

SUMMARY OF CONCLUSIONS

Joint meeting of the Board of Supervisors and the Securities and Markets Stakeholder Group

Date: 10 November 2016
Time: 09:00 – 12:30
Location: ESMA, CS60747 – 103, rue de Grenelle, 74345 Paris
Contact: jacob.lonnqvist@esma.europa.eu T: +33 1 58 36 43 39

1. Opening remarks

The ESMA Chair welcomed all to the meeting, emphasising the great importance of the SMSG for the ESMA Board of Supervisors, and thanking the Board for attending in high numbers. He went through the agenda for the morning.

2. National supervision and enforcement in retail finance

The SMSG member Boštjan Krisper presented a report from the Financial Services User Group regarding supervision and enforcement of retail finance matters at a national level. The findings of the report covering 13 European jurisdictions demonstrates a landscape where in many instances there are too few resources in place in order to conduct supervision and enforcement for retail investors/consumers. The report also presented some findings as regards the preferred institutional set-up in order to best serve consumer interests.

Jean-Paul Servais, Chair of the FSMA and Chair of the ESMA FISC, made some observations of the findings of the report and the desk-based methodology behind it. He noted a need for a stronger consumer protection mandate for financial supervisors generally and a support for ex-ante supervision in areas of consumer relevance including life insurance. He emphasised the importance of supervisory convergence, and noted that the supervisory model has to be adapted to the different markets, and furthermore presented some of the findings of ESMA of the MiFID peer reviews conducted in the past years. He further noted that different tool-kits would be needed depending on the markets and that clear mission statements are needed

for authorities giving them a mandate to conduct consumer related supervision. He spoke in favour of the possibility to use product banning powers. He noted in his views too wide disclaimers in prospectuses not serving consumers.

Members of the SMSG expressed views in favour of suitability rules supervision, where there is now a great deal of divergence of enforcement. Some voiced concern that actions of supervisors should not be allowed to interfere with financial innovation.

The ESMA Chair noted the unlevel playing field between securities products and insurance products.

3. Product Governance

Merel van Vroonhoven, Chair of AFM and the Chair of IPISC, presented the ESMA Consultation Paper on MiFID II product governance together with Salvatore Gnoni, ESMA team leader. The presentation noted that the ESMA Guidelines focus on the target market assessment with the main element to ensure consistent application of new framework/strong request from stakeholders. ESMA's choice of issuing guidelines allows full public consultation of stakeholders. Some aspects addressed by the Guidelines include:

- the categories of information when identifying the target market,
- how to differentiate the target market identification and different investment services provided,
- regular review of products and services by the manufacturer and distributor,
- identification of the 'negative' target market, and more.

The guidelines should assist firms in acting in accordance with the best interests of their clients and provide additional clarity for the application and supervision of relevant rules.

The SMSG member Chris Vervliet presented preliminary positive views of the SMSG on the ESMA draft Guidelines.

Members discussed the role of product governance in relation to other investor protection rules under MiFID, in particular the concept of the "target market", the balance between distributor and manufacturer and complex vs. non-complex products.

The SMSG Chair noted that the Group would come back to the topic in the SMSG meeting and deliver an advice paper to ESMA in the consultation.

4. Macro-prudential framework for non-banks

Martin Moloney, Alternate Board Member, Central Bank of Ireland, presented the progress made in terms of non-bank prudential work and he emphasised the importance of data and

cooperation. He further accounted of the work the Central Bank of Ireland has done as regards stress testing of investment funds and non-bank prudential regulation against the background of the 2010 G20 conclusions in this respect.

Christian Winkler, ESMA, presented the ESMA reply to the Commission consultation on macro-prudential framework for non-banks focusing on the questions on expansion of the macro-prudential framework beyond banking, data access capacities, macro-prudential considerations in EU policy making and the structure of the ESRB General Board.

Meeting participants discussed issues like herding, data access needed liquidity black holes.

Martin Moloney commented on the question that the quality of data is problematic in order to be able to conduct non-bank stress testing. Rodrigo Buenaventura, Head of Division, ESMA commented on the remark that the OTC data is already of sufficiently high quality for macro supervision purposes.

5. PRIIPS

The ESMA Chair informed the meeting that ESMA is expecting a letter from the European Commission soon including a the issues that ESMA and the other ESAs will have to address within six weeks.

SMSG members reminded ESMA of the letter it had sent to the European Parliament in spring regarding past performance and that these views are still valid.

The ESMA Chair noted that the content of the letter, according to the European Commission would not include a request to work on past performance. He thanked the meeting participants for their useful input to the discussions in the morning.