



Summary of Conclusions

Securities and Markets Stakeholder Group

Dates:	11 April 2019
Time:	9:00 - 16:45
Location:	ESMA, 103 rue de Grenelle, 75007 Paris
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1. Report from the Steering Committees

The SMSG Chair outlined the latest activities of the SMSG, emphasising in particular the work done to provide advice to ESMA on the amendment that had been done to the draft regulatory technical standards on the PRIIPS regulation.

The SMSG Chair also confirmed the plan to hold a preparatory SMSG meeting in the afternoon of 11 July.

2. Approval of the Rules of Procedures

The SMSG Chair presented to the Group a proposal for amending Article 6 (4) of the SMSG Rules of Procedure. The ESMA Chair expressed some reservations regarding too detailed specifications on the format of how ESMA should respond to SMSG advice. Overall, the Group agreed with the proposal and suggested minor changes as to wording.

Additionally, the Group discussed the content of Article 8 (4) of the Rules of Procedure and its applicability to working groups, as well as whether ESMA would be able to implement a dedicated platform to facilitate circulation of meeting documents.

One of the Members asked for the possibility of a web-based solution for communication.

Decision: The draft text inserted into article 6(3) in the draft circulated to the meeting was discussed and agreed in the Group with the exception of the words “dedicated section” and with some minor language amendments to be made.



It was also decided to delete the reference to a written procedure for working groups in article 8(4), since a Working Group does not take actual decisions, but prepare decisions to be adopted by the full SMSG.

It was agreed that web-based communication to share documents with the SMSG before meetings could be more efficient, but that this is not a matter for the rules of procedures. The ESMA Chair suggested to come back to the topic of web-based communication in one of the upcoming meetings.

3. TRV and AIFMD Reports

ESMA Head of Department, Steffen Kern, presented to the Group the ESMA 2019 Report on Key Trends, Risks and Vulnerabilities (ESMA50-165-737) and the ESMA Annual Statistical Report on EU Alternative Investment Funds (ESMA50-165-748).

The first presentation covered (i) overview of risk assessment, (ii) market trends (markets, investors, infrastructure and services, products and innovation, financial innovation), and (iii) vulnerabilities (investor protection, orderly markets, and financial stability), while the second presentation addressed (i) key results; (ii) AIF market size and structure, (iii) liquidity as to hedge funds and real estate, (iv) statistical methods, and (v) the way forward expected by ESMA.

The presentations led to numerous comments as regards to further risks such as those arising from Brexit uncertainty, energy consumption of cryptos, cloud services and outsourcing of data, sustainability and climate change, and liquidity in stress moments.

ESMA explained the methodologies and concepts adopted in the reports and confirmed that some of these risks might be taken into account in future reports.

The ESMA Chair also noted that, on Fintech, ESMA focusses on the risks of the new technology, not so much on the risks to incumbent firms. Competition between incumbents and newcomers is likely to benefit consumers due to prices being driven down and/or quality being improved. The ESMA Chair also commented that ESMA was working on periodic auctions and especially regarding their contribution to price discovery, and ESMA developed views on issues for EU regulators to access cloud service providers for supervisory purposes. He also indicated that he would welcome the views from SMSG members on these aspects at future meetings.

4. UK's Withdrawal from the EU



The SMSG Brexit working group reported on its activities and commented on the advice provided to ESMA, particularly as to contract service continuity, data protection and the ESMA statement on share trading obligation of March 2019.

ESMA Head of Department, Roxana de Carvalho, updated the Group with a presentation on recent political developments and their impact for ESMA work in the field of Brexit.

The Group discussed i.a. the difficulties arising from an extra-territorial impact in the context of STO, market stability and disruption, contract continuity and novation. It was also suggested that ESMA should liaise more with the UK financial regulator and issue clear communication to educate non-financial market participants whose activities are indirectly affected by Brexit uncertainties in the financial markets.

ESMA explained that a consistent approach has already been discussed at length with the UK Authorities in order to avoid overlaps in STOs. However, the UK authorities have not provided clarity on their approach to the STO. ESMA took note of the issues on contract continuity and explained that the measures already adopted aimed at dealing with this and any further actions are to be taken at national level. Additionally, it was explained that ESMA has amended Technical Standards in order to support the movement of derivative contracts from the UK to the EU.

Furthermore, the ESMA Chair, Steven Maijoor, acknowledged that the ESMA approach to STO published may lead to an overlap of trading obligations for a number of shares and potentially a greater level of fragmentation of trading, however it seeks to limit potential market disruption while also ensuring Article 23 MiFIR is adequately and consistently applied across the EU. Finally, it was also noted that ESMA has been discussing risks related to data confidentiality and privacy issues but these are, in the context of Brexit, more relevant for banking than for securities markets.

5. MiFID

The SMSG MiFID working Group reported on its activities and identified a few areas where they saw a need for further clarity, namely on data quality, market data and pricing, and "buckets". The working group also addressed, i.a., the uncertainty as to how cost and charges rules should be interpreted, best execution reporting under Article 27 and investment research.

Furthermore, the working group delivered presentations on the impacts and challenges of MiFID II implementation in bond markets and how the Directive is perceived by German private investors. Additional Group members added to the discussion by commenting on similar surveys conducted in their jurisdictions (e.g. Finland and Poland) and the kind of respondents who had participated.

ESMA thanked for the presentations and pointed out a few questions as regards the type of markets and investors covered and replied positively to the fact that no major market disruptions had been identified by the working group. It was also noted that data quality is one of ESMA's priorities and that one of its standing committees is looking at the data quality across the Member States. ESMA also noted that there had been problems of mis-selling in the past, and the difficulties connected to establishing clear cause /effects in this regard. ESMA also summarised the main reasons and causes that had led to the creation of MiFID rules as regards best execution, research related rules and markets developments.

The ESMA Chair stated that unbundling has reduced conflicts of interest regarding research, and should improve the proper evaluation of the value of research. These expected effects need to be evaluated in future evaluation assessments.

6. Legislative Changes (ESAs, EMIR, IFR)

ESMA Executive Director, Verena Ross, and ESMA staff Joe Heavey delivered a presentation to the Group on ESAs review, EMIR and IFR and their impact on ESMA's governance and remit.

The SMSG commented on the presentation and discussed a number of topics regarding the (supervisory) role of ESMA, such as mystery shopping, coordination of market abuse, funding, supervision of large investment firms and the future composition of stakeholder groups. The ESMA ED also outlined the governance aspects notably related to EMIR 2.2 and the staffing needs expected for ESMA.

7. Sustainable Finance and CRA disclosure requirements

The SMSG working group rapporteur on sustainable finance, Nathalie Guy-Guggenheim, commented on its advice to ESMA as regards the integration of ESG factors in MiFID, UCITS and AIFMD, as well the disclosure requirements applicable to credit ratings. The lack of common labels, and the inconsistencies this might lead to, were reported as the main issues.

ESMA presented to the Group the results of the feedback received as part of the ESMA public consultations. It was noted that a lack of agreed definitions and labels at the EU level is a substantial shortcoming in terms of incorporating ESG factors into MiFID, UCITS and AIFMD. ESMA also noted that credit rating agencies were less supportive in terms of making information available in a central location in their websites, as they argue information is already available in their websites for financial markets, consumers and users (although not in a central location).



SMSG members discussed i.a. the lack of an uniform concept of "proportionality", "sustainability" and the "S" and "G" letters that compose the so-called ESG factors ("social" and "governance") and highlighted that financial products might be greenwashed if a clear common definition is not adopted.

ESMA noted that the taxonomy had just been agreed at a political level and the fact that a proportionality view does not mean that legislation can enter into force gradually.

ESMA noted that the delivery from ESMA in April will cover technical advice on level 2 and that several aspects of the guidelines that the SMSG had commented on will be dealt with at a later stage when ESMA will amend the guidelines.

ESMA Executive Director, Verena Ross, acknowledged that further clarity is indeed of high relevance to prevent mis-selling of green products, and that a taxonomy first would have been beneficial, but has not been possible due to the legislative timetable involved. Furthermore, it was also acknowledged that ESMA work has focused more on the E factors than on the S or G factors.

8. STORs

The SMSG working group on market abuse commented on its advice to ESMA on a peer review into the collection and use of suspicious transaction and order reports under MAR. The working group supported the review to be conducted by ESMA and noted it would be beneficial to ask market stakeholders for input as well as assessing the efficiency of the usage of STORs and a cost benefit analysis.

ESMA praised the working group for its advice and stressed that, while there are alternative sources of information to identify suspected market abuse, STORs are a key tool to detect suspected market abuse and provides an obligation on market participants to seek to preserve market integrity. The objective or possible outcome of the peer review process is not to undertake a cost benefit analysis of STORs. It was also highlighted that ESMA plans to engage with industry stakeholders as part of the on-site visits to a sub-set of NCAs.

Moreover, ESMA highlighted it welcomes further insights on: (i) algorithmic trading; (ii) the use of third-party providers for post-trade surveillance; and (iii) insights on third-country NCA supervisory practices regarding the STOR regime.

The SMSG Chair concluded that the MAR Working Group will proceed with its work on these and other MAR topics and will provide ESMA with further input in the next meetings.

9. Cost and Performance

The SMSG working group rapporteur Giovanni Petrella gave a presentation on the work performed in the context of PRIIPs and commented on the latest ESMA Report on Cost and Performance. The SMSG views were supportive of the views in the ESMA report and noted in particular that the report was the first of its kind and should establish a baseline for future editions of the report. He developed views on the statistical significance of the return difference, survivorship bias and the results over time of the differences noted in returns.

ESMA welcomed the suggestions of the SMSG and confirmed that it will assess the feasibility of including different risk levels (e.g. risk returns) and matching techniques regarding survivorship bias in the next Cost and Performance reports.

The Rapporteur of the Working Group agreed to present a written advice covering the tentative findings presented for adoption at the next SMSG meeting.

10. AOB

The Group raised the question as to whether ESMA expects any mandate in the field of Market Abuse Regulation. ESMA Executive Director, Verena Ross, confirmed that the Authority is expecting to receive a new mandate to provide advice to the Commission on the MAR review, and will come back to the group in writing on the expected timetable.

Finally, it was agreed that, given the various tasks ESMA is expected to perform in the context of MiFID during 2019, the Authority will provide the Group with a timeline of the upcoming MiFID deliverables.

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	Excused
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
Kerstin Hermansson	CEO, Swedish Securities Dealers Association (SSDA)	Excused
Christiane Hölz	Managing Director, Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW)	Present
Paul Koster	Managing Director, Dutch Shareholders Organisation	Present
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	Excused
Sari Lounasmeri	CEO, Finnish Foundation for Share Promotion	Present
Michael Nietsch	Professor of Law, EBS Universität für Wirtschaft und Recht	Present
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	Excused
Rainer Riess	Director General, Federation of European Securities Exchanges (FESE)	Excused
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