

Summary of Conclusions

Securities and Markets Stakeholder Group

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| Date: | 17 April 2023 |
| Time: | 09:00h – 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 all participants to the meeting and introduced the new SMSG member, Agustín Reyna, who replaces Geoffrey Bezzina and who represents consumers on the SMSG.

The SMSG Chair also recalled the two pieces of advice that had been adopted since the last SMSG meeting on 27 January 2023:

- [SMSG advice to ESMA on ESMA’s consultation on Guidelines on funds’ names using ESG or sustainability-related terms](#), and
- [SMSG advice to ESMA on additional questions relating to greenwashing](#).

In relation to the amended SMSG rules of procedure (RoP) adopted at the meeting on 27 January, the SMSG Chair noted a slight wording change in relation to in-person meetings to ensure that the RoP comply with ESMA’s environmental commitments to hold 50% of meetings remotely. There were no objections from the SMSG members.

2. Adoption of summaries of conclusions from 27 January 2023

The summaries of conclusions from the joint meeting between the ESMA Board of Supervisors and the SMSG, as well as the SMSG meeting were adopted.

3. Recent market developments

a. Retail attitudes to sustainability

Ben Granjé (SMSG member) presented a study by 2degrees investment initiative on retail attitudes to sustainability. He summarised the results of the study that showed a general lack of knowledge but an interest for and a positive attitude towards sustainable finance although with a high level of heterogeneity in beliefs and motivations. He noted in particular a frequent attitude-behaviour gap that was tied to the age of the respondents rather than their nationality.

SMSG members discussed the presentation including commenting on the high quality of financial advice available versus the low availability of products, as well as the role of financial education. They also noted that the study highlighted that the availability of simple products was important.

ESMA staff commented on the interesting juxtaposition of lifestyle and investment choices that the study presented. They noted that the European Supervisory Authorities are working on sustainable education this year.

b. Recent market events resulting from SVB/Credit Suisse

Barbara Alemanni (SMSG member) gave a presentation on the bankruptcy of SVB and the impact on Credit Suisse. She presented different possible explanations and noted several factors around the events including the role of social media and messaging apps in spreading and speeding panic across the market, the impact on bank funding and on market confidence in the debt market, investor protection issues, and the role of poor liquidity.

ESMA staff gave a presentation on risk assessment and recent market developments that covered the impact of the banking sector stress on markets, the increase in securities lending, and the impact on funds; overall, it pointed to a deteriorating market environment.

SMSG members discussed the two presentations and commented on the investor protection issues raised by the recent events, the importance of balancing regulation with competitiveness, the differences in the US and EU regulatory frameworks, the impact of higher interest rates for firms and households, the impact of social media, the issues around AT1 funds, the need to focus on governance risks (within ESG), and the role of banks versus fintechs.

ESMA staff confirmed that both the interest rate change and non-bank financial intermediation, and especially liquidity interconnectedness, remain relevant topics.

4. Update on CMU

Rainer Riess (SMSG member) outlined his views on the development of the Capital Markets Union (CMU). He stated that progress had been made but he argued that the EU's equity markets perform below their potential, that the global proportion of EU listed shares had declined, and there is an ongoing trend of companies de-listing and fewer IPOs and lower companies' valuations. He listed several actions that should help improve EU capital markets,

including implementing the Commission CMU Action Plan, harmonising financial laws and pooling liquidity. He also noted that the Listing Act and a more transparent market structure were helpful initiatives.

Guillaume Prache (SMSG member) gave an update on the CMU focussing on the bond markets. He noted the importance of retail investors to achieving the CMU but stated that they needed independent advice and that the CMU was failing because of the overcomplexity of rules and markets. He presented several examples of bond market retail funds that all gave returns lower than inflation.

SMSG members discussed the two presentations including the importance of the consolidated tape and the European Single Access Point (ESAP) to the CMU, the importance of high-quality advice - with differing opinions as to whether it needed to be independent or not, the higher liquidity and therefore attractiveness of larger centres (e.g. Paris and Frankfurt) for corporates, the global slowdown in listings but also evidence of companies returning from other markets, the need for ESMA to have a data-driven, agile approach as well as rule-making power, the importance of political support for the CMU from national governments, and the competitiveness of European markets internationally.

ESMA staff noted that the planned actions under the CMU will help but agreed that certain actions were more for Member States than the EU institutions. They highlighted that retail investor involvement in financial markets had increased recently but not always in the appropriate investments and that ultimately more simple products and expanding of independent advice in the interest of the retail investor might prove to be helpful. They also noted the comments on market structure and warned that a consolidated tape, while important, would not solve all issues. They also agreed with the point on market agility and stated that ESMA having a tool such as a no-action type letter would be useful.

5. Listing Act

ESMA staff presented an overview of the Listing Act and its implications for ESMA's work. While noting that there were many useful reforms included, they noted that certain aspects, such as the lighter requirements for insider lists or the raising of the threshold for unbundling, could have investor protection concerns.

Sari Lounasmeri (SMSG member) gave a presentation on the proposed act from a user perspective. She highlighted the positive changes for users from the changes to the Prospectus regime but expressed concern about transparency and investor protection from the proposals related to MAR. She also cautioned that euro amounts, as well as percentages, were important when calculating free float and warned against too high a threshold for unbundling. Finally, on multiple-vote share structures (MVSS), she supported a principle of one share, one vote with few exceptions which need to be accompanied by strong investor protection safeguards.

Stjepan Mandic (SMSG member) gave a presentation on the proposed act from an SME perspective. He noted that the act would increase access to capital for SMEs, simplify listing requirements and increase investor confidence in capital markets. He pointed out that a multiple-voting rights regime could help family-owned businesses to retain control. He also noted that the act would increase regulatory compliance for SMEs, would have limited impact for smaller SMEs, and that they would still need to compete for investors' attention with larger, more established companies.

SMSG members discussed three presentations with some members expressing support for the alleviation of MAR requirements, as well as for the MVSS proposal. Others supported the unbundling threshold increase but commented that reducing the minimum free float requirement would increase zombie stocks, argued against the additional complication of MVSS and raised investor protection concerns. Some members also brought up the increasing cost of listing and the amount of data requirements.

ESMA staff noted that, from ESMA's point of view, the current MiFID II regime for research and unbundling should ideally be maintained and suggested that the changes to the insider list currently proposed were not workable.

6. Reduction of reporting requirements

Piotr Biernacki (SMSG member) presented some ideas for reducing reporting requirements following an announcement of such by President von der Leyen on 15 March 2023. His ideas included designing standards for SMEs before designing those for large undertakings ("zero-plus approach"), once-only reporting, and completely integrated reporting. He also suggested several simplifications to existing reporting.

SMSG members noted the importance of reporting for investor protection but nevertheless raised the complexity of having different reporting regimes and suggested that ESMA could address this as part of its international outreach.

ESMA staff stated that they would wait to see concrete proposals from the Commission following the President's speech but confirmed that ESMA always tried to balance carefully the need for data for investor protection and supervision with the additional burden of reporting.

The Group discussed whether to provide advice and decided to wait to set up a working group until more details were known.

7. Product Governance Guidelines

ESMA staff presented the [Final Report on Guidelines on MiFID II product governance requirements](#) on which the Group had provided advice. They thanked the SMSG for providing rich advice and gave some specific points of feedback about how it had been taken into account in the final guidelines. These are set out fully in the final report and relate to

sustainability-related objectives, clustering approach, distribution strategy, and periodic review.

8. Greenwashing: SMSG advice on additional questions

The SMSG Chair, as rapporteur, presented the [advice](#), which was an addition to a previous advice on Greenwashing. She explained the various proposals in the advice including:

- a proposed definition of the term “greenwashing”/ESG-washing which should be linked to existing standards dealing with misleading information or unfair competition;
- that ESMA should monitor “greenbleaching” (i.e. the phenomenon that fund managers invest in sustainable activities but refrain from claiming so to avoid the related legal risks) to enable it to assess whether sustainable finance legislation reaches its goals;
- that ESMA should monitor, ask questions and advise the Commission on the declining number of article 9 funds, and
- in relation to whether intent is relevant to the definition of greenwashing, that it should be linked to the existing requirements on clear, fair and non-misleading information.

She also presented a proposed format for a table that ESMA could complete to link greenwashing to the relevant regulatory standards and explained how certain important legal frameworks, such as the Unfair Consumer Practices Directive (UCPD) and MiFID II would fit into that table.

ESMA staff thanked the SMSG for the additional effort taken to clarify their greenwashing advice which will feed into the ESA’s upcoming report on greenwashing. They noted the various proposals and agreed that the definition of greenwashing should cover the full spectrum of ESG topics and agreed that intent should be linked to the existing requirements with regard to clear, fair and non-misleading information. While taking onboard the advice, they also pointed out that there is no policy goal in SFDR regarding the number of article 9 funds, SFDR being a transparency regulation.

9. CSD peer review and consultation for 2024-2025 Peer Review Work Programme

ESMA staff provided information on the [peer review](#) on supervision of central securities and depositories (CSD) providing cross-border services or participating in interoperable links that was undertaken by ESMA during 2021 and 2022. They explained the main findings of the report and outlined the main recommendations which were related to authorisation activities, passporting procedure, cooperation arrangements, ongoing supervision, investigations and on-site inspections, and enforcement measures.

ESMA staff also consulted the SMSG on the peer review work plan for 2024-2025, presenting a list of proposed peer reviews for 2024 and 2025.

10. 2022 BUL activity

ESMA staff presented an update on ESMA's 2022 activities related to Breach of Union Law (BUL) and complaints. They gave key figures on the number of BUL complaints and cases, as well as an overview of the types of complaints received, a split of admissible cases per legislative act and a summary of some of the main issues resolved in 2022.

SMSG members discussed the information presented and pointed out that BUL process can be challenging for citizens to understand, which causes lots of inadmissible complaints. They recommended that ESMA's website be clear on what is an admissible complaint.

ESMA staff thanked the SMSG for the suggestion and gave some more information about the type of complainants. They also described the other ways to complain to ESMA such as the info@esma.europa.eu general email address.

11. Sustainable Finance

a. Joint ESAs' consultation on the SFDR Delegated Regulation

ESMA staff presented a Joint ESAs [consultation paper](#) on the SFDR Delegated Regulation. They gave an overview of the main topics of the consultation, which include the expansion of social principle adverse impact (PAI) indicators, the technical revision of the PAI framework, views on do no significant harm (DNSH), greenhouse gas (GHG) emissions reduction target disclosure, and simplification of financial product templates.

The SMSG decided to form a working group to deliver advice on the consultation.

b. Sustainable investment definition

Adina Gurau-Audibert (SMSG member) gave a presentation on the definition and application of "sustainable investment" as of SFDR. She presented firstly the results of a survey of AFG members showing the wide range of definitions used and went on to give proposals for how to define the term including ways to demonstrate a positive contribution to an environmental or social objective, to DNSH, and to good governance practices.

c. Potential working group on engagement and transition

Chris Vervliet (SMSG member) proposed to establish a working group on engagement and transition funds. He stated that, while exclusion was the usual focus, it is the least effective strategy. He went on to show potential issues with aligning the engagement approach with different Level 1 sustainability legislation and asked whether there were ways to measure and promote engagement.

SMSG members discussed the proposal including the policy need for an engagement approach and the legislative tools open to ESMA in that regard.

ESMA staff thanked both of the SMSG presenters for their useful input. On the definition of sustainable investment they recalled that, under the regulatory framework, the onus is on proving sustainability therefore the ideas proposed are useful if disclosed correctly.

The SMSG decided to wait to form a working group on engagement and transition until there was a clearer mandate for ESMA.

12. AOB

An overview of upcoming consultation papers was circulated for information.

PARTICIPANT LIST – SMSG 17 April 2023

| Name | Organisation | |
|------------------------|--|---------|
| Alemanni, Barbara | University of Bocconi | present |
| Avgouleas, Emilios | University of Edinburgh | present |
| Balthasar, Stephan | Allianz SE | present |
| Bergmann, Henning | Deutscher Derivate Verband (German Derivatives Association) | present |
| Biernacki, Piotr | Polish Association of Listed Companies | present |
| Bindelle, Florence | European Issuers AISBL | present |
| Christov, Lubomir | Advisor to the Bulgarian National Association "Active Consumers" | present |
| Colaert, Veerle | KU Leuven University | present |
| Funered, Urban | Swedish Securities Dealers Association | present |
| Gažić, Ivana | Zagreb Stock Exchange | present |
| Granjé, Ben | The Flemish Federation of Investors | present |
| Gurau Audibert, Adina | Association Française de la Gestion financière (AFG) | present |
| Hölz, Christiane | Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW) | present |
| Jewell, Dermott | Consumers' Association of Ireland | present |
| Litvack, Eric | Société Générale | present |
| Lounasmeri, Sari | Finnish Foundation for Share Promotion | present |
| Mandic, Stjepan | Concepto Ltd | present |
| Masquelier, François | European Association of Corporate Treasurers (EACT) | present |
| Oberndorfer, Martha | Advisor to Austrian Public Sector Clients of ESG | present |
| Pedersen, Morten Bruun | Danish Consumer Council | present |
| Petrella, Giovanni | Università Cattolica | present |
| Prache, Guillaume | Better Finance | present |
| Reyna, Agustín | BEUC | present |

| Name | Organisation | |
|---------------------------------|---|---------|
| Riess, Rainer | Federation of European Securities Exchanges (FESE) | present |
| Saade, Virginie | Citadel | present |
| Santillán, Ignacio | Spanish Investors Compensation Scheme for investment firms (FOGAIN) | present |
| Schuurs, Pieter | Index | present |
| Stiefmüller, Christian Martin | Finance Watch AISBL | present |
| Van de Werve de Schilde, Tanguy | EFAMA | present |
| Vervliet, Chris | European Works Council at KBC Group | present |

ESMA

| Name | Position |
|-------------------|--|
| Verena Ross | Chair |
| Natasha Cazenave | Executive Director |
| Jakub Michalik | Acting Head of Governance and External Affairs Department |
| Fabrizio Planta | Head of Data Intelligence and Technology Department |
| Dora Blanchet | Head of Sustainable Finance Unit |
| Christian Winkler | Head of Markets, Funds and Infrastructure Analysis Unit |
| Amandine Zelenko | Team Leader, Enforcement Team |
| Patrik Karlsson | Senior Policy Officer, Investment Management Unit |
| Nathalie Piscione | Senior Legal Officer, Conduct Supervision and Convergence Department |
| Valeria Luraschi | Policy Officer, Investor Protection and Intermediaries Unit |