



ADVICE TO ESMA

SMSG advice to ESMA on its draft 2022 annual Work Programme

I. Introduction

On 29 July 2021, the SMSG received ESMA's draft annual work programme, with a request for our written comments by 23 August 2021. 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 sustained emphasis on supervisory convergence across the different areas of ESMA's competences, while being mindful of the effect on the actual European market practices.

While the SMSG generally agrees with the focus of the draft Work Programme, it advises ESMA to reconsider the scope and emphasis of certain points of its work programme.

II. Investors and issuers

1. The SMSG is of the opinion that financial education and literacy are very important areas (p. 9 and 13). In the opinion of the SMSG the Work Programme is somewhat underdeveloped in this area. The SMSG therefore asks ESMA to elaborate its work programme in this field, with clearly stated goals and deliverables. For instance, in the field of ESG, ESMA could envisage to work on a project of education on ESG data reporting.
2. The SMSG advises ESMA to extend its investor protection focus to crypto assets. There is a lot of volatility and insecurity in this area, while reliable information is scarce. Nevertheless, this market is attracting many investors, who may permanently lose trust in investing, including investing in capital markets.
3. ESMA announces that it aims at improving its ability to reach out to investors' representatives to receive direct feedback and input (p. 16). The SMSG is fully supportive of this initiative but advises ESMA to develop in more detail how it will realize this. The SMSG also wonders whether a similar initiative is needed at the other end of the value chain, namely the representatives of issuers.

III. Benchmarks

4. ESMA intends to monitor the transition from EONIA and Libor in the OTC derivatives market (p. 30). The SMSG advises to include in its monitoring exercise the transition in the cash markets as well.

IV. Risk monitoring

5. ESMA's risk monitoring is of key importance to the European capital markets and is part of core ESMA activities (p. 36-37). The Commission, more specifically, requested the European Supervisory Authorities to issue recurrent reports on the cost and past performance of the main categories of retail investment, insurance and pension products (Ares(2017)50008790), implementing the action

announced in the Commission communication on the Mid Term Review of the Capital Markets Union of 8 June 2017.

6. However, when it comes to cost and performance, the TRV reports and the annual statistical reports of ESMA are still based on data not proprietary to ESMA, including from commercial data providers (e.g. Morningstar or Refinitiv). The Commission request stated that ESA reporting should be based on data and information originating from disclosures and reporting already required by Union law (e.g. UCITS, MiFID/MiFIR, IDD, IORP and PRIIPs) or national legislations, and collected in a direct or indirect manner. The request specified that the ESA reports may be based on already available but potentially incomplete databases, but that alternatively, the collection of limited sample of data from the product manufacturers may be foreseen.
7. Previous ESMA reports on costs and performance have been based on both disclosures and reporting already required by Union law (e.g. UCITS, MiFID/MiFIR, IDD, IORP and PRIIPs) and data from commercial data providers. However, the UCITS KIID is set to be replaced by the PRIIPs KID in due course, whereas the latter does not contain information on past performance and costs. This means that the data which ESMA can obtain from disclosures and reporting required by Union law will become more incomplete.
8. The independent, reliable and comprehensive assessment of the costs and performance of retail investment products is, however, essential for investors' trust, for effective capital markets funding and for pension adequacy.
9. The SMSG, therefore, calls on ESMA to work on building up an independent pan-European database with information on cost and performance for UCITS and AIFs and to build up own intelligence in that respect. In this regard, article 9(1)(a) of ESMA Regulation indeed not only requires ESMA to analyze and report on consumer and market trends, such as the actual returns and the development of costs and charges of retail financial services and products, but also to collect the relevant data.

V. Competitiveness

10. A particular concern of the SMSG recently (and this was highlighted in our report on the ESA review) was to ensure that ESMA should have a sufficient focus on the competitiveness of EU financial markets, in order to facilitate the achievement of CMU objectives.
11. In this light the SMSG urges ESMA to include in its Work Programme the proactive monitoring of regulatory developments in third-countries and notably in the UK, which could have an impact on the relative competitiveness and attractiveness of EU financial markets. In the current version of the Work Programme, consideration of third-country regimes seems to focus on the status-quo rather than on the direction of travel. In terms of ensuring competitiveness of EU markets, the SMSG advises ESMA to explicitly include a more forward-looking approach (section 3.1.1). This is all the more important in view of DLT technology that will possibly replace settlement as we know it today (see [LINK](#)).
12. The SMSG further advises ESMA to develop a strategy allowing to take into account the impact of its Work Programme especially on smaller markets. There is a concern that when ESMA takes over supervision on critical benchmark administrators and APA's, this may introduce an increased and disproportional regulatory cost on smaller exchanges or APA operators and may cause some of them to discontinue their services, as they are providing this service locally and for relatively small transactions.

13. More generally, each regulatory step should be accompanied with an analysis of how the cost of the measure will be distributed in the market and there should be an overall assessment of the regulatory cost on market participants (brokers, exchanges, CSDs, Issuers, users). Costs are indeed often mentioned as main obstacle for a higher number of listings, while on the other hand, more listings of SMEs is a key objective of CMU.

This advice will be published on the Securities and Markets Stakeholder Group section of ESMA's website.

Adopted on 23 August 2021,

[signed]

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Chair
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