

## ADVICE TO ESMA

### ESMA draft 2021 annual Work Programme

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#### 1. Introduction

On July 16<sup>th</sup> 2020, the SMSG received ESMA's draft annual work programme, with a request for our written comments by 18.00 CET on Friday 31 July 2020. The SMSG highly appreciates the opportunity to provide input on ESMA's Work Programme and provides ESMA with the following advice.

The SMSG generally supports ESMA's draft Work Programme, and particularly welcomes the emphasis on supervisory convergence across the different areas of ESMA's competences, while being mindful of the effect on the actual European market practices.

#### 2. Earmarking resources for follow-up work on Wirecard in 2021

The SMSG notes that ESMA will assess BaFin's and FREP's supervisory response to the Wirecard events in the area of financial reporting. The SMSG has three comments in this regard.

First, lessons-learned and follow-up actions from this assessment do not figure in the 2021 annual workplan. Even if the Peer Review on Wirecard is expected to be finalized in 2020 and follow-up actions will only be known at the end of that process, the SMSG advises ESMA to already earmark resources in the Work Programme 2021 to allow for potential follow-up actions and to carry out an in depth analysis of the underlying factors.

Second, the following items are of relevance to the Wirecard problem (i) regulation quality, (ii) supervision quality and (iii) enforcement tools at the disposal of national and EU authorities. The SMSG notes that EMSA already in 2017 identified areas for improvement in the German enforcement model, which were not adequately addressed. Lawmakers should therefore analyze whether supervisory authorities across the EU, as well as ESMA, have sufficient tools to properly fulfill their supervisory role and enforce actions where needed. Even though this largely goes beyond ESMA's remit, ESMA can play a role in this regard, by examining whether EU law has been correctly transposed by Member States and a high quality of financial reporting is ensured. This is necessary to restore investor confidence, which has been severely impacted by this scandal. The SMSG therefore advises ESMA to examine, in particular, whether the financial reporting rules have been correctly transposed in all Member States.

Third, the SMSG stresses the need to also pay due attention to the role of auditors.

### 3. SRD II

The Work Plan mentions that ESMA will also undertake work to improve the convergence of national practices under the revised Shareholder Rights Directive, taking ESG-related factors into particular account.

The SMSG advises ESMA to also consider including already in its 2021 Work Programme preparatory work in regard of two reports which need to be published by the Commission in close cooperation with ESMA by mid-2023 and on which work is therefore expected to start either in 2021 or 2022 at the latest:

- the preparation of the report due according to Article 3f (2) of SRD II (implementation of rules on shareholder identification and facilitation of the exercise of shareholder rights) and
- the preparation of the report due according to Article 3f (2) of SRD II (transparency of institutional investors, asset managers and proxy advisors).

Adopted on 31 July 2020,

[signed]

Veerle Colaert

Chair

Securities and Markets Stakeholder Group