

Summary of Conclusions

Securities and Markets Stakeholder Group

Date:	6 July 2023
Time:	10:00h – 12:30h
Location:	Online
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No Item

1. Report from the Steering Committee

The SMSG Chair welcomed all to the meeting.

During an SMSG-only meeting (without ESMA representatives) on 5 July 2023, the SMSG had discussed the draft advice on the Joint Committee's consultation paper on the review of the SFDR Delegated Regulation, prepared by an SMSG Working Group. There were divergent views in the Group on the treatment of derivatives and their impact on the real economy. Since no final agreement on this draft had been reached yet, the Chair asked the rapporteur of the Working Group to set out the different views, after which several members clarified their point of views. The Group finally decided to accommodate the difference of views by including a minority opinion in their advice. There were also some smaller drafting suggestions made that were accepted.

2. Adoption of summaries of conclusions from 17 April 2023

The summary of conclusions from the SMSG meeting on 17 April 2023 was adopted.

3. Recent market developments

a. Artificial Intelligence and Robo-advice

Emilios Avgouleas gave a presentation on the benefits and risks of the use of artificial intelligence in finance including suggested regulatory approaches and possible legal remedies. The benefits included the lowering of overhead costs and inefficiencies in the global markets. He noted two key risks were algorithmic bias and algorithmic correlation and went on to suggest regulatory approaches to counter these risks. The regulatory approaches he outlined

included use of circuit breakers, use of code of conduct prompts, and prohibiting “Russian doll” types of AI programs (i.e. an AI system programming other AI systems or using information generated by AI powered platforms). He underlined that regulators’ current toolkits may be inadequate and suggested that circuit breakers should be added into AI systems used in high frequency trading. In terms of the possible legal remedies, he recommended shifting liability from the program operator to the manufacturer and mandating code of conduct prompts into the AI program.

Christiane Hölz presented a BETTER FINANCE research report on robo-advisers based on a mystery shopping exercise of a sample of automated, independent “Robo-advisory” investing service platforms. The exercise evaluated suitability, transparency, fees, sustainability, and asset allocation and expected returns. The report drew both positive and less positive conclusions: on the one hand robo advisers provide low cost, non-conflicted advice and are easy to use at a competitive cost; however they may offer a limited range of portfolios and may not sufficiently consider individual investor specificities. The report’s policy recommendations included improving awareness of investor protection regimes, promoting simplicity and comparability, revising the PRIIPs KID to make it digitally fit and to similarly present cost, risk and performance information, implementing a standardisation for digital disclosures, implementing templates on sustainability preferences, and undertaking a compliance assessment of all retail investment advisors’ algorithms.

SMSG members discussed the two presentations including the impact of AI on existing requirements, the value of personalised advice, the use of nudging techniques, the divergence in investment advice provided by different advisors and whether that is more significant with AI advice than with human advisors.

ESMA staff confirmed that verification of algorithms is already a requirement in ESMA guidelines, and that AI must be controlled in the same way as the standard logic, however it was important to keep regulations and guidelines up to date. ESMA staff also noted that ESMA would publish a discussion paper on digitalisation in the retail space in the next few months; they also pointed to an analytical article they had published earlier in the year showing that AI can amplify existing risks.

b. SFDR templates: consumer testing

Giovanni Petrella presented the results of a consumer testing exercise in Italy on graduate students on the draft SFDR templates included in the ESA’s joint consultation paper on the SFDR review. The survey results showed the need to strike the right balance between precision and clarity, that the relationship between the different definitions is not clear (i.e. between “taxonomy investments” and “sustainable investments”), that “greenness” is difficult to assess without a benchmark, that if colours are to be used then a calibration should be required as they can be misleading, and that textboxes - rather than footnotes - are preferred.

Finally, he warned that the sample is probably tilted to finding more correct answers than a purely random sample.

ESMA staff thanked Professor Petrella for the work done and provided more information on the overall testing exercise that involved a limited study in four countries. The other three country exercises noted similar concerns on colours and definitions.

4. Consultation paper on MiCA

ESMA staff presented the upcoming consultation paper on MiCA. They began by giving an overview of MiCA with the products and entities in scope, and an overview of the requirements on issuers and CASPs, as well as the role of authorities. They then described the mandates included in this first consultation paper which relate to CASPs' authorisation, identification and management of conflicts of interests and also how they should address complaints.

The consultation paper will be circulated in the following days, once published, and the Group will then decide on whether to set up a working group to respond to the consultation.

5. AOB

The Group discussed the batch of consultation papers on DORA that the Joint Committee had recently released. It was decided to establish a working group to respond to the consultation, if possible, this could be a joint working group with the EBA and EIOPA stakeholder groups.

The Group adopted the advice on SFDR that had been discussed at the beginning of the meeting, subject to there being no objections to the circulated revised text by the end of the day.

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	excused
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	absent
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	excused
Pedersen, Morten Bruun	Danish Consumer Council	absent
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	excused
Stiefmüller, Christian Martin	Finance Watch AISBL	excused
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
Salvatore Gnoni	Head of Investor Protection and Intermediaries Unit
Claudia Guagliano	Head of Consumer, Sustainability and Innovation Analysis Unit
Amandine Cordier	Investor Protection and Intermediaries Unit
Patrik Karlsson	Investment Management Unit
Louise Waller	International and Institutional Affairs Team