committee could seek contact with the Steering Committees of other Stakeholder Groups, to share the agendas of the Stakeholder Groups between themselves and promote transparency between the groups regarding the issues being discussed and considered, which could help to further facilitate joint work on areas of common interest.
29. Finally, the SMSG still sees room for improvement regarding the fulfilment of its legally required mandate to work as an interface with other user groups in the financial services area established by the Commission or by Union legislation (recital 48 of ESMA Regulation). The SMSG recommends that the next Steering Committee, after consultation with the group, actively identifies areas where cooperation/exchange could be of interest for ESMA and seeks to establish contact with other the Steering Committees of the other Stakeholder Groups.
30. ESMA's work is supported by Standing Committees who have consultative working groups (CWGs) made up of external stakeholder representatives. Members of CWGs are expected to provide technical assistance to the Standing Committees in relation to all aspects of their work. The SMSG has requested from ESMA that the interaction between the CWGs and the SMSG be further improved. This would allow an earlier involvement of the SMSG in the single rulebook work to fulfil its tasks. ESMA has agreed to share with

the SMSG both meeting calendars and agendas of individual CWGs meetings (ESMA Note 20 September 2017, ESMA22-106-362). However, ESMA has not established a mechanism yet which ensures timely access of the SMSG to the relevant information. The SMSG therefore suggest that the process be improved. A review of best-practices for stakeholder engagement at the NCA level, as well as in certain third-countries, could help to define a roadmap toward best-in-class stakeholder governance.

1.3.6 Secretariat and administrative support

31. According to Art. 37(4) ESMA Regulation, ESMA shall ensure adequate secretarial support. Since the establishment of the SMSG, ESMA has assigned one person, Louise Waller to act as secretary and provide administrative support, next to her other work at ESMA. The SMSG is very grateful for the smooth cooperation with Ms Waller and for her valuable support to the group.

2 Activity Report

2.1 SMSG Advice and Own-Initiative Papers

- End of Term Report, 30 June 2024, ESMA24-229244789-4709 (rapporteurs: Veerle Colaert, Rainer Riess and Christiane Hölz);
- [SMSG advice on the third MiCA package](#), 21 June 2024, ESMA24-229244789-5075 (rapporteur: Giovanni Petrella);
- [SMSG advice on the consultation on reverse solicitation and the qualification of crypto-assets as financial instruments under MiCA](#), 23 April 2024, ESMA24-229244789-4738 (rapporteur: Giovanni Petrella);
- [SMSG Advice on the Discussion Paper on Digitalisation and Retail Investors Protections](#), 10 March 2024, ESMA24-229244789-4704 (rapporteur: Barbara Alemanni);
- [SMSG Advice on the Draft Guidelines on Enforcement of Sustainability Information \(GLESII\)](#), 10 March 2024, ESMA24-229244789-4699 (rapporteur: Urban Funered);
- [Joint ESA Stakeholder Group Advice on RTS-ITS on major incident reporting](#), 10 March 2024, JC 2024 19 (rapporteur: Christian M. Stiefmueller);
- [Joint ESA Stakeholder Group Advice on RTS on subcontracting of ICT services](#), 10 March 2024, JC 2024 18 (rapporteur: Christian M. Stiefmueller);
- [Joint ESA Stakeholder Group Advice on RTS on threat-led penetration testing \(TLPT\)](#), 10 March 2024, JC 2024 17 (rapporteur: Christian M. Stiefmueller);
- [SMSG Advice on second MiCA package](#), 18 December 2023, ESMA24-229244789-4623 (rapporteur: Giovanni Petrella);

- [SMSG Advice on the Consultation Paper on Technical Standards specifying certain requirements of the Markets in Crypto Assets Regulation \(MiCA\)](#), 11 October 2023, ESMA24-229244789-4580 (rapporteur: Giovanni Petrella);
- [Joint ESA Stakeholder Group Advice on DORA RTS ICT risk management](#), 11 September 2023, JC 2023 39 (rapporteur: Christian M. Stiefmueller);
- [Joint ESA Stakeholder Group Advice on DORA ITS register of information](#), 11 September 2023, JC 2023 36 (rapporteur: Christian M. Stiefmueller);
- [Joint ESA Stakeholder Group Advice on DORA RTS policy contractual arrangements](#), 11 September 2023, JC 2023 35 (rapporteur: Christian M. Stiefmueller);
- [Joint ESA Stakeholder Group Advice on DORA RTS Classification ICT Incidents](#), 11 September 2023, JC 2023 34 (rapporteur: Christian M. Stiefmueller);
- [SMSG Advice to the ESA's Joint Consultation Paper on Review of SFDR Delegated Regulation](#), 12 July 2024, ESMA22-1669215091-5374 (rapporteur: Chris Vervliet);
- [SMSG Advice on additional questions relating to greenwashing](#), 16 March 2023, ESMA22-106-4551 (rapporteur: Veerle Colaert);
- [SMSG Advice to ESMA on ESMA's consultation on Guidelines on funds' names using ESG or sustainability-related terms](#), 21 February 2023, ESMA22-106-4511 (rapporteurs: Adina Gurau Audibert and Urban Funered);
- [SMSG Advice on DORA](#), 27 January 2023, ESMA22-106-4405 (rapporteur: Christian Stiefmueller);
- [SMSG Advice on Greenwashing](#), 18 January 2023, ESMA22-106-4384 (rapporteurs: Adina Gurau Audibert and Urban Funered);
- [SMSG Advice on the SMSG's role in the Breach of EU Law Procedure](#), 10 January 2023, ESMA22-106-4389 (rapporteur: Guillaume Prache);
- [SMSG Advice on Depositary Receipts and Geopolitical Risks](#), 25 November 2022, ESMA22-106-4322 (rapporteurs: Christiane Hölz and Rainer Riess);
- [SMSG Advice to the Call for evidence on the implementation of SRD2 provisions on proxy advisors and the investment chain](#), 25 November 2022, ESM22-106-4323 (rapporteurs: Christiane Hölz and Florence Bindelle);
- [SMSG Advice in respect of the ESMA Consultation Paper on the Review of the Guidelines on MiFID II product governance requirements](#), 17 October 2022, ESMA22-106-4247 (rapporteur: Veerle Colaert);
- [SMSG Advice on gas and nuclear energy](#), 8 July 2022, ESMA22-106-4325 (rapporteur: Chris Vervliet);
- [SMSG Advice to ESMA on EFRAG Consultation on Sustainability Reporting standards](#), 7 July 2022, ESMA22-106-4135 (rapporteur: Florence Bindelle);
- [SMSG Advice to the ESMA Consultation Paper on Guidelines on certain aspects of the MiFID II suitability requirements](#), 3 May 2022, ESMA22-106-4032 (rapporteur: Chris Vervliet);

- [SMSG Recommendations in regard of the impact of inflation on investor protection](#), 27 April 2022, ESMA22-106-4024 (rapporteurs: Veerle Colaert and Giovanni Petrella);
- [SMSG response to ESAs on their joint Call for evidence on the European Commission mandate regarding the PRIIPs Regulation](#), 5 January 2022, ESMA22-106-3809 (rapporteur: Giovanni Petrella);
- [SMSG response to ESMA on its Call for evidence on the EC mandate on certain aspects relating to retail investor protection](#), 31 December 2021, ESMA22-106-3800 (rapporteur: Henning Bergmann);
- [SMSG Advice to ESMA on its Consultation Paper on the review of certain aspects of the Short Selling Regulation](#), 19 November 2021, ESMA22-106-3734 (rapporteur: Urban Funered);
- [SMSG Advice on remuneration guidelines](#), 13 October 2021, ESMA22-106-3638 (rapporteur: Chris Vervliet);
- [SMSG Advice on ESMA 2022 annual Work Programme](#), 23 August 2021, ESMA22-106-323 (rapporteur: Veerle Colaert);
- [SMSG response to the European Commission's consultation on the EU strategy for retail investors](#), 29 July 2021, ESMA22-106-3504 (rapporteur: Guillaume Prache);
- [SMSG advice to ESMA on Digital Finance](#), 30 July 2021, ESMA22-106-3473 (rapporteur: Christian M. Stiefmueller)
- [SMSG response to the ESMA's Consultation Report on "EU Money Market Fund Regulation – legislative review"](#), 30 June 2021, ESMA22-106-3439 (rapporteur: Adina Gurau Audibert);
- [SMSG response to the European Commission's targeted consultation on supervisory convergence and the single rulebook](#), 21 May 2021, ESMA22-106-3378 (rapporteur: Giovanni Petrella);
- [SMSG advice to the ESA's Joint Consultation Paper on Taxonomy-related sustainability disclosures](#), 14 May 2021, ESMA22-106-3375 (rapporteur: Chris Vervliet);
- [SMSG advice to ESMA on its Consultation Paper on "Guidelines on certain aspects of appropriateness and execution-only"](#), 28 April 2021, ESMA22-106-3280 (rapporteur: Barbara Alemanni);
- [SMSG own initiative advice to ESMA on Wirecard case](#), 15 February 2021, ESMA22-106-3194 (rapporteur: Henning Bergmann);
- [SMSG advice to ESMA on its Consultation Paper on Guidelines on the MiFID II/ MiFIR Obligations on Market Data](#), 11 January 2021, ESMA22-106-3087 (rapporteur: Rainer Riess);
- [SMSG Response to ESMA's Consultation on Article 8 of the Taxonomy Regulation](#), 16 December 2020, ESMA22-106-3050 (rapporteur: Florence Bindelle);
- [SMSG advice on Sustainability Templates](#), 23 October 2020, ESMA22-106-2993 (rapporteur: Veerle Colaert);

- [SMSG advice on ESG disclosures](#), 14 September 2020, ESMA22-106-2858 (rapporteur: Chris Vervliet);
- [SMSG advice on 2021 Annual Work Programme](#), 31 July 2020, ESMA22-106-2819 (rapporteur: Veerle Colaert).

2.2 SMSG Presentations on Recent Market Developments and Supervisory Convergence

32. SMSG meetings typically start with discussions on recent market developments and supervisory convergence. Such discussions have the purpose for the SMSG to highlight to and exchange views with ESMA on topics of general interest in the securities markets and related areas.

33. Topics discussed in the 5th mandate period include:

- SMSG meeting of 1 October 2020:
 - Presentation by Guillaume Prache of the Better Finance 2020 report on long-term and pension savings in Europe
 - Presentation by Christiane Hölz of the German draft Electronics Securities Act
 - Presentation by Giovanni Petrella on the impact of the MiFID II provision on research unbundling
- SMSG meeting of 17 December 2020:
 - Presentation by Guillaume Prache of Better Finance / DSW Report on the 2020 virtual shareholder meetings in Europe
- SMSG meeting and joint meeting with the Board of Supervisors of 17 December 2020:
 - Presentation by Guillaume Prache of Better Finance / DSW Report on the 2020 virtual shareholder meetings in Europe
 - Presentation by Sari Lounasmeri and Stjepan Mandic on the Capital Markets Union (CMU) Action Plan
 - Presentation by Adina Gurau Audibert and Alexander Schindler on ESMA's report on the recommendation of the European Systemic Risk Board (ESRB) liquidity risk in investment funds
- SMSG meeting of 9 February 2021:
 - Presentation by Barbara Alemanni on investors' trust in robo-advice
- SMSG meeting and joint meeting with the Board of Supervisors of 24 March 2021:
 - Presentations by Christiane Hölz and Rainer Riess on Gamestop
 - Presentation by Alexander Schindler on the European Single Access Point (ESAP)
- SMSG meeting of 17 June 2021:

- Presentation by Guillaume Prache on sustainable corporate governance and the potential impacts on capital market participants
- Presentation by Piotr Biernacki on the EFRAG PTF-NFRS draft advice on the future architecture of European corporate sustainability reporting standards
- Presentation by Giovanni Petrella on fragmentation of the order flow and dark trading during the height of Covid-19
- MSG meeting of 28 September 2021:
 - Presentation by Guillaume Prache on Value for Money
- MSG meeting and joint meeting with the Board of Supervisors of 18 November 2021:
 - Presentation by Guillaume Prache on a Better finance study on inducements
 - Presentation by Chris Vervliet on the interaction between the Sustainable Finance Disclosure Regulation, the Markets in Financial Instruments Directive and the taxonomy
 - Presentation by Rainer Riess on research conducted on market structures
- MSG meeting of 3 February 2022:
 - Presentation by Christiane Hölz on DSW / Better Finance research into intermediaries' implementation of the Shareholder Rights Directive II
 - Presentation by Chris Vervliet on inflation and the impact on investor protection
- MSG meeting of 13 May 2022:
 - Presentation by Ivana Gažić and Christian Stiefmüller on crypto-assets
 - Presentation by Guillaume Prache of the Better Finance Research Report on the Detrimental Effects of "Inducements" Report
 - Presentation by Piotr Biernacki on the European Lab Project Task Force on European sustainability reporting standards (PTF-ESRS) draft report
- MSG meeting and joint meeting with the Board of Supervisors of 8 July 2022:
 - Presentation by Adina Gurau Audibert on fund performance
 - Presentation by Ben Granjé on a 2° Investing Initiative (2DII) survey on the abolishment of ESG ratings
 - Presentation by Sari Lounasmeri of research on investors' sentiment and ownership
- MSG meeting of 5 October 2022:
 - Presentation by Tanguy van de Werve on the impact of the current economic situation on the fund industry
 - Presentation by Lubomir Christov of a study on suitability issues entitled "Towards upgrading the suitability requirement"

- SMSG meeting of 15 December 2022:
 - Presentation by Barbara Alemanni of a study on the financial and risk literacy of Italian households
 - Presentation by Guillaume Prache of the Better Finance 2022 report on long-term and pension savings in Europe
- SMSG meeting and joint meeting with the Board of Supervisors of 27 January 2023:
 - Presentation by Christian Stiefmueller on crypto exchange FTX
 - Presentation by Giovanni Petrella on the use of crypto currencies to elude financial sanctions
 - Presentation by Pieter Schuurs on the impact of the Russian war against Ukraine on the efficiency and stability of European energy markets
 - Presentation by Christiane Hölz on the sustainability preferences under MiFID of German retail investors
 - Presentation by Piotr Biernacki on the EFRAG European Sustainability Reporting Standards
 - Presentation by Adina Gurau Audibert on French employee savings schemes
- SMSG meeting of 17 April 2023:
 - Presentation by Ben Granjé on a 2° Investing Initiative (2DII) survey on retail attitudes on sustainability
 - Presentation by Barbara Alemanni on the bankruptcy of SVB and the impact on Credit Suisse
 - Presentation by Rainer Riess and Guillaume Prache on the progress of the CMU
 - Presentation by Sari Lounasmeri and Stjepan Mandic on the Listing Act from user and SME perspectives
- SMSG meeting and joint meeting with the Board of Supervisors of 5 and 6 July 2023:
 - Presentations by Henning Bergmann and Guillaume Prache on the European Commission's Retail Investor Strategy (RIS)
 - Presentation by Emiliós Avgouleas on the role of artificial intelligence in finance and possible ways to regulate
 - Presentation by Christiane Hölz on robo-advice and neo-brokers
- SMSG meeting of 6 October 2023:
 - Presentation by Adina Gurau Audibert of the results of an annual responsible investment study on the French market
 - Presentation by Lubomir Christoff of a report from the Carbon Tracker Initiative entitled "Loading the DICE against pension funds"

- Presentation by Agustín Reyna on social media platforms facilitating the misleading promotion of crypto assets via their advertising policies and influencers
- Presentation by Guillaume Prache on risk to retail investors of securities lending
- Presentation by Piotr Biernacki on the final European Sustainability Reporting Standards (ESRS) and on the experience of the first year of taxonomy reporting in annual reports
- SMSG meeting of 6 December 2023:
 - Presentation by Christiane Hölz of a DSW study on general meetings drawing conclusions on shareholder rights
 - Presentation by Barbara Alemanni of a study into the financial literacy of Italian households, focussing on gender and generation gaps in financial literacy
 - Presentation by Guillaume Prache of a Better Finance report into transition investing
- SMSG meeting and joint meeting with the Board of Supervisors of 25 and 26 January 2024:
 - Presentations by Agustín Reyna, Rainer Riess and Tanguy van de Werve on the CMU
 - Presentation by Guillaume Prache of the Better Finance 2023 report on long-term and pension savings in Europe
 - Presentation by Tanguy van de Werve of an EFAMA report on household participation in capital markets
- SMSG meeting of 23 April 2024:
 - Presentation by Sari Lounasmeri of the Retail investor barometer (twice-yearly survey of Finnish retail investors)
 - Discussion of the Eurogroup statement on the future of CMU and Letta report on the future of the internal market

3 SMSG Self-Assessment

3.1 Survey

34. In March 2024, SMSG members were invited to respond to an end-of-term survey to understand their views on different areas of the SMSG's activities and performance. SMSG members rated the following areas: working methods; relations with ESMA; composition and independence; quality and timeliness of advice; visibility of SMSG advice.
35. The survey included 53 questions to be answered with an ordinal rating (38 question), questions to be answered on the basis of the members expectations (8 questions), and

open-ended comments (7 questions). The qualitative opinions were translated into scores as follows: 1 = “Unsatisfied”, 2 = “Partly satisfied”, 3 = “Satisfied”, 4 = “More than satisfied”, 5 = “Extremely satisfied”.

36. The responses were submitted by 24 SMSG members (80% response rate). In the 2018 survey, the respondents were 22 (73% response rate). In the 2020 survey, the respondents were 19 (63% response rate).
37. The 2024 survey shows that SMSG members are very satisfied of the SMSG’s activities and performance. The average and median scores are above 4 (i.e., “more than satisfied”). Satisfaction is very high across all dimensions (working methods, relations with ESMA, composition, advice, visibility). The trend over time of the scores shows an impressively positive progression. The overall sentiment is positive as the “more than expected” answer (34%) is much more frequent than the “less than expected” (7%) and the trend over time is extremely positive (in 2020 “more than expected” was 13% and “less than expected” was 14%).

3.2 Key messages from SMSG Members

38. SMSG members provided many insightful remarks and suggestions in the open-ended comments section of the survey. Such remarks and suggestions can form the basis for further discussion in order to improve the contribution of the SMSG.
39. We present below the key messages arising from the open-ended comments.
- When appropriate, it could be useful to frame each topic in a broader context. A 'historical' overview of the evolution of certain subjects might help.
 - The contribution of SMSG members to the meetings appear to be satisfactory.
 - The contribution of SMSG members to WG activities appear to be quite diverse across members.
 - Remote participation to SMSG meetings is deemed possible with the camera on.
 - Joint BoS-SMSG meetings are deemed as not suited for online meetings due to the large number of participants and the lower level of discussions.
 - The SMSG appreciates the feedback from ESMA on its activity and how SMSG advice was used.
 - It would be useful to have information on issues discussed at CWG if they are similar to the ones discussed within the SMSG.
 - European Commission representatives appear to have seldom participated in Joint BoS-SMSG meetings.
 - Although out of ESMA's remit, some members deem that the concerns regarding the ESAs review are as still valid. In particular, the balance between user and industry representatives and the reduction of the number of academics.
 - While the consensus approach drives the advice, diverging opinions are also reflected to provide ESMA with the full and complete picture of the views expressed.

- It was highlighted that the earlier the SMSG knows about the advice to be provided, the better and earlier it can organize itself and the WG that will elaborate it.
- The quality of the SMSG advice may suffer as a result of poor attendance to Working Group activities during the holiday season. It would be useful to avoid deadlines just after the holiday seasons.
- It would be useful to include a section in each advice assessing cost of implementation of legislation and potential effect on market operations.
- It would be useful to have a short primer at the start of new consultations, recapping earlier concerns, evolution and learning points as to avoid going back to stipulations already clarified.
- The Chair and Vice-Chairs have been excellent and provided the needed environment and governance of the group for its optimum efficiency and quality.
- It was suggested to elect the Vice-Chairs together on a single ballot rather than consecutive ballots, so as to ensure that a better balance of representativeness is achieved.

Annex I – SMSG Members and categories

Members	Representing	Appointment (*)
Barbara Alemanni	Academics	1 July 2020 (I)
Emilios Avgouleas	Academics	1 July 2020 (I)
Stephan Balthasar	Financial market participants	22 March 2023 (I)
Henning Bergmann	Financial market participants	1 July 2020 (I)
Geoffrey Bezzina	Users of financial services	1 July 2020 (II) **
Piotr Biernacki	SME	1 July 2020 (II)
Florence Bindelle	Financial market participants	1 July 2020 (I)
Morten Bruun Pedersen	Consumers	1 July 2020 (II)
Lubomir Christov	Users of financial services	1 July 2020 (I)
Veerle Colaert	Academics	1 July 2020 (II)
Jasper De Meyer	Consumers	1 July 2020 (II) **
Urban Funered	Financial market participants	1 July 2020 (I)
Ivana Gažić	Financial market participants	1 July 2020 (I)
Ben Granjé	Consumers	22 March 2023 (I)
Adina Gurau Audibert	Financial market participants	1 July 2020 (II)
Christiane Hölz	Users of financial services	1 July 2020 (I)
Dermott Jewell	Consumers	1 July 2020 (I)
Eric Litvack	Financial market participants	1 July 2020 (II)
Sari Lounasmeri	Users of financial services	1 July 2020 (II)
Stjepan Mandic	SMEs	1 July 2020 (I)
François Masquelier	Financial market participants	15 November 2022 (I)

Members	Representing	Appointment (*)
Martha Oberndorfer	Consumers	1 July 2020 (II)
Giovanni Petrella	Academics	1 July 2020 (II)
Guillaume Prache	Consumers	1 July 2020 (II)
Agustín Reyna	Consumers	22 March 2023 (I)
Rainer Riess	Financial market participants	1 July 2020 (II)
Virginie Saade	Financial market participants	1 July 2020 (I)
Ignacio Santillán	Financial market participants	1 July 2020 (II)
Martin Scheck	Financial market participants	1 July 2020 (II) **
Alexander Schindler	Financial market participants	1 July 2020 (II) **
Pieter Schuurs	Financial market participants	15 December 2021 (I)
Jean-Marc Servat	Financial market participants	1 July 2020 (II) **
Christian Martin Stiefmueller	Consumers	1 July 2020 (I)
Tanguy van de Werve	Financial market participants	1 July 2020 (I)
Chris Vervliet	Employees' representative	1 July 2020 (I)

* Roman number marks appointment (I) or reappointment (II)

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- Geoffrey Bezzina left the group on 4 February 2023
- Jasper De Meyer left the group on 22 March 2022
- Martin Scheck left the group on 15 November 2022
- Alexander Schindler left the group on 22 March 2022
- Jean-Marc Servat left the group on 15 December 2021

Annex II – Rules of Procedure (adopted on 27 January 2023)

Decision of the Securities and Markets Stakeholder Group

Rules of Procedure

The Securities and Markets Stakeholder Group

Having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) (the ‘Regulation’ and ‘Authority’), and in particular Article 37 of the Regulation

Whereas:

- (1) Article 37(1) of the Regulation provides that the Securities and Markets Stakeholder Group’s (the ‘Group’) role is, to ‘help facilitate consultation with stakeholders in the areas relevant to the tasks of the Authority’. In particular, Article 37(1) provides that the Group ‘shall be consulted on actions taken in accordance with Articles 10 to 15 concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial institutions, Article 16 concerning guidelines and recommendations. Such facilitation of consultation implies the Group being asked to give its advice in advance of the issue of any such consultation by the Authority.
- (2) Article 37(5) of the Regulation provides that the Group ‘may submit advice to the Authority on any issue related to the tasks of the Authority, with particular focus on the tasks set out in Articles 10 to 16, and 29, 30 and 32’, where the latter refer to common supervisory culture, peer reviews of competent authorities and assessment of market developments.
- (3) Article 16b of the Regulation provides that three voting members of the Board of Supervisors may request the Board of Supervisors to request advice from the Group.
- (4) Article 17(2) of the Regulation provides that the Group may submit a request to the Authority, as appropriate, to investigate the alleged breach or non-application of Union law (BUL).
- (5) Group members may be on occasion privy to documents and information which are not yet public and are therefore confidential in nature. The Members firmly undertake not to disclose this information to any individuals outside the Group.

Has adopted the following rules of procedure:

Article 1 - Membership appointment and mandates

1. The appointment of the Group members is made by the Board of Supervisors in accordance with Article 37(3) of the Regulation, which states that in making its decision, “the Board of Supervisors shall, to the extent possible, ensure an appropriate reflection of diversity of the securities and markets sector, geographical and gender balance and representation of stakeholders across the Union.”
2. Group members serve in a personal capacity in accordance with their appointment under Article 37 of the Regulation.

3. According to Article 37(4) of the Regulation, Group members shall serve for a period of four years, following which a new selection shall take place.
4. As per Article 37(4) of the Regulation, Members may serve two successive terms.
5. As per Article 58(2) of the Regulation, Group members may not, as long as they remain members, sit on ESMA's Board of Appeal.
6. Should a member position become vacant before the end of their term, he/she has the duty to inform the Authority and Chair and Vice-Chair(s) of the Group without delay. As the vacancy arises, a new member shall be appointed by the Board of Supervisors, to the extent possible, ensuring the balanced representation of stakeholders as per article 37(3) of the Regulation. The replacement member shall serve until the end of the ongoing SMSG term.

Article 2 - Chairperson and Vice-Chairperson(s)

1. The Group shall be chaired in a personal capacity, by one of the Group members selected as Chairperson. The Group shall select a Chairperson and up to two Vice-Chairpersons during its first meeting or at the beginning of the second meeting.
2. The first meeting of the newly appointed Group shall be chaired by the ESMA Chairperson until the moment the Chairperson of the Group has been selected.
3. The Chairperson and Vice-Chairperson(s) shall act as the Steering Committee of the Group ('Steering Committee'). The SMSG shall consider the composition and balance of the group when electing the Steering Committee.
4. The Steering Committee shall be convened on request of the Chairperson or one of the vice-chairpersons, to discuss the functioning and organisation of the Group, and to prepare the agenda of the SMSG meetings in accordance with Article 4(1).
5. The election of the Chairperson shall be preceded by and based on a nomination procedure. Any member of the Group may nominate any other member, including him- or herself or any other member of the Group. The Chairperson shall be elected in a secret ballot by a simple majority of the Group members present at the time of the election and casting a vote. If no simple majority is achieved in the first round, a second round of voting shall be held between the two candidates who received the highest number of votes in the first round. Group members may only vote for one candidate. Abstentions shall not be counted as votes cast. The Chairperson shall, as per Article 37(3a) of the Regulation, serve as such for a period of two years and may apply as a candidate for the position of Chairperson and/or Vice-Chairperson for one more period of two years.
6. The election of the Vice-Chairpersons shall follow the same procedure as that for the Chair outlined in paragraph 5. Each Group member can cast a vote for up to two candidates.
7. The Vice-Chairperson (or one of the Vice-Chairpersons) shall replace and represent the Chairperson in case of absence or impediment. If the Chairperson and the Vice-Chairperson (or both Vice-Chairpersons) are absent the meeting shall be chaired by a member of the Group nominated by the Chairperson and Vice-Chairperson(s). The nomination shall be communicated to the Group seven days in advance of the meeting where possible.
8. The Chairperson or a Vice-Chairperson may be removed from office on a decision adopted in a secret ballot by two-thirds of the members of the Group.
9. If the position of Chairperson is vacant, whether due to removal from office or otherwise, an election shall be held as soon as possible to appoint a new Chairperson in line with the procedure outlined in Article 2(4). In the meantime, the meetings shall be chaired by one of the Vice-Chairpersons. If the position of a Vice Chairperson is vacant, an election according to the

rules in article 2(4) shall be organised as soon as possible in order to maintain the balance in the Steering Committee.

10. The Chairperson shall:

- a. chair the meetings of the Group and endeavour to achieve an active and balanced participation by all the various stakeholder categories in the discussions;
- b. with the Steering Committee, co-ordinate the agenda for the meetings of the Group with the Authority and the members of the Group;
- c. provide the agreed output of the Group to the Authority's Board of Supervisors; and
- d. make public statements on behalf of the Group on the basis of formally agreed positions.

11. The Chairperson may, as per Article 37(3a) of the Regulation, be asked to make a statement before the European Parliament and answer any questions from its members whenever so requested.

Article 3 - Convening and location of meetings

1. Meetings of the Group shall be convened by the Chairperson. The Group shall meet at least four times a year in accordance with Article 37(1) of the Regulation in the form and according to the timetable determined in agreement with the Authority. The Group shall meet with the Board of Supervisors regularly, at least twice a year, in accordance with Article 40(2) of the Regulation; these meetings shall be preceded by a Group-only meeting. Additional meetings of the Group may be convened depending on the calendar of ESMA's regulatory output and related consultation procedures.
2. The Group meetings shall be either in-person, held at the Authority's premises, or by video call; at least 50% of the meetings shall be in-person. Whenever there is an objective need and upon request of the Group and in agreement with the Authority, one meeting per year may exceptionally be held in another location that is convenient to all members of the Group. Whereas the meeting shall be in-person, a Group member can exceptionally request to attend the meeting by video call with the agreement of the Chairperson.
3. In order for the Group to convene and make decisions, there shall be a quorum of two-thirds of its members. If the quorum is not met, decisions may be taken without quorum on a preliminary basis subject to subsequent approval by written procedure.

Article 4 - Agenda

1. The Chairperson of the Group, after consulting the Steering Committee, shall draw up the agenda following a consultation with the members of the Group and the Authority. The Chairperson will announce at the beginning of the meeting the items that were suggested by the members of the Group but were not scheduled for discussion.
2. New items may only be added to the agenda in the light of new developments at the start of a meeting if there is consensus from members present.
3. At least once every year, the Group shall discuss the Authority's work plan in order to select those topics of the work plan that are of specific interest to the Group. Dates for Group meetings, as well as some more strategic key topics, for the next calendar year shall be agreed upon in the fourth quarter of the preceding year.

Article 5 - Secretariat support and Group documents

1. The Authority shall, as per Article 37(4) of the Regulation, ensure adequate secretariat support for the activities of the Group, its Chairperson and Vice-Chairperson(s).
2. As a general rule, the agenda and the supporting documents shall be circulated to the Group by its secretariat 10 days in advance of each meeting. In urgent or exceptional cases, the Authority shall send drafts on which the Group is consulted and all other working documents to the Group members at the earliest opportunity.
3. The Authority shall organise meeting facilities, circulate meeting agendas, background materials and minutes, provide technical coordination for the preparation of advice or any other input the Group may wish to provide to the Authority and arrange the reimbursement of expenses, in line with the Authority's relevant policies on reimbursement of expenses.
4. Circulation of documents shall in principle be via ESMA's document distribution tool.

Article 6 - Role of the Group

1. The role of the Group is to help facilitate the Authority's consultation with stakeholders in areas relevant to the tasks of the Authority. In carrying out its role, the Group:
 - a. expects to receive from the Authority, and discuss with it, information on issues relevant to the Group's role sufficiently early as to enable the Group to carry out its role most effectively;
 - b. expects to receive from the Authority an overview of the planned consultations on proposed technical standards and guidelines to enable the Group to plan ahead its activities;
 - c. expects to receive from the Authority information about discussions held with its consultative working groups;
 - d. shall be consulted by the Authority, as per Article 37(1) of the Regulation, on actions taken in accordance with Articles 10 to 15 of the Regulation concerning regulatory technical standards and implementing technical standards;
 - e. shall be consulted by the Authority on actions taken in accordance with Article 16 of the Regulation concerning guidelines and recommendations to the extent that these do not concern individual financial market participants; and
 - f. may be asked, as per Article 16b (4) of the Regulation, to provide advice on questions and answers developed by the Authority. A duty of confidentiality shall apply to such advice.
2. The Group may also:
 - a. submit advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16 (regulatory technical standards, implementing technical standards, and guidelines and recommendations), 16 (questions and answers), 29 (common supervisory culture), 30 (peer reviews of competent authorities) and 32 (assessment of market developments) of the Regulation; and,
 - b. request the Authority to investigate an alleged breach or non-application of Union law within the scope of Article 17 of the Regulation, as per its Article 17(2).
3. As stated in ESMA Regulation article 17.2, the Group is one of the five privileged complainants on a possible breach of – or non-compliance with - EU Law (BUL) by an NCA.

4. It is not within the SMSG's remit or responsibility to receive and/or process BUL complaints from other parties, and a fortiori to deal with those. If the Group does receive such complaints, it may forward them to the Authority.
5. Every member of the Group is encouraged to identify potential breaches of union law and report them to the Group for discussion. If and when the Group discusses a potential BUL case, it could on a case-by-case basis - when deemed appropriate by the Group - publicly disclose this in the summary of conclusions of its meetings, or a recommendation to the Authority, published by the Authority on its website. In such a case, the Group will take due care of the wording of the published text, ensuring that clear caveats are made on the Group's role in the process (clarifying, for instance, that the Group's position is only about a "potential" BUL issue without prejudice to the Authority's assessment, etc.)
6. Any decision of the Group regarding BUL cases shall follow articles 6(2b), 6(8), and article 7 of its Rules of Procedure.
7. The Group shall hold a structured discussion with the Authority once a year, based on a report from the Authority to the Group on its previous years' experience with the BUL procedure. This discussion can be extended to the use of other ESMA tools for supervisory convergence and compliance of NCAs to EU Law.
8. Where the Group issues advice at the request of the Authority, the Group shall deliver its advice within the deadline requested by the Authority. The Authority shall ensure that the Group has sufficient time to agree and deliver its advice. Where the Group issues advice on its own initiative, it shall liaise with the Authority on an adequate date to deliver it to the Authority. At the request of the Group, the Authority will endeavour to give oral feedback on the advice issued by the Group at the next SMSG meeting. Moreover, the Authority shall in its relevant feedback statements/final reports reflect and comment on the advice given by the Group.
9. Where the Group issues advice, that advice shall be signed by the Chairperson of the Group and, where applicable, by the relevant working group rapporteur.
10. The Group may, as per Article 37(5) of the Regulation and alongside its counterparties in the banking, insurance and pensions industries, respectively the Banking Stakeholder Group, the Insurance and Reinsurance Stakeholder Group, and the Occupational Pensions Stakeholder Group, together issue a joint advice on issues related to the work of the ESAs under Article 56 on joint positions and common acts.

Article 7 - Decision-making

1. As far as possible, the Group shall take decisions by consensus.
2. In the event that a consensus has not been reached and decisions are put to a vote, agreement among two-third of the members present shall be required except in relation to elections for the Chairperson or Vice-Chairperson which shall follow the procedure set out in Article 2.
3. In exceptional circumstances where it has not been possible to reach consensus and one third of the Group's members or the members representing one group of stakeholders present consider that their views are not adequately reflected in an advice to be issued by the Group, those members are entitled by Article 37(5) of the Regulation to issue a separate advice. Such a separate advice may state the names of the members whose views it reflects.

Article 8 - Written procedure

1. If necessary, the Group and any Working Group may adopt its decisions through use of written procedure. To this end, the Authority shall be responsible for the distribution to the Group members of drafts on which the Group is being consulted and/or any other working documents.

2. The written procedure is to be initiated by the Chairperson of the Group or by the rapporteur of any working group upon a request on the part of at least 50% of the members of the Group or working group or on his/her own initiative.
3. The written procedure shall specify the date by which Members shall provide their views or votes which shall not normally be less than ten days after the launch of the written procedure. Votes on decisions taken by written procedure shall be in written form and a failure to vote shall be considered a vote for the proposal.
4. However, if one-third of Group members ask for the question to be examined at a meeting of the Group, the written procedure shall be suspended and the question shall be added to the agenda of the next meeting of the Group or on the agenda of an extra-ordinary meeting to be organised according to the urgency of the issue.

Article 9 - Working language

The working language of the Group shall be English.

Article 10 - Working groups

1. In agreement with the Authority, the Group may, as per Article 37(4) of the Regulation, establish working groups from among its members to examine specific issues related to the discharge of the Group's tasks.
2. Working groups shall be dissolved as soon as their tasks are fulfilled. Working groups shall appoint a rapporteur who will coordinate the activity of the working group and chair its meetings in a fair and inclusive manner.
3. The Group shall decide on the mandate, composition and duration of each working group. These working groups shall report to the Group. The composition of these groups should reflect, where possible, a balance of the Group's constituencies.
4. Working Groups shall aim to provide a report to the Group that can form the basis for a decision to be taken by the Group. Reports shall therefore reflect views discussed in the working group, including minority views in accordance with Article 7(3), in a way that is designed to achieve consensus in the Group. Working groups shall therefore work on the basis of consensus. In the event consensus is not reached, the working group shall adopt its report on the agreement of two-thirds of its members present.
5. Working group meetings shall be held in principle via video call but may be held at the Authority premises or such other location as is agreed by the members of the working group and the Authority.
6. Working groups may in its work interact with ESMA Staff.

Article 11 - Attendance and duties of Group Members

1. The Chairperson and the Executive Director of the Authority are invited to attend the meetings of the Group and can ask the Vice-Chairperson and/or members of the Authority's Management Board and/or the Chairpersons of the relevant Standing Committees and working groups of the Authority and/or members of the Authority's staff to join specific meetings.
2. At each meeting, the secretariat shall draw up an attendance list.
3. Members are expected to attend and actively participate in the meetings of the Group.
4. Members are expected to actively contribute to the work undertaken by the Group and to undertake any other duties decided on an ad hoc basis by the Group.

5. Failure to attend three meetings of the Group in a twelve-month period shall be deemed a failure to perform the member's duties. In such a case, upon consultation with the Group Chairperson, the Authority may ask the Board of Supervisors to vacate the current position and to select a new Group member.

Article 12 - Conflicts of interest

1. At the start of each meeting, any member whose participation in the Group's or a working group's deliberations would raise a conflict of interest on a specific item on the agenda, other than the fact of their current positions with organisations, shall inform the Chairperson or rapporteur and disclose the conflict to the Group or working group in a transparent manner. That member may continue to participate in the discussion but shall not have the right to vote on such items. In the event that the Chairperson's participation in a specific item on the agenda would raise a conflict of interest, the Chairperson shall inform the Group and the discussion of that item shall be managed by the Vice-Chairperson (or one of the Vice-Chairpersons).
2. Members' conflicts of interest will be duly noted in any report or advice published by the Group or any of its working groups.

Article 13 - External Guests

1. Exceptionally, the Chairperson or a rapporteur may invite an external party to give testimony on a specific subject for consideration by the Group or working group as input. A suggestion to invite an external party can be made by any member and shall be approved by a simple majority of all members following consultation with the Authority. Once the external guest has been approved, the Chairperson or rapporteur shall inform the members no later than at the same time as the agenda is circulated and ask the members if any other point of view should be heard at the same meeting.
2. The European Commission may also be invited to attend the meetings of the Group.
3. The external guest will only be asked to participate in the part of the meeting directly related to her/his testimony and will be bound by the same rules on confidentiality regarding the session as set out in these Rules.

Article 14 - Summaries of conclusions

1. Summaries of the discussion and conclusions on each point on the agenda shall be drafted by the Authority and circulated to the Group following approval by the Chairperson of the Group, after consulting the Steering Committee.
2. Summaries of conclusions of previous meetings shall be adopted by the Group by written procedure or at meetings.

Article 15 - Information and confidentiality

1. The Authority shall provide to the Group all information that is necessary for it to carry out its role, subject to professional secrecy as set out in Article 70 of the ESMA Regulation and ESMA's Rules of Professional Secrecy and Confidentiality.
2. Members of the Group shall not share outside the Group any unpublished documents of the Authority which have been made available to them.
3. If Members of the Group fail to respect these obligations, the Authority may request the Member to stand down.

Article 16 - Regular Reporting and Transparency

1. The Authority will include in its annual report an overview of the activities of the Group, including a summary of any reports and other advice it has formulated over the course of the given year.
2. The summary for inclusion in the annual report shall be approved by the Chairperson and Vice-Chairperson(s) of the Group.
3. The Group shall produce an Activity Report containing an executive summary of the advice and reports delivered by the Group listing main achievements and inputs to the Authority, which shall be prepared by the Group and reviewed by the Steering Committee). The Activity Report shall be drawn up at least at the end of every MSG four-year term.
4. The Authority shall make public on its website:
 - a. the names of members of the Group and any changes or amendments to the Group's membership;
 - b. the advice of the Stakeholder Group and the results of their consultations, as well as how their advice has been taken into account;
 - c. the summaries of conclusions of its meetings; and
 - d. short biographies (CV's) of the Members of the Group.

Article 17 - Correspondence

1. Correspondence sent to the Group by third parties shall be addressed to the Authority, for the attention of the Stakeholder Group Chairperson.
2. Correspondence sent to Group members by the Authority or group Members shall be sent to the e-mail address which they provide for that purpose.

Article 18 - Access to documents

1. Public access to the Group's documents shall be subject to the provisions on access to documents in Article 72 of the Regulation and measures taken for its implementation.
2. The Authority shall be competent to take decisions regarding requests for access to Group documents.

Article 19 - Protection of personal data

All processing of personal data for the purposes of these rules of procedure shall be in accordance with Regulation (EU) 2018/1725.

Article 20 - Collaboration with other groups

The Group should work as an interface with other groups in the financial services area established by the Commission or by Union legislation or as otherwise agreed with the Authority.

Article 21 - Amendments to these Rules of Procedure

The Group may, as per Article 37(6) of the Regulation, amend these Rules of Procedure by a majority of two-thirds of the Group's members, in particular in order to take into account possible developments in the roles, tasks and organisation of the Authority and the Group.

Article 22 - Entry into force

This Decision takes effect on the day following that of their adoption and repeals the Decision of the Securities and Markets Stakeholders Group (ESMA22-106-2371) of 9 July 2020.

Done at Paris on 27 January 2023

[signed]

Veerle Colaert

Chairperson

Securities and Markets Stakeholders Group