

## Summary of Conclusions

### Securities and Markets Stakeholder Group

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**Date:** 12 April 2018  
**Time:** 9.00 - 16:30  
**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. Opening statements from the Chair

The SMSG Chair opened the meeting and welcomed the two new members Geoffrey Bezina and Juan Viver.

#### 2. Report from the Steering Committee

The SMSG Chair accounted for the work that had taken place between the stakeholder groups of the three ESAs in order to produce a letter to the European Commission, Council and Parliament on the topic of the 3 ESAs review.

The SMSG Chair explained that the stakeholder groups were at different levels in their respective discussions and that the current letter was a compromise, which needed to stay rather high-level. SMSG member Jennifer Payne presented the draft letter for the discussion of the group that followed. Members gave a number of suggestions, which will be taken into account when the steering committee re-discusses the letter with members of the other stakeholder groups.

The SMSG Chair also accounted for plans of an end of term report. The SMSG Chair also explained that rapporteurs will be asked to monitor more closely whether and how ESMA takes into account SMSG advice in its Final Report on Guidelines/Standards.

As part of that discussion, the SMSG members also reminded that they would like to systematically receive the agenda of the ESMA-CWG meetings.

### **3. Sustainable finance**

SMSG member René Karsenti presented the Commission Action Plan on sustainable finance highlighting the numerous areas where ESMA, as well as the other ESAs, would need to carry out work according to a very ambitious timeline.

The SMSG and ESMA discussed how the SMSG could best contribute to the work that ESMA will undertake in this area. Some members noted the timeline would not seem realistic, and suggested that the group could make a public statement on that aspect.

ESMA, Roxana Damianov, explained that ESMA's work in relation to sustainability related in part to the Commission action plan, but that also the proposal for the 3 ESAs review includes changes to ESMA's objectives, and requires a more systematic inclusion of sustainability aspects in ESMA's work.

The SMSG Chair concluded that the SMSG should set up a standing committee for 2018 under leadership of René Karsenti, to follow the various action points under ESMA's remit.

### **4. Resilience in corporate reporting**

SMSG member Paul Koster presented an updated version of a working paper on resilience in corporate reporting. Members of the group welcomed the paper. Comments went in different directions including connection to the sustainable finance work, how much informative is the overall financial report for investors, and the Commission Consultation on the Corporate Reporting Fitness Check.

ESMA, Roxana Damianov, commented on the work ESMA is carrying in relation to non-financial reporting information and how ESMA monitors alternative performance measures.

The SMSG Chair concluded noting the decision taken that the group should contribute to the European Commission consultation on Fitness.

### **5. Supervisory convergence topics**

#### **a. Interactive rule-book**

ESMA presented its new launched web tool on interactive rulebook. It is an on-line tool that aims at providing a comprehensive overview and easy access to all level 2 and level 3 measures adopted in the areas in ESMA's scope. The rulebook is currently covering UCITS and the next legal acts to be covered will be the CRA regulation and MiFID/ MiFIR.

The SMSG expressed high appreciation for the rulebook and provided a few suggestions.

### **b. Complaints handling**

ESMA presented its work in relation to complaints handling in context of work leading up to breach of union law investigations and the criteria it has to apply in the procedure of investigation. ESMA explained the process in place and criteria for which investigations had not formally led to a breach of union law case.

## **6. Recent market developments**

### **a. Trends, Risks and Vulnerabilities**

ESMA, Christian Winkler, presented ESMA's latest report on Trends, Risks and Vulnerabilities (TRV). Among the risks were early 2018 market volatility, high credit risk and political risks dominated by Brexit and the geopolitical landscape. There was a negative outlook for operational risk, reflecting mounting risks of cyber-attacks.

SMSG and ESMA discussed aspects in relation to e.g. commodity derivatives, herd behaviour, short positions, ETF risks, and the decreasing number of listings.

The ESMA Chair emphasised the internal use ESMA makes of the TRV report in order to identify risks, which may lead to further policy work.

### **b. Contract continuity**

ESMA, Mina Filippa, updated the SMSG on ESMA's work in relation to contract continuity, notably in relation to legal issues affecting cross-border financial services contracts between the UK and the EU27 due to the EU financial services regulatory regime no longer applying to the UK as of 30 March 2019. The discussion especially focused on derivatives contracts, in order to propose possible actions that could be taken to face those issues. ESMA has been looking at general legal consequences of UK financial firms (and products) losing their passporting rights, both in relation to existing and future contracts, with particular attention to OTC derivatives contracts.

SMSG member professor Blanaid Clarke presented an analysis of the concept of contract frustration under English law.



The SMSG Chair thanked ESMA and Blanaid Clarke for their contributions and concluded that the SMSG would come back to the topic at future meetings.

## **7. European Commission mandate to ESAs on the cost and past performance of the main categories of retail investment products**

ESMA has together with the other two ESAs received a mandate to contribute to the work the Commission is undertaking as regards costs and charges. The request to the ESAs has a broad scope also covering pensions.

ESMA will start the work as regards UCITS using commercial data, but will not have access to data on distribution costs. ESMA will also aim at providing comparability across the sectors. SMSG members had comments as regards scope, objective, possible further requests for data from market participants, and time/money weighted return.

The ESMA Chair stated that ESMA will be able to provide an interim update to the SMSG probably after summer.

The SMSG Chair suggested that while advice on the methodology might be too early now, the working group under Giovanni Petrella could already start to work.

## **8. Product Intervention**

ESMA, Salvatore Gnani, explained the content of the product intervention measures that ESMA had agreed on 27 March on product intervention measures in relation to binary options and CFDs (Contracts for Differences). The main reason behind the measures are the significant investor protection concerns that ESMA and the NCAs have witnessed over time for CFDs and binary options.

ESMA has had a very high number of responses to its call for evidence and made some changes to its earlier proposals. ESMA also explained next steps as regards translation, decision, start of application and confirmed the temporary nature of the measures (three-months).

## **9. Discussion on May meeting with the Board of Supervisors**



The Group discussed possible agenda items for the May meeting together with the ESMA Board of Supervisors.

#### **10. AOB**

There was no other business.

## PARTICIPANT LIST

1.	Christos Alexakis	Associate Professor in Finance, ESC - Rennes Business School	Present
2.	Georg Baur	Member of Management Board, VOEB, Association of German Public Banks	Present
3.	Harald Benink	Professor of Banking and Finance, Tilburg University	Present
4.	Jean Berthon	Vice-Chair, Better Finance	Present
5.	Geoffrey Bezzina	Executive Chairman, Office of the Arbiter for Financial Services,	Present
6.	Lubomir Christoff	Advisor, Bulgarian National Association Active Consumers	Present
7.	Blanaid Clarke	Professor of Corporate Law, Trinity College	Present
8.	Veerle Colaert	Professor of Financial Law, University of Leuven	Excused
9.	Elizabeth Corley	CEO, Allianz Global Investors	Excused
10.	Bartosz Dziemaszkiewicz	Vice-President, Polish Individual Investors Association	Present
11.	Javier Echarri	CEO, LDS Partners and Advisor on SME related matters	Excused
12.	Mark Hemsley	CEO of BATS Chi-X Europe	Excused
13.	Kerstin Hermansson	Managing Director, Swedish Securities Dealers Association	Present
14.	Christiane Hölz	Lawyer, DSW	Present
15.	René Karsenti	President, ICMA	Present
16.	Paul Koster	Chair, European Investors Association	Present
17.	Eric Litvack	Managing Director, Societe Generale	Excused
18.	Rainer Lenz	Chairman of the Board of Directors, Finance Watch	Present

19.	Jennifer Payne	Professor of Corporate Finance Law, University of Oxford	Present
20.	Giovanni Petrella	Professor of Banking, Università Cattolica, Milano	Present
21.	Rainer Riess	Director General, FESE	Present
22.	Anna Maria Romano	Accounting expert, FISAC CGIL	Excused
23.	Ignacio Santillan	CEO, FOGAIN, Spanish Investor Compensation Scheme	Present
24.	Jean-Marc Servat	Chair, EACT	Present
25.	Jarkko Syyrilä	Head of Compliance, Nordea Asset Management	Present
26.	Greg Van Elsen	Financial Services Officer, BEUC	Present
27.	Chris Vervliet	Senior Risk Advisor, KBC Asset Management	Present
28.	Rüdiger Veil	Professor of Law, LMU Munich	Present
29.	Juan Manuel Viver	Financial Consumer representative	Present
30.	Tim Ward	CEO, Quoted Companies Alliance	Present