

SUMMARY OF CONCLUSIONS

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

Date: 26 May 2016
Time: 09:00 – 12:30
Location: ESMA, CS60747 – 103, rue de Grenelle, 74345 Paris
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No Item

1. Opening remarks

The ESMA Chair welcomed the SMSG, in the current composition, to its last meeting with the ESMA Board of Supervisors. The SMSG Chair expressed the gratitude of the Group that so many Board Members attended the meeting.

2. End of Term Report

The SMSG Chair presented the SMSG End of Term Report which the group is currently finalizing summarising its work over the last two and a half years. The report includes a discussion on the institutional setting of the SMSG, a self-assessment report and an account of its work during the past mandate period.

The SMSG Chair stressed that the draft was work in progress and not intended to be adopted until the end of June, when the current mandate expires. He mentioned the wide mandate of the Group and its wish to work on high-level issues rather than detailed technical consultations, and he mentioned the need to have supervised entities represented in the group. He further noted the added value of the SMSG in producing a coherent view with very few divergent

opinions, and the wish of the Group to be consulted on Q & A documents where appropriate, which could for example take place as part of an ex post review.

The ESMA Chair noted that ESMA could reflect upon possibly using in some cases guidelines instead of Q&As when the issue has more far-reaching consequences for stakeholders and consultation would be important. ESMA in any case will need to keep some kind of quick supervisory tool available in order to make its view known on the interpretation of urgent supervisory matters.

3. Funds Liquidity

René Karsenti and Peter De Proft presented a report from ICMA /EFAMA exploring the liquidity risk management processes that fund management companies follow when setting up a fund and during the life of the fund itself. The paper also describes the existing EU regulations and the recognised market-based tools available in most European jurisdictions for liquidity risk management. The report shows that fund managers take primary responsibility for managing risk in their own funds and the tools are comprehensive and appropriate for liquidity management in both normal and exceptional circumstances. The report also shows great divergence across EU jurisdictions in the types and uses of tools available other than those resulting from UCITS and AIFMD. The report recommends wider use of non-legislative market based tools and encourages use of existing data reported to national authorities for better analysis of fund liquidity. It also supports the continuing efforts of the trade organisations to develop further guidelines for liquidity risk management.

One Board member noted that FSB/IOSCO work has begun on liquidity stress tests and AML regarding who their investors are.

SMSG members' comments referred to the need for more exchanges of best practices in order to ensure more consistent application of UCITS/AIFMD liquidity and risk management processes, noting that the US has developed transparency requirements on how funds can respond to unfavourable liquidity conditions and the. It will also be important to not put domestic products at a disadvantage vs. cross-border funds in order to avoid arbitrage across asset classes.

The ESMA Chair thanked the SMSG members for their presentation.

4. BRRD – impact on securities markets

SMSG member Pierre-Henri Conac gave a presentation to the SMSG on the directive for establishing a framework for recovery and resolution of credit institutions and investment firms including bail-in provisions regarding retail investors and on the role of NCAs. He noted several instances where retail clients recently had suffered important losses after having

invested in sub-ordinated debt instruments issued by banks and called ESMA to issue a statement on self-placement and the risk of bail-in, a [Guideline on self-placement](#), and launch a [supervisory convergence exercise](#). He emphasized the strong role of the MSG in raising this issue with ESMA since 2012 in several texts (Guidelines and draft technical standards).

David Lawton, FCA, announced in his role as chair of the Investor Protection and Intermediaries Standing Committee that ESMA in a few days' time will publish a statement including a reminder of responsibilities when selling bail-in securities. The statement includes a notice that there will likely be a personal recommendation involved when selling such financial instruments to private investors, which leads to the important consequence that suitability requirements become applicable.

Members noted i.a. that a balance needs to be struck between stability and investor protection. One member commented that BRRD assumes that individual consumers are in a position to assess the credit worthiness of banks, and referred to a case where six Slovenian banks had caused big losses for consumers back in 2014.

The ESMA Chair noted that both ESMA and EBA argue for transparency to investors on the bail-in status of debt and agreed that it was indeed difficult for private consumers to assess the credit worthiness of banks.

5. Peer Review on Prospectuses

Lourdes Centeno, Chair of ESMA's Supervisory Convergence Standing Committee (SCSC) and Vice-Chair of the CNMV, presented the main findings of the prospectus peer review which has been concluded and recently submitted to the Board of Supervisors recently. The review, covering 2013 and 2014, which has not been published yet, has looked at how the Prospectus Directive is being applied across the EU. The review has included six onsite visits to France, Ireland, Luxembourg, the Netherlands, Norway and Poland. Four prospectuses were selected randomly at each NCA. Stakeholder engagement took place with 12 firms through the course of the visits. The review demonstrated divergent practices in several areas, with regards to e.g. the decision-making process, the application of a second reader in the process, the use of advertisements and the incorporation by reference. There was also a broad range of approval times, and a number of provisions appeared to be difficult to apply, e.g. as regards comprehensibility.

The review includes a number of recommendations, such as a need to clarify risk factors, comprehensibility and the need to elaborate practical supervisory tools such as efficiency of the approval process and exchanges on live cases as well as consistent approach towards products supplements.

Convergence of risk based supervision should also be pursued so that there are similar comments on similar prospectuses from various authorities. It was noted that the time used

until approval was often dependent on the quality of the submissions from the market participants, and that if a file is complete from the start this has an important impact on speeding up the review process.

The report will include a number of recommendations with regard to topics which could benefit from further clarification on a legislative level, areas where further guidance by ESMA could be considered as well as some elaboration of practical supervisory tools.

The Chair thanked Lourdes Centeno for her presentation.

6. SMSG Supervisory convergence WG

Rüdiger Veil, Rapporteur of the SMSG Supervisory Convergence Working group presented a note on SMSG involvement in supervisory convergence related work. He noted the various tools that ESMA has at its disposal for supervisory convergence including a few suggestions for a stronger follow-up of peer reviews. In particular, ESMA should look further into matters of enforcement. The presentation also developed the SMSG's thinking as regards the involvement of the SMSG as well as other stakeholders into the work on peer reviews and the detection of inconsistent application of EU law. He also raised the possibility for the SMSG to be consulted in some form on Q&As.

The SMSG Chair Jesper Lau Hansen concluded that the question on whether to open for the possibility of direct contacts from stakeholders to the SMSG ought to be left for the next SMSG to respond to.

There were comments among the meeting participants on the high importance of Q&As for market participants and some ideas on the possibility of some kind of consultation on them.

The ESMA Chair noted that ESMA will in any case always need a quick convergence instrument, without the need to consult on.

The ESMA Chair thanked all for participating in the meeting, and thanked the SMSG for its constructive work during the two and a half years it had been in service.