

Summary of conclusions

Securities and Markets Stakeholder Group

Date: 10 April 2014
Time: 9:00-17:00
Location: ESMA, 103 rue de Grenelle, 75007 Paris
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1. Adoption of agenda

The agenda was approved.

2. Adoption of the Summary of Conclusions from the meeting held on 29 January

The summary of conclusions were approved subject to one amendment from Guillaume Prache regarding the reasons behind his decision not to candidate as Chair for a second term, and some minor drafting improvements on a few other places.

3. Report from the Steering Committee

The SMSG Chair thanked the Vice-Chairs for their work in the preparation of the meeting and reported on the activities of the steering committee, including agreeing on its internal working methods, the setting up of several working groups, writing letters to Chairs and Vice-Chairs of the other stakeholder groups inviting to a common meeting, possibly around the 4 June ESA's consumer day in London.

The ESMA Chair gave his views on the functioning of the ESMA consultative working groups stating the difference in scope and composition between the CWG's and the SMSG. While the SMSG has a clear formal role under the ESMA regulation it has in the past focused on the single rulebook and to some extent on stability issues, e.g. under the recent market topics, but it has to a lesser degree been active on supervisory convergence matters, which is also a highly important area for attention of the SMSG and where the knowledge that SMSG members have of the functioning of the market would be valuable to ESMA. It should also be noted that consumer protection issues are not only connected to investor protection issues, but are equally present in relation to markets regulations. While the CWG experts have been selected mainly on the basis of their detailed expertise and close connection to the market the SMSG members form a more heterogeneous group representing various interests, including from the industry associations.

Members of the SMSG expressed a wish to be consulted first or at the same time, as the CWGs, and remarked that it would be useful to have a clearer idea of the day-to-day agenda of ESMA in order to be able to provide input at an early stage. It was emphasized that precisely because the SMSG represents a broad constituency of stakeholders it is important that the SMSG is first to be consulted in order to provide a view of the more general principles at stake in the work contemplated by ESMA.

In regard of the idea that a data room could be used to share documents, e.g. with CWG or before the SMSG meetings, the ESMA Chair noted that there are several more pressing IT –projects for ESMA and that a data-room is not among the current priorities. The SMSG is free to set up a method for consulting with the CWG if it wishes.

4. European Parliament Report on the ESFS Review

The Vice-Chair Judith Hardt noted that the knowledge of the activities of the Stakeholder groups was weak among certain key persons including MEPs. Other members noted that the SMSG would need a strategy for engagement.

The SMSG Chair updated the Group on the main content of the European Parliament report on the ESFS review, noting firstly the remarks made in the report especially on the role of the ESMA Chair in the governance structure of ESMA and secondly the remarks on the functioning of the stakeholder groups of the three ESAs. The SMSG discussed briefly these two aspects of the report and it was noted that the views of the EP on governance coincided with those of the SMSG as expressed in the SMSG own initiative report regarding the ESFS review.

5. Recent market developments

Peter De Proft informed the SMG on the work with regard to SIFIs, Systematically Important Financial institutions, based on a slides presentation shared with the Group.

The Discussion included questions how funds that shrink or fail would be treated and how many funds that would qualify for the threshold of 100 million Euro.

ESMA representative noted that there are different legal frameworks, but it is not an unregulated area. Close to bank and insurance, the size limit of 100 million would seem to catch a very limited number. Perhaps both size and activity should be considered.

SMSG members noted that there are also very important smaller players, such as the Spanish crisis showed. For the systemic market risk one should focus on product, not market for monitoring. It is a global market. The leverage makes it very difficult to spot risk. Other members agreed that the definitions are very difficult and that there is a maturity mismatch. The Vice-Chair Peter De Proft noted that no EU funds would fall within the level of the regulation.

ESMA Chair noted that the blueprint for the regulations comes from the banking area and that it is not obvious that the risks in the asset management area are lower. The question seems to be what you do if the identified entity is not systemically relevant.

6. MiFID II – major themes and topics

Vice-Chair Judith Hardt presented the main components of the MiFID II, according to a presentation shared with the meeting. The presentation also included a comparison of the new MiFID II and the existing MiFID.

Rodrigo Buenaventura introduced the key work that ESMA will have to do under MiFID II in terms of Markets technical advice and technical standards, followed by presentations by his ESMA colleagues on the main elements of the Transparency and Trading obligations disclosure elements, the work on microstructural issues as well as on the requirements on Data reporting.

The Presentation material included six areas where ESMA is and will continue to undertake work in particular as follows:

- Transparency and Trading Obligations
- Trading Venues' Organisational Requirements
- Microstructural Issues
- Data Publication and Access
- Commodity Derivatives

SMSG members commented that in principle it would make sense to essentially mirror the structure of the ESMA groups in the setting up of the SMSG work. It was noted that the transparency and trading obligations are quite different between the equities and the bonds side and therefore should be divided. As regards trading venues organizational requirements this topic has to an important degree been covered in the work done by SMSG on SME's and a working group. The comment was also made that the data publication and Data access were really two different topics that could be covered in separate working groups.

The type of regulatory tools will vary and will have different deadlines as follows:

- Regulatory Technical Standards (RTS) (12 months from date of Publication of MiFID II in Official Journal)
- Implementing Technical Standards (ITS) (18 months from publication)
- Delegated Acts – ESMA is mandated to provide technical advice to the Commission and the EC itself will draft the level 2 rules (8 months from mandate)
- Guidelines (18 months from date of Publication)

Sarah Raisin presented the work that will be undertaken by ESMA in the area of investor protection. The areas of work for ESMA will include:

- Independent advice
- Inducements
- Product intervention
- Product governance
- Information on costs and charges

The SMSG discussion noted that the coming legislation in MiFID II will be of utmost importance to the financial markets in the EU for a long time ahead.

One member raised the point that there is no material for retail investors available that can explain to them what the changes of MiFID II will involve, and requested that ESMA should draw up such a document for the public in “plain English”.

Conclusion: The SMSG decided to set up working groups which will essentially replicate the work that will be carried out by ESMA with some modifications, so that there will be separate working groups for transparency and trading obligations for equities and for bonds. There may not be working groups for trading venues organizational requirements or for micro-structural issues as the SMSG already has done some work in these areas. The establishment of working groups will be settled by e-mail after the meeting.

The ESMA Chair concluded that the timelines will depend on ESMA deadlines, so in cases where ESMA has to deliver its advice to the European Commission for delegated acts the deadlines will have to be strict whereas a little bit more time may be granted when ESMA delivers RTS, ITS or Guidelines.

ESMA committed to draw up a document in plain English on the effects of MiFID II for retail investors.

7. Crowd funding

The rapporteur Angel-Berges Lobera presented a final paper of the group for agreement of the Group. He accounted for the numerous sources of the report. The market is estimated to be around 3-6 billion USD with around 1/3 of that in the EU and approximately half of that amount in the UK. With 50 % as financial crowd funding 90 % of that concerns loans and 10 % securities leading to an overall market of approximately 100 million Euros.

ESMA, Laurent Degabriel, mentioned the mapping of the EU legal situation that ESMA has conducted and that it has shared with the European Commission.

Conclusion: The SMSG approved the report. It was concluded that the report should be published.

8. Market Abuse Directive working group

ESMA presented the main time-lines and the work it will have to undertake with regard to the MAR, which will include 15 technical standards (RTS/ITS), seven or eight topics for technical advice to the Commission on delegated acts and three Guidelines and Recommendations.

The current working assumption is that MAR will enter into force in June 2014 and that ESMA will have eight months to deliver technical advice and 12 months for technical standards.

ESMA has had 60 responses to its discussion paper and will firstly focus on the regulatory deliverables with the drafting of one consultation paper on technical standards and another one on technical advice.

The SMSG Rapporteur Carmine Di Noia presented the paper produced by the working group and emphasized the importance of the topic as one which SMSG should continue to follow. It was emphasised that the SMSG would be able to respond again to these issues as they would reappear before ESMA, so the paper only presented the initial views of the SMSG on the more principled aspects of the work ahead.

Comments from members included the importance of market soundings as one critical aspect.

Conclusion: The SMSG paper including comments on the ESMA Discussion Paper was agreed in principle subject to the inclusion of a few minor comments and possible additional language improvements be inserted in the weeks to follow but at the latest by 28 April. The paper is thereafter to be published.

9. Consumer Protection

The Rapporteur of the working Group, Guillaume Prache, presented the work undertaken by the working group, noting that it remained sceptical of the results that the ESMA ETF study had showed. The working group would instead suggest that ESMA focuses on mystery shopping in collaboration with national competent Authorities and on peer reviews.

Laurent Degabriel presented the preliminary results obtained from the questions that had been posed to NCAs on the work they are undertaking in supervision of how the costs and cost effectiveness of financial instruments, and low cost alternatives, are informed on or advised to clients. He reported that the preliminary answers given to these questions were not entirely satisfactory and that ESMA would continue to investigate the matter. He remarked on the difference between cost and cost effectiveness.

Comments from SMSG members included that the best interest of clients in the EU were not taken as seriously as for clients in the US, and that UCITS are listed in Denmark but are not considered ETFs, which underlines the different views of ETFs in the EU.

Giedrius Steponkus shortly presented findings of a study conducted to compare general conditions of contracts offered by banks in Lithuania. The study shows that in Lithuania housing loan contracts have 3 to 10 times more text than those by the same banks used in Sweden and Finland. Furthermore, the Lithuanian housing contracts are so complex that it seems dedicated for lawyers rather than ordinary customers. Significant part of the unfavourable conditions of the contracts applicable to Lithuanian customers by the same banks operating both in Scandinavia and in Lithuania is not applied in Scandinavia. Guillaume Prache, Lubomir Christov and Krzysztof Grabowski commented that same practice takes place in other countries.

Conclusion: It was noted that suitability guidelines is forming part of the work programme of the ESMA Review Panel and that cost aspects would be part of that work stream.

10. Cost of Data Vendors

The rapporteur Jean-Pierre Pinatton presented the work done by the group and related the challenging discussions that had been held in the group. There are not as of yet a clear conclusion on the outcome from the working group, but given the importance of the matter the working group would like to continue its work.

Conclusion: The working group shall continue as part of the MiFID II work stream and present progress at the next SMSG meeting.

11. CRA group

The rapporteur Lindsey Rogerson presented the paper tabled to the meeting. She indicated that for the future work regarding CRA, she would find it useful if the SMSG could comment on the matter of European Ratings Platform.

Conclusion: The Paper was approved and the rapporteur would make some minor adjustments before publication. Work will continue in a new working group regarding the European Ratings Platform.

12. APM – Alternative Performance Measures

The Rapporteur Krzysztof Grabowski presented the results as a note from the working group, which outlined the response the working group contemplated and a time line for completion.

In accounting it is very important that words are given the same meaning in different areas of legislation. It was noted that alternative performance measures are voluntary and that IFRS can be used. Members noted that the level for equities and for bonds was different. Comments were given on the text of paragraphs 7, 11, 13, 16 and 17.

Conclusion: It was agreed as per the proposal of the rapporteur that the paper should be prepared basing on the presented note and taking comments into account and thereafter circulated to the full group for decision at the end of the month before publication in time for the deadline of the consultation.

13. Transparency – Major shareholder notification

The SMSG Rapporteur Rüdiger Veil gave a presentation of the major elements of the Consultation paper on major shareholder notification provisions and the indicative list subject to notifications in the transparency directive as well as a timeline for completion of the response to the consultation. The SMSG discussed i.a. the topic of financial instruments and the fact that convertible bonds are used as a loophole created in level 1; that the delta is used only for cash-settled instruments and that the terminology is not suited for fiduciary owners.

Verena Ross noted that for a full harmonization directive, ESMA would need corresponding powers.

Conclusion: The SMG will produce an advice which will be decided in written procedure in the second half of May in view to adopt the paper for publication before the deadline of the consultation.

14. AOB

The date of the September meeting was fixed to the 23 September. A completed meeting calendar will therefore be distributed to the SMSG.

List of Participants at the SMSG meeting on 10 April 2014

| Name | Organisation | |
|----------------------|--|---------|
| Angel Berges-Lobera | Professor of Finance, Universidad Autonoma Madrid | Present |
| Thomas Book | CEO, Eurex Clearing AG | Excused |
| 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 | Present |
| Peter De Proft | Director General, EFAMA | Present |
| Carmine Di Noia | Head of Capital Markets and Listed Companies, ASSONIME | Present |
| Jaroslav 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 | Excused |
| 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 | Chief Compliance Officer MFB Hungarian Development Bank Private Ltd | 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 |

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|--------------------------|--|---------|
| 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 |

ESMA

Steven Maijoor
 Verena Ross
 Rodrigo Buenaventura
 Carsten Osterman
 Alberto Garcia
 Nuno Casal
 Catherina Sutcliffe
 Laurent Degabriel
 Tomas Borovsky
 Carla Pereira
 Jean-Baptiste Haquin
 Paolo Santella
 Jacob Lönnqvist