



## Final Summary of Conclusions

### Securities and Markets Stakeholder Group

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**Date:** 29 January 2014  
**Time:** 9:30-17:00  
**Location:** ESMA, 103 rue de Grenelle, 75007 Paris  
**Contact:** [jacob.lonnqvist@esma.europa.eu](mailto:jacob.lonnqvist@esma.europa.eu) T: +33 1 58 36 43 39

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#### 1. Introductory remarks from the ESMA Chair Steven Maijoor

ESMA Chair Steven Maijoor welcomed all members to the meeting, those that have been part of the SMSG the previous period and new members alike. The Chair reminded of the role that the SMSG has under the ESMA regulation where consultation is built into the way ESMA works, and where the SMSG members provide their independent technical expertise.

#### 2. Adoption of agenda

The agenda was adopted. It was noted that the Summary of conclusion from the last meeting of 2013 had been approved in written form.

#### 3. Introduction from each member of the SMSG

The ESMA management and all present members of the Group introduced themselves briefly stating their main past professional activities.

#### 4. Approval of the Rules of Procedures

The Group discussed the Rules of Procedures, doc. SMSG/2014/002. The document was approved including the suggested changes made prior to the meeting and some further changes made at the meeting. The changes made to the document included:

- adding explicitly the possibility for two Vice-Chairs in article 2(1) and (4),
- A reference to “working in a personal capacity” also for Vice-Chair in article 2(4),
- Insertion of the word “whole” before Group in article 2(5),



- A change of “shall” to “may” in the end of article 7(3),
- Reference to the Executive Director in article 11(1),
- A change from “is” to “may be” in article 11(2),
- Inclusion of the words “or at the meeting” at the end of article 14(2),
- Insertion of a paragraph on activity report in new article 16(3),
- References to CVs / short biographies at the end of article 16.

## 5. Vote on the election of SMSG Chair and Vice Chair(s)

The ESMA Chair pointed out that the Rules of Procedures allows the election of one or two Vice-Chairs, and stated that he had good experiences from the practices of having two Vice-Chairs working with the SMSG Chair.

The SMSG decided unanimously that it should elect two Vice-Chairs also for the next future 2 ½ year mandate period of the SMSG.

Guillaume Prache, who had served as chair in the previous SMSG, announced that he would not re-apply for the position of chair. He pointed in particular to the current compensation regime for not for profit non industry members as inadequate and substantially less than other user groups, like the European Commission’s Financial Services User Group, and he warned that insufficient compensation would restrict the consumer engagement that was envisaged by the establishment of the European Supervisory Authorities. He strongly urged a reform of the regime to ensure the necessary consumer engagement in the workings of institutions as ESMA, where they play a vital role.

Jesper Lau Hansen, Judith Hardt and Peter De Proft stood as candidates for the post as Chair. They each introduced themselves and stated their main motives.

It was noted that 29 Members of the SMSG attended the meeting.

The candidates for the post as Vice-Chair, Judith Hardt, Peter De Proft, Carmine Di Noia, Krzysztof Grabowski, and Zsolt Nagygyörgy introduced themselves and their main motivations for standing for election. Jesper Lau Hansen announced that he will not vote in the election of Vice-Chairs.

**Decision:** The SMSG elected the following candidates by secret ballot

- Chair: The SMSG elected by simple majority Jesper Lau Hansen as Chair.
- Vice-Chairs: Judith Hardt and Peter De Proft

## 6. SMSG meeting calendar 2014



ESMA had presented a draft meeting calendar (SMSG /2014/003) for 2014, including four meeting dates for the SMSG and two meeting dates of half-day meeting with the SMSG and the ESMA Board for Supervisors jointly in connection with two of the SMSG meetings in July and November.

**Conclusion:**

The SMSG approved the meeting calendar with the addition that the SMSG meetings should generally begin at 9.00 in the morning, and that a fifth meeting of the SMSG should be added in the second half of the year – most likely in end September.

## **7. ESFS Review**

The SMSG Member Pierre-Henri Conac held a presentation of the main content of the European Parliament (“Mazars”) study, which had been prepared for the ESFS review, as well as the SMSG input to the ESFS Review (2013/SMSG/013), using a series of slides shared with the meeting. The presentation also accounted for the EU Parliaments report, which had received 325 amendments, and some of the proposals made in that report such as:

- IMF style peer reviews,
- Right of vote for the Chair,
- European Commission observer role in the ESMA Board of Supervisors,
- Direct supervision,
- The role of ESMA in 3<sup>rd</sup> country equivalence work,

The SMSG discussed different aspects of the proposals and noted that a legislative reform would not be likely soon, given the new European Parliament and European Commission to be put into place.

One member made remarks on the composition of the SMSG with regard to CRA and TR representatives.

One member remarked on the quite short, 1 ½ page passage on consumer trends in the TRV report and the fact that consumer protection is very differently organised in the various Member States. He also drew the attention to the case of the European Ombudsman regarding the establishment of the EBA Stakeholder Group in 2011, where complaints had been directed against the geographical balance and the application of the user category. The Member noted that the new SMSG seemed to have addressed those concerns.

One member accounted for what seemed to be a fatigue in the European Parliament, and that it would probably be more important to see what will come out of the European Commission.

The ESMA Chair mentioned the ESMA input given to the ESFS Review, and the fact that the Commission report on the ESFS Review is expected in March, and also commented on the breach of union law point made saying that the ESMA Board of Supervisors had considered one breach of union law



case but had decided to close the case as the Board concluded there was no evidence of a breach of EU law.

**Conclusion:** The SMSG will continue to follow the developments with regard to the ESFS review.

After the lunch break the meeting was chaired by the newly elected chair Jesper Lay Hansen, starting with agenda point 8.

## **8. SMSG work programme**

Verena Ross accounted for the background of the SMSG work programme (SMSG/2014/004) which has been developed in autumn much as a reflection of the ESMA work programme. The SMSG discussed the draft work programme that had first been presented in November.

Members made the following comments:

- items 6 and 10 seemed to overlap,
- focus should be on items where SMSG can be of most benefit, notably on the detailed implementation of EU legislative framework in Member States with a focus on supervisory convergence,
- Complain function guidelines could usefully be part of the work,
- the SMSG should go on in visibility for ESMA as an authority also working for consumers, and some common action could be considered for a consumer day (15 March),
- Also cross-cutting issues should be made part of the work like items 6 and 10,
- A MAD working group could be set up,
- The joint meetings with the ESMA Board and the recent market topics serve as a good channel for SMSG to get an understanding for what could be really important for ESMA that the SMSG works on,
- It was noted that the activity report included useful background information on work done previously,
- The SMSG Chair noted that while the work programme served as a useful basis for the work that the SMSG shall do, the work that ESMA asks advice on or that emerges ad-hoc during the year will also be important to react to and that flexibility was important

Verena Ross commented on the points made in the discussion, noted that the presentations earlier held on MiFID related topics could be made also regarding the MAD topics, and also on 3<sup>rd</sup> country ESMA could hold a presentation. A focus on supervisory convergence in the SMSG work would be useful. Re-



garding the connection to the ESMA annual report one could perhaps consider a link in the electronic version made to the SMSG work programme.

**Conclusion:** The work programme was adopted.

## 9. Recent Market Developments

### *Trends, risks and vulnerabilities*

Steffen Kern, head of unit for Economic analyses, ESMA, presented the Trends, risks and Vulnerabilities Report (TRV report) to the SMSG, using a presentation shared with the meeting.

Comments from members of the SMSG included:

- Several SMSG members commented that this was useful work coming from ESMA,
- That the Consumer trends reporting was thin, and that the data available regarding returns was lacking, which was something that perhaps could be addressed together with EBA and EIOPA,
- Question on the relevance of the systems risk indicators.
- There was one remark that the traffic light system of red would seem to suggest immediate action.
- There could be a useful feedback loop involving the ESMA Board of Supervisors in a discussion together with the SMSG on these topics,
- Also cross-border topics should be covered in the report including the emerging markets and shadow banking issues,
- Investigations into market manipulation of interest rates could be added.

Steffen Kern accounted for the difficulty in obtaining good data at the EU level, and ESMA could think of using new indicators but the indicators used are the only ones available for the moment. The topics should be made relevant also for investors. Discussion on retail and consumer trends is also very important and here there needs to be a balance between readability and sophistication. The reading audience is mainly institutions. Regarding the credit risk topic mentioned, it would be for ECB, EBA and SSM to look at and as regards the foreign risks it is something that the ESRB is working on.

The ESMA Chair stated that ESMA is carefully watching the start of transaction reporting in February and that this is something that cannot be rehearsed, but that the data quality will be monitored. He also mentioned that the emerging markets were not explicitly in the focus of ESMA but that there could indeed be topics to be aware of. The issue mentioned by one member of high spreads in banks would rather be within EBAs remit, but ESMA is looking into the benchmarks manipulations together with the European Commission.



**Conclusion:** The SMSG thanked ESMA for the presentation and will come back to some of these topics.

### ***Cost of Data Vendors***

Jean-Pierre Pinatton accounted for the topic of the cost of data vendors according to the presentation shared with the meeting, noting the high costs involved in getting access to relevant data.

Member comments included:

- Data is also highly important for the investigation into market abuse cases,
- It was remarked that some data on individual stocks in real time is available for free using e.g. Google search functions.

The ESMA Chair remarked that the EMIR Regulation includes a provision on a “reasonable cost” basis for the provision of data, and also noted that issues of competition play an increasingly important role also for securities regulators.

**Conclusion:** The SMSG Chair concluded thanking Jean-Pierre Pinatton for his presentation and stating that the SMSG would consider setting up a working group on the topic.

## **10. Supervisory Convergence issues**

Sophie Vuarlot-Dignac, Head of Unit for legal, cooperation and convergence, presented with the issue for the SMSG setting out the work done in the area of peer reviews and breach of union law investigations. The SMSG were invited to comment on suitable topics for further peer reviews.

The SMSG members gave the following comments on good candidates for convergence work:

- Securities lending,
- Prospectuses, especially for retail investors,
- AIFMD implementation across the EU will be important to monitor as already now differences in national implementation are beginning to show. In one Member State the private placement rules have been changed so that in reality only authorised AIFMs can market their AIFs, making it difficult for not only third country AIFMs but also AIFMs from Member States who have as yet not implemented the AIFMD, to market into that Member State. Information quality differences where e.g Spain and Portugal do monitor annual reports whereas others do not.



- Shareholders' agreements in respect of takeover law where the definitions are very poor in national law as well as in the EU,
- Mystery shopping could be a tool to use,
- Possibly the SMSG could be consulted on peer reviews.
- Acting in concert – relevant for both the take-over remit but also for the Transparency directive,
- The MiFID Compliance Function Guidelines, also subject for possible work by the SMSG,

**Conclusion:** The SMSG Chair concluded that the SMSG would get back to supervisory convergence matters at future meetings.

## 11. CP on Alternative Performance Measures

Roxana Damianov, ESMA, presented the main content of the draft ESMA consultation paper on Alternative Performance Measures, according to a presentation shared with the meeting, and informed that the consultation paper would go for approval to the next ESMA Board meeting and thereafter be opened for consultation.

One SMSG member noted the varying implementation of the transparency directive and had questions on the formal procedures.

**Conclusion:** The SMSG Chair noted that SMSG would consider a working group on the topic once the consultation period had opened.

## 12. ETF

Steffen Kern and Jean-Baptiste Haquin, ESMA, presented the finding of ESMA in the area of Exchange Traded Funds (ETF). The ESMA study had been initiated following requests from the SMSG that the ETFs are not offered to retail customers is to their detriments.

Comments from the SMSG included:

- Three major fund managers have around 80% of the market and ETFs are mostly offered to institutions, and for a retail client it is very difficult to buy,
- One member noted that the situation is very different in the US where ETFs are offered to retail clients,
- Only 5 % of ETFs are handled in passive strategies in the EU, which is very low,



- It was remarked that the ESMA paper does not respond to the issue of distribution, and that in the EU only UK and NL have rules regarding conflicts of interest, for distributors.
- A peer review on suitability of enforcement of the best interest of the retail investor in the EU would be a welcome topic.
- It was noted that the report was giving results contrary to the evidence presented by EuroFinuse which looked at retail index-funds, not institutional index funds. Therefore the conclusions of the ESMA study could be challenged. The key question remains un-answered, which is why ETFs are not offered to retail customers. Also the French AMF mystery shopping study has demonstrated that ETFs are not offered.
- One member questioned if ETFs would be the type of product the SMSG would like to see extended to retail customers.
- The inducements were identified as an important factor.

The ESMA Chair stated that distribution is an important topic and that inducements play an important role in the current business model of investment advice. It would now be for the SMSG to comment on the findings of ESMA.

**Conclusion:**

It was concluded that the SMSG will provide further input on the issue.

**13. MiFID – SMSG Capital Market Structure Working Group up-date**

The item was not discussed, and the SMSG will come back to the topic at future meetings continuing work begun by the previous Group.

**14. AOB**

There was no other business.

List of Participants at the SMSG meeting on 29 January 2014

<b>Name</b>	<b>Organisation</b>	
Angel Berges-Lobera	Professor of Finance, Universidad Autonoma Madrid	Present
Thomas Book	CEO, Eurex Clearing AG	Present
Salvatore Bragantini	Advisor to Borsa Italiana (LSE Group)	Present
Marina Brogi	Professor of Capital Markets, La Sapienza University, Rome	Present
Lubomir Christov	Advisor to Bulgarian Association "Active Consumers"	Present
Pierre-Henri Conac	Professor of Commercial and Company Law, University of Luxembourg	Present
Elizabeth Corley	CEO, Allianz Global Investors	Excused
Peter De Proft	Director General, EFAMA	Present
Carmine Di Noia	Head of Capital Markets and Listed Companies, ASSONIME	Present
Jaroslawn Dominiak	President of the Management Board of the Association of Individual Investors	Present

Krzysztof Grabowski	Financial Market Participant, Corporate Governance Advisor	Present
Judith Hardt	Director General, FESE	Present
Fernando Herrero	Member of Board ADICAE, Spanish Banking users association	Present
Anne Holm Rannaleet	Senior adviser, IK Investment Partners Ltd.	Present
Alexander Justham	CEO, London Stock Exchange	Present
René Karsenti	President and Board Member, ICMA	Present
Jesper Lau Hansen	Professor of Law, University of Copenhagen	Present
Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Present
Jan Maarten Slagter	Director, VEB (Dutch Association of Shareholders)	Present
Niamh Moloney	Professor of Law, London School of Economics and Political Science	Present

Zsolt Nagygyörgy	Head of Compliance CIB investment Funds,	Present
Jean-Pierre Pinatton	Chairman of the Supervisory Board of Oddo & Cie Group	Present
Guillaume Prache	Managing Director EuroFinUse	Present
Chrystelle Richard	Associate Professor Accounting and management Control Dept., ESSEC Business School	Present
Lindsey Rogerson		Present
Giedrius Steponkus	Chairman, Lithuanian Shareholders Association	Present
Stavros Thomadakis	Professor Emeritus in Financial Economics of the National and Kapodistrian University of Athens	Present
Rüdiger Veil	Professor and Managing Director, Institute for Corporate and Capital Markets Law, Bucerius Law School, Hamburg	Present
Chris Vervliet	Senior Risk Manager, KBC Asset Management	Present
Gabriele Zgubic-Engleder	Chair of the Board VKI, Head of the Austrian Federal Chamber of labour	Present



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Steffen Kern  
Jean-Baptiste Hquin  
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