

Summary of Conclusions

Securities and Markets Stakeholder Group

Date:	27 January 2023
Time:	13:30h – 17:00h
Location:	ESMA, 201-203 rue de Bercy, 75012 Paris
Contact:	louise.waller@esma.europa.eu T: +33 1 58 36 42 74

No Item

1. Report from the Steering Committee

The SMSG Chair welcomed everyone to the meeting and reported that two pieces of advice had been adopted by the Group since the last meeting of the SMSG on 15 December 2022:

- a. [Advice on the SMSG's role in the Breach of EU Law Procedure](#) on 10 January 2023
- b. [SMSG Advice on Greenwashing](#) on 19 January 2023

The Group discussed the possibility of responding to four specific questions on Greenwashing that had been posed to the Group during the morning session. A working group will be set up to respond if sufficient expressions of interest are received by email.

2. Adoption of summary of conclusions from 15 December 2022

The summary of conclusions was adopted.

3. Recent market developments

a. Sustainability preferences under MiFID of German retail investors

Christiane Hölz presented a survey in September 2022 into investment advice on sustainable products that was conducted among experienced retail investors. She noted that the engagement approach played only a small role even though studies have shown it to be the most effective approach. She also noted that almost 60% did not follow the adviser's recommendation and a dominant reason was because of concerns

about ESG criteria not being clear. She concluded that there was a lot of uncertainty in the market leading to scepticism, that a lack of knowledge increased the risk of greenwashing, and that terms should be clarified, and complexity reduced.

SMSG members discussed the survey findings including some members noting that a similar message of unclarity had been observed in other areas and a study with similar results had been done in Italy. There was discussion over whether a label could help. It was also suggested that potentially investors focussed more on the revenue of products rather than their sustainability and that there may be tacit steering away from these products as they more complicated to sell.

ESMA staff thanked the SMSG for their feedback on investor preferences and noted that capacity building, of both investors and advisors, was a collective challenge. They added that ESMA was aware of the complexity of rules and confirmed that they were at the centre of its attention.

b. Update on the EFRAG European Sustainability Reporting Standards

Piotr Biernacki updated the Group on the EFRAG work on sustainability reporting standard setting. With regards to the first set of standards, he noted that they had achieved a reduction in the disclosure requirements and achieved further alignment with international standards. He outlined the planned next steps for the standards and for the public consultation of the draft XBRL taxonomy. Finally he outlined how work on the second set of standards would develop.

SMSG members discussed the presentation and noted that EFRAG's work would bring necessary data. There was some discussion of the merits of voluntary versus listed standards, on the one hand the potential to make listing in the EU less attractive, on the other hand the importance of receiving data from the millions of SMEs not covered by CSDR.

ESMA staff noted that ESMA had issued an opinion yesterday on the EFRAG standards which found that the EFRAG standards were broadly aligned with the interests of financial stability and investor protection but with a number of points that it recommended the Commission to work with EFRAG on fixing.

c. French survey on employee savings schemes

Adina Gurau Audibert gave a presentation on employee savings and retirement schemes managed by asset managers in France. She noted that it was one way to increase retail investment in markets by giving confidence via investing in their employer and that it was a growing trend thanks to the French legal framework.

SMSG members discussed the presentation, noting that it presented one of the least costly ways for French retail investors to save.

4. DORA

Christian Stiefmueller, rapporteur of the working group, presented the draft own initiative advice on the Digital Operational Resilience Act (DORA) for adoption. He noted that DORA was marked by regulatory complexity as it intersected with many other frameworks at EU level and would be implemented by many actors. He outlined the specific issues contained in the draft advice around ICT risk management, incident management and reporting, operational resilience testing, information sharing, and supervisory structures and processes.

SMSG members discussed the draft advice and underlined the importance of the principle of proportionality for SMEs and noted the concentration risk on the software supply side.

The Group adopted the advice with a clarification to the wording of the executive summary and with the addition of a reference to proportionality. The SMSG Chair thanked the working group for a well drafted piece of advice.

ESMA staff thanked the group for their advice. While acknowledging the complexity of the institutional set-up, ESMA staff assured the Group that ESMA was working with the other ESAs, the relevant competent authorities and with ENISA in order to take into account the perspective from all relevant sectors. The SMSG advice will be shared with them so that it can be taken into consideration in the ESAs work. ESMA staff agreed that the topic was both complex and involved short timelines but noted DORA was designed to harmonise. They also noted that the Level 2 work was necessarily bound by the Level 1 framework.

5. Brexit peer review

ESMA staff presented the results of the peer review into the national competent authorities' (NCAs) handling of relocation to the EU in the context of the UK's withdrawal from the EU that had been published on 8 December 2022. The peer review covered three sectors and six NCAs. Overall it found that there was a similar approach to authorisation but differences in the interpretation of the risk-based approach. It was also found that outsourcing and delegation arrangements meant that meaningful presence in the Member State was not always ensured. Despite Brexit being a one-of-a-kind event, there were also several points for attention regarding evolving business models and the consequences on groups' organisation that could indicate a more general trend.

SMSG members and ESMA staff discussed the findings including the reasons for the limited presence in the EU and whether further guidance was needed around proportionality and outsourcing. ESMA staff emphasized that the review had been on NCAs not on firms and that there would be follow-up in two years.

6. SMSG rules of procedure

The SMSG Chair presented an amended version of the SMSG rules of procedure that included amendments around the election of the vice-chairs, virtual attendance at physical meetings, precisions on the circulation of documents, and additions resulting from the Group's advice on its role in the breach of Union law procedure.

The Group adopted the amended rules of procedure.

7. AOB

The SMSG Chair concluded the meeting by thanking all participants, by recalling the advice adopted in the meeting, by recalling to members that a specific call on EMIR 3 could be held with ESMA staff by those interested, and by confirming that a call for interest developing further advice on greenwashing would be launched.