



Summary of Conclusions

Securities and Markets Stakeholder Group

Date: 5 February 2020
Time: 9.00 – 17.00
Location: ESMA, 201-203 rue de Bercy, 75012 Paris
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1. Report from the Steering Committee

The SMSG Vice-Chair Rainer Riess updated the Group on the letter it had sent together with the EBA and EIOPA stakeholder groups to the EU Institutions concerning the requirements regarding stakeholder groups in the new ESA Regulations.

The ESMA Chair welcomed all to the meeting and informed the Group on the current call for expression of interest for membership to the SMSG.

2. Q&A Procedure

ESMA staff updated on its revised procedure for Q&As following the amendments made to the ESMA Regulation, which require ESMA to involve the EU Commission in a timely manner whenever a question would involve the interpretation of Union law. ESMA will develop an IT tool for this purpose. It receives around 2000 questions per year.

The ESMA Chair informed the SMSG about the motivation and discussions in the ESAs Review leading up to the new procedure, including concerns regarding Q&As involving Union law interpretations.

3. JC PRIIPS Consultation

SMSG member Giovanni Petrella provided a presentation of the advice paper by the SMSG in response to the ESAs' consultation on amendments to the PRIIPs KID. He raised numerous issues; among them firstly the delicate timing in relation to the expected PRIIPs Level 1 review; he emphasised the challenging work undertaken by ESMA in order to address the problems of pro-cyclicality. The SMSG supported the ESAs proposal to include past performance. The SMSG also suggested a simplified method to measure transaction costs.

ESMA responded to a number of detailed questions regarding performance scenarios, proportionality and explained the next steps.

The ESMA Chair emphasised the challenges of the technical work ahead as well as the required approval in three different Boards of Supervisors.

4. Performance Fees under UCITS

The SMSG members Adina Gurau Audibert and Giovanni Petrella, provided a summary of the advice that the SMSG had provided in November in response to the ESMA consultation paper on Guidelines on performance fees in UCITS.

SMSG members raised comments in support of harmonisation and noted various NCAs' use of performance fees.

ESMA staff informed the Group that ESMA was currently carrying out a mapping exercise and was still discussing several technical issues. ESMA stated that the guidelines will be out in the second quarter 2020.

5. Peer review on STOR – Suspicious Transaction Order Reporting

ESMA staff updated the SMSG of its peer review on STORs. The peer review included 30 markets and visits to six NCAs and found i.a. a 130% increase in the use of STORs after the introduction of MiFID II in 2018.

ESMA staff members responded to several detailed technical questions and noted in particular that the STOR framework covered by the peer review had been set in place 2016 and that ESMA systematically carries out a follow-up peer review.

The ESMA Chair emphasised that peer review reports are taken very seriously in the ESMA Board of Supervisors and that the scoring of supervisory practices constitutes a powerful tool.

6. Sustainable finance Strategy and Short-termism

ESMA Head of Department Roxana De Carvalho presented the ESMA sustainable finance strategy, put in place following changes to the ESMA Regulation, which makes clear that ESMA shall take ESG considerations into account in all its activities, and has further been referenced in ESMA's strategic orientation.

ESMA also accounted for its report on short-termism as delivered to the Commission following useful feedback received from numerous stakeholders including the SMSG.

SMSG and ESMA staff members raised several issues such as concerns for green washing, the need for reliable data, the non-harmonised implementation of the NFRD across the EU, and the delay as regards the development of the social and governance aspects.

The SMSG Chair thanked the SMSG and ESMA staff for the discussion and concluded that the SMSG would surely come back to sustainable finance related matters in the near future.

7. Recent Market Developments

The recent market development item covered four topics.

ESMA, Christian Winkler, presented two ESMA reports: Firstly, ESMA's Annual Statistical Report on EU Alternative Investment Funds, showing i.a. an increase of AIFs by 11 % up to 5.8 tn € AuM, representing 40% of the EU fund industry. Secondly, he covered ESMA's annual statistical report on EU Derivatives markets, describing a market of 736tn €, with a strong counterparty and geographical concentration.

SMSG members raised several topics including the fact that many of these AIFs are bought by retail investors.

Thirdly, SMSG member Andreas Gustafsson held a comprehensive presentation on artificial intelligence, notably its use for market manipulation detection, as well as cloud computing.

ESMA Executive Director Verena Ross highlighted the focus that ESMA is putting on financial technology in its medium-term strategy. She also noted that not all the trading data in the EU is available to ESMA, i.e. transaction data is exchanged between NCAs via an ESMA IT hub but not visible to ESMA. Furthermore, she informed the SMSG that ESMA is working on guidelines on cloud services.

Fourthly, SMSG member Jasper De Meyer presented a report from BEUC on inducements, which described numerous mis-selling cases. The report argued for a ban of inducements after the example given by the UK and the Netherlands.

ESMA Executive Director Verena Ross mentioned the ESMA work on cost and performance, which has shown the very important effect cost has on the return and she highlighted in particular the need for proper supervision in order to arrive at the necessary convergence on this important investor protection topic. She also highlighted the ongoing MiFID review work to provide advice to the Commission on the topic of inducements.

8. MiFID II - equity transparency and other MiFID topics

ESMA staff presented its recent Consultation Paper on equity transparency.

ESMA also presented its consultation paper on the third country regime for investment firms, outlining the future role for ESMA in this regard.

SMSG members discussed what issues they would most usefully like to raise with ESMA.

ESMA Executive Director Verena Ross noted that the MiFID II regulation is based on the current market structure including the UK and that ESMA is conscious that with Brexit the market is likely to evolve. ESMA's reviews are conducted according to the time frame prescribed by Level 1, even if this may not always be ideal given the potential impact of Brexit on market structure in the future.

The SMSG Chair concluded stating the SMSG should aim at responding to the consultations.

9. Product Intervention

SMSG Chair Veerle Colaert presented the SMSG advice it had earlier given to ESMA, supporting ESMA's measures as well as raising a number of scoping issues and advocating an extension of the product intervention powers to cover PRIIPs too.

ESMA Executive Director Verena Ross commented that ESMA had already pointed to the risks associated with only covering MiFID firms in the scope to the application of product intervention.

10. AOB

Answering to a comment by an SMSG member, ESMA Executive Director Verena Ross reminded the Group that the work on Brexit that ESMA had undertaken last year was made on



the basis of a no deal scenario, and that ESMA in its planned work on Brexit this year does not assume any particular scenario in terms of trade relationship between the EU and the UK.

The SMSG Chair thanked all for their participation and concluded the meeting.

PARTICIPATION LIST

Alexakis, Christos	Associate Professor in Finance, ESC - Rennes School of Business
Biernacki, Piotr	Vice-President of the Management Board, Polish Association of Listed Companies
Colaert, Veerle	Professor of Financial Law, KU Leuven University
De Meyer, Jasper	Financial Services Officer, European Consumer Organisation (BEUC)
Gay Guggenheim, Nathalie	Head of Regulatory Transformation, Global Banking and Markets, HSBC
Gurau Audibert, Adina	Head of Asset Management, Association Française de la Gestion financière (AFG)
Gustafsson, Andreas	SVP & General Counsel Europe, Nasdaq (Stockholm)
Hermansson, Kerstin	Board member of Swedbank, ex-CEO, Swedish Securities Dealers Association (SSDA)
Hölz, Christiane	Managing Director, Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW)
Litvack, Eric	Head of Regulatory Strategy, Société Générale
Lounasmeri, Sari	CEO, Finnish Foundation for Share Promotion
Nietsch, Michael	Professor of Law, EBS Universität für Wirtschaft und Recht
Pedersen, Morten Bruun	Senior Economist at the Danish Consumer Council
Petrella, Giovanni	Full Professor of Banking, Università Cattolica
Prache, Guillaume	Managing Director, Better Finance
Riess, Rainer	Director General, Federation of European Securities Exchanges (FESE)
Santillán, Ignacio	CEO, Spanish Investors Compensation Scheme for investment firms (FOGAIN)
Scheck, Martin	CEO, International Capital Market Association (ICMA)



Schindler, Alexander	Member of the Executive Board, Union Asset Management Holding AG
Servat, Jean-Marc	Chair, European Association of Corporate Treasurers (EACT)
Suominen, Santeri	Legal Adviser, Confederation of Finnish Industries (EK)