



## Summary of Conclusions

### Securities and Markets Stakeholder Group

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<b>Dates:</b>	5 February 2019
<b>Time:</b>	9.30 - 16:45
<b>Location:</b>	ESMA, 103 rue de Grenelle, 75007 Paris
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#### 1. Introductory remarks from the ESMA Executive Director

ESMA Executive Director Verena Ross, welcomed all new, continuing and re-selected members to the fourth edition of the SMSG. She highlighted the great importance ESMA attaches to the SMSG and the valuable advice the SMSG has provided to ESMA. She also elaborated on the various type of advice the SMSG usually provides, both on ESMA consultations and following own initiative work.

#### 2. Adoption of agenda

The agenda was approved. ESMA was also asked to briefly present its ongoing open consultations, under aob, in the agenda.

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

All SMSG members presented themselves to the rest of the group, highlighting their professional background.

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

ESMA Executive Director provided an overall explanation on the Rules of Procedures and their background, opening the floor for suggestions.



The proposal was raised to include a clear feedback from ESMA to any advice of the SMSG that has been provided. Following a discussion between SMSG members and ESMA Executive Director, it was agreed to clarify in the Rules of Procedure, that ESMA shall include an explicit written feedback to the SMSG advice, e.g. into its feedback statements, in addition to giving oral feedback on the advice given.

There were requests from the Group to arrange meetings of the Group also before joint meetings with the ESMA Board of Supervisors and it was agreed to arrange that. It was further discussed whether or not to invite external experts more regularly, where the Executive Director noted the fact that this is already foreseen as a possibility in the existing Rules of Procedures. Regarding the meeting calendar there was the request to have meetings more evenly spread over the year. It was agreed to review the meeting calendar for 2019, but given limited flexibility it was noted that – for now – SMSG members should assume the current calendar.

## **5. Election of SMSG Chair and Vice-Chairs**

The two candidates for the Chair position addressed the Group with the reasons for their respective candidacies, their views on the SMSG's role and functioning as well as their professional background. The election was conducted by secret ballot. Following a count of the votes cast by the ESMA Executive Director and one ESMA Staff member, the ESMA Executive Director announced that Veerle Colaert had received the highest number of votes and was thus elected SMSG Chair.

Subsequently, the ESMA Executive Director opened the floor for the candidates interested in the Vice-Chair positions. The Group clarified that it wishes to continue the practice of having two Vice-Chairs as provided for in the Rules of Procedures. The two candidates explained the reasons for their candidacy, their professional background, and the roles and tasks they have had in the previous SMSG. There were no further candidates. The SMSG unanimously elected Christiane Hölz and Rainer Riess as Vice-Chairs by acclamation.

## **6. Cost and past performance of retail products**

ESMA staff member Christian Winkler, presented the ESMA report on performance and cost of retail investment products in the EU and informed about two key statistical takeaways: (i) there is limited data availability (no regulatory UCITS data, limited cost indicators in AIF, no suitable statistical sources for SRPs) but UCITS findings are robust, and corroborated by existing third-party analyses; and (ii) substantive costs are eating out sizeable parts of gross performance; and costs are significantly higher for retail compared to institutional investors;



costs are also higher for active equity funds compared to passive funds; with large variations across member states.

SMSG members discussed i.a. the relevance of an assessment of underlying financial risks, the impact of fees on the returns, cost structure, the quality and composition of data used in the report, the relevance of plain language for retail investors, and links to sustainability. ESMA emphasised the nature of the report as a living document that may incorporate in future iterations relevant feedback provided by the Group, such as the idea to include information on benchmarks. ESMA highlighted the challenges that underlay the study, e.g. the lack of available data or the fact that structured retail products are complex and vary significantly across individual member states.

ESMA Chair Steven Maijor thanked the SMSG for useful comments made. He stressed that the structure of the report was designed to increase transparency and segregate the factual evidence found from policy recommendations.

The SMSG Chair Veerle Colaert concluded that the SMSG decided to set up a working group on cost and past performances of retail products with SMSG member Giovanni Petrella to function as rapporteur. Members will be invited to express their interest in joining this Working Group.

## **7. ESMA Work programmes**

ESMA Executive Director Verena Ross presented ESMA's different work programmes for 2019 including ESMA's key priorities and provided SMSG members with further explanations on high level key priorities, resources, guidelines on non-financial reporting, and the challenges imposed by the UK's withdrawal from the EU.

SMSG Chair Veerle Colaert informed the meeting on the usual methods used in the SMSG as regards the creation of working groups, noting that the SMSG will contribute in the course of 2019 to the development of future work programmes. She noted that in view of the importance of MiFID II in ESMA's work programme, and in respect of its supervisory convergence work in this area in particular, the SMSG should set up a working group on MiFID II to give input to ESMA on emerging convergence and peer review topics in respect of MiFID II. Kerstin Hermansson agreed to be the rapporteur.

The SMSG also decided to set up a working group on Brexit to give input to ESMA on emerging convergence and peer review topics around Brexit. Blanaid Clarke agreed to be the rapporteur of this working group.

SMSG member Piotr Biernacki suggested to also set up a Working Group on MAR, at this stage to give input to ESMA on STORs.



Members will be invited to express interest in joining the working groups.

## **8. Supervisory convergence**

ESMA staff member Dora Blanchet presented the work performed by ESMA in the context of supervisory convergence. The presentation covered strategic priorities, convergence toolbox, transversal convergence activities, supervisory convergence work programme 2019, and the peer review tool.

The Group provided input to ESMA with regard to emerging convergence issues and peer reviews, major issues linked to Brexit and the implementation of MiFID II/MiFIR, implementation of STOR obligations in the industry, and EMIR data quality peer review. SMSG members also discussed product intervention as well as investor protection issues in light of Brexit.

ESMA thanked SMSG for the input provided. It was also stressed that: product intervention is an important tool which is converted later into national legislation; the work conducted by ESMA has influenced the legislation and supervisory approaches across jurisdictions.

The ESMA Chair explained how the product intervention measures that ESMA has been applying work. In response to a question, he also commented on goldplating which is by the nature of directives difficult for ESMA to address. The Chair also commented on strong UK traditions as regards consumer protection work and noted that it would be important for the EU 27 to ensure to maintain a strong consumer protection perspective in future initiatives.

## **9. UK's withdrawal from the EU**

Roxana de Carvalho, head of ESMA's Corporate Affairs Department, gave a presentation covering the main work streams within ESMA when planning for UK's withdrawal from the EU. She outlined the latest developments, notably covering the recent publications by ESMA on MoUs, supervisory briefings on supervision of non-EU branches of EU firms and the use of UK data in ESMA databases.

SMSG members discussed the topic and pointed to their respective main concerns on topics like share trading obligation and access to CCPs.

The ESMA Chair thanked the SMSG members for their input and mentioned that most of ESMA's preparation work is conditional on the UK leaving without an agreement on 29<sup>th</sup> of March and that it will be reassessed if transitional measures are put in place. The ESMA Chair also mentioned some emerging issues with UK firms active in the EU and also noted that the European Commission is competent for equivalence related work.

## 10. Sustainability

ESMA presented its main sustainability work streams to the SMSG members: (i) Integration of sustainability risks and factors and Consultation Papers on the integration of such elements in MiFID II, UCITS and AIFMD; (ii) Disclosure of ESG Factors in Credit Ratings and Consultation Paper on disclosure requirements applicable to credit ratings; (iii) potential drivers of short-termism in the market; and (iv) user's needs in relation to corporate reporting.

An SMSG Working Group is already working on a response to the consultation on sustainability in MiFID II and in UCITS/AIFMD. The working group has agreed to come up with two separate reports in respect of MiFID II on the one hand and UCITS/AIF on the other hand, responding to ESMA's two respective consultations. Further, the SMSG discussed corporate reporting frameworks, the scope of the short-termism study, compensation schemes, influences arising from non-European markets, the different risk horizons of investors. On "short-termism", it was decided to follow up on this theme and decide at a later stage whether to set up a WG on this topic. Furthermore the SMSG decided to set up a working group on CRA issues provided there was sufficient interest from members.

The ESMA Chair thanked the members for the remarks and noted that further developments on the short-termism work stream were expected on the basis of a potential mandate to be issued by the European Commission.

## 11. AOB

ESMA Executive Director delivered a short presentation on the ongoing ESMA consultations, including the Consultation Papers that were addressed as part of topic 10 of the agenda

- Consultation Paper on integrating sustainability risks and factors in MiFID II,
- Consultation Paper on integrating sustainability risks and factors in the UCITS Directive and AIFMD
- Consultation Paper on Disclosure Requirements Applicable to Credit Ratings

and additional ones:

- Consultation Paper on CSDR GL on Art 6 standardised procedures and messaging protocols



- Consultation Paper on CSDR Guidelines on settlement fails reporting under Article 7(1) of CSDR
- Consultation Paper on draft guidelines on the reporting to competent authorities under article 37 of the MMF Regulation.

There was no additional other business.



## PARTICIPANT LIST

Christos Alexakis	Associate Professor in Finance, ESC - Rennes School of Business	Present
Geoffrey Bezzina	Head of the Arbitrer's office, Malta	Present
Piotr Biernacki	Vice-President of the Management Board, Polish Association of Listed Companies	Present
Blanaid Clarke	Professor of Banking, Trinity College Dublin	Present
Veerle Colaert	Professor of Financial Law, KU Leuven University	Present
Jasper De Meyer	Financial Services Officer, European Consumer Organisation (BEUC)	Present
Nathalie Gay Guggenheim	Head of Regulatory Transformation, Global Banking and Markets, HSBC	Present
Adina Gurau Audibert	Head of Asset Management, Association Française de la Gestion financière (AFG)	Present
Andreas Gustafsson	SVP & General Counsel Europe, Nasdaq (Stockholm)	Present
Troels Hauer Holmberg	Senior Economic Advisor, Danish Consumer Council	Present
Kerstin Hermansson	CEO, Swedish Securities Dealers Association (SSDA)	Present
Christiane Hölz	Managing Director, Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW)	Present
Paul Koster	Managing Director, Dutch Shareholders Organisation	Excused
Jan Kust	Member of the Board, Trade Union of Banking and Insurance Employees in the Czech Republic	Excused
Rainer Lenz	Chair of the Board of Directors, Finance Watch	Present
Eric Litvack	Head of Regulatory Strategy, Société Générale	Present
Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Present
Michael Nietsch	Professor of Law, EBS Universität für Wirtschaft und Recht	Excused

Martha Oberndorfer	Member of the Advisory Council, Austrian Shareholder Association	Present
Giovanni Petrella	Full Professor of Banking, Università Cattolica	Present
Guillaume Prache	Managing Director, Better Finance	Present
Rainer Riess	Director General, Federation of European Securities Exchanges (FESE)	Present
Ignacio Santillán	CEO, Spanish Investors Compensation Scheme for investment firms (FOGAIN)	Present
Martin Scheck	CEO, International Capital Market Association (ICMA)	Present
Alexander Schindler	Member of the Executive Board, Union Asset Management Holding AG	Present
Jean-Marc Servat	Chair, European Association of Corporate Treasurers (EACT)	Present
Santeri Suominen	Legal Adviser, Confederation of Finnish Industries (EK)	Present
Vincenzo Troiano	Full Professor, University of Perugia	Present
Octávio Viana	President of the Board of Directors, Associação de Investidores e Analistas Técnicos Mercado de Capitais (ATM)	Present
Juan Viver	Independent consultant	Present