

# Summary of Conclusions

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

<b>Date:</b>	5 July 2023
<b>Time:</b>	14:00h – 16:30h
<b>Location:</b>	Online meeting
<b>Contact:</b>	<a href="mailto:louise.waller@esma.europa.eu">louise.waller@esma.europa.eu</a> T: +33 1 58 36 43 21

### No Item

#### 1. Opening remarks by the ESMA and SMSG Chairs

The ESMA Chair and the SMSG Chair opened the meeting, welcomed all the participants and introduced the topics for discussion.

#### 2. Sustainable Finance

The SMSG Chair introduced the Group's additional advice on Greenwashing that addresses four questions raised by the Chair of ESMA's Sustainability Standing Committee regarding their previous advice to ESMA on its call for evidence on greenwashing. The advice provides a definition of greenwashing that focusses on misleading investors, comments on whether greenbleaching is a problem from a supervisory perspective and on ESMA's role in view of the declining number of article 9 funds, and opines on the relevance of intent for greenwashing.

Chris Vervliet (SMSG) presented the Group's draft advice on SFDR. He noted that the draft delegated act on ESRS and the Commission Notice on Taxonomy Regulation had been published during the consultation period. He highlighted several aspects of the advice, including that the disclosure of quantitative PAI thresholds should be mandatory where they are used, that it is premature to use taxonomy technical screening criteria as the basis for the SFDR do no significant harm assessment, that estimates should be avoided due to cost considerations, as well as several remarks on the visual elements of the templates. He also described a difference of opinion in the Group regarding the treatment of derivatives, which

would give rise to a minority opinion within the final advice. He also requested that ESMA investigate structured funds vs structured products through EMTN.

The ESMA Chair presented ESMA's Progress Report on Greenwashing, noting how useful the two pieces of advice received from the SMSG had been in the elaboration of the Report. She outlined the ESAs' common understanding of greenwashing put forward in the report and illustrated it by listing some of the eight key characteristics of greenwashing identified in the report, including that it has a misleading component, and that it can be intentional or unintentional. She also gave some examples of areas exposed to greenwashing risks such as issuers cherry-picking positive information but omitting negative aspects that are material to investors' decisions. She went on to list some of the causes of greenwashing and some preliminary remediation actions. She then invited discussion from members of the Board and of the SMSG on the conclusions and main findings of the Report.

Regarding the SMSG's SFDR advice, members of the Board commented that, while estimates were not ideal, they may be necessary when lacking data early on.

Commenting on greenwashing, one member of the Board agreed with the SMSG's conclusions on intent. The member noted that the move from article 9 to article 8 funds had not occurred in all countries and therefore ESMA could play a convergence role. Another Board member also noted that it was important to provide guidance to market participants on incorrect information.

Relating to using estimates, one SMSG member noted that it would be important to phase out use of them quickly and one member provided an example of a company that had used estimates and needed to significantly restate their greenhouse gas emissions once they got better data.

One SMSG member requested more information from ESMA on materiality in ESRS and on the next steps of ESMA's funds names work. The member also commented that, despite article 8 and article 9 not being intended as labels, they have de facto become so. Another member noted that the risk of greenwashing allegations was particularly high for impact funds as investors may misunderstand the impact they can have via the fund. Another SMSG member spoke about the high risk of greenwashing to retail investors and how a scandal could reflect badly on the capital markets in general. ESMA was recommended to look at ESG indices, which were employing a negative screening approach as it could mean having no impact. ESMA was also asked whether the EU was looking at other labelling schemes, given work on the EU Ecolabel was not progressing.

ESMA staff noted the change of some previously article 8 into article 9 funds but also stated that it is not ESMA's policy aim to have a certain number of article 9 products.

Concluding the discussion, the ESMA Chair thanked the SMSG again for their two pieces of advice. She stated that ESMA would continue to work on funds names in the autumn as ESMA believed there were risks for greenwashing. She also confirmed that the interaction between SFDR and ESRS was an important topic for the ESAs, as was the recent material from the Commission on transition, and that it was important to look at how the financial system can support the transition to a more sustainable environment.

### **3. Retail Investment Strategy (RIS)**

The ESMA Chair introduced the topic noting that the Board of Supervisors had held their first discussion on the proposal by the Commission the day before.

Marie-Anne Barbat-Layani (ESMA) introduced the proposed RIS stating that ESMA was still assessing it but noting that, overall, there was support for the proposal; she also noted that a number of proposals stemmed from technical advice provided by ESMA and thanked the Commission for considering ESMA's views and input. She went on to outline the overall aim of the RIS proposal and the key changes proposed to MiFID II that include adapting disclosures to the digital age, protecting retail investors from misleading marketing, banning inducements in certain situations, among others. She also noted some of the proposals on supervisory convergence and enforcement and on amendments to the PRIIPs Regulation.

Derville Rowland (ESMA) presented ESMA's opinion on undue costs of UCITS and AIFs. She noted that it was a topic that ESMA had been working on through various initiatives for several years. She welcomed the Commission proposal and noted that it took into account ESMA's opinion especially so that investors are not charged undue costs and appropriate compensation can be put in place.

Henning Bergmann (SMSG) then presented a view of the RIS from the industry perspective. His overall assessment of the proposal was positive and he listed several positive aspects, such as the alignment of MiFID/IDD and realism about a full ban of inducements. He also listed some elements where vigilance was needed, including the complexity of the process and the numerous and simultaneous developments. Among issues of concern he highlighted the Value for Money framework, the rules on inducements, and the best interest test.

Guillaume Prache (SMSG) presented a view of the RIS from the perspective of individual investors. He argued that, while the RIS contained several good proposals, it falls short in several areas including on conflicts of interest. He argued that investment advisors should be called salespersons if they are essentially compensated by sales inducements/kickbacks and presented evidence of returns from "advised" investments vs. unadvised ones. He also noted concerns about the very targeted review of the KID that does not address the current serious content issues. However he welcomed the proposals on the ban of inducements for "execution only" investments, on "Value for Money", and on the Best Interest Test.

One SMSG member suggested there should be a distinction in L1 between clearly designated salespeople and professional financial planners paid by fees as a fix to the conflict-of-interest issue. Another SMSG member asked ESMA how it intended to work on the different mandates contained for it in the RIS and argued that reliable data would be needed, for example on benchmarks. Other SMSG members mentioned the importance of maintaining competitiveness, the need for high quality advice and the need to understand why there had been a jump in mistrust. Timing was mentioned and the need to ensure that ESMA had sufficient time to transpose the measures. Finally one SMSG member questioned how the pan-EU value benchmarks could reflect the rich diversity of funds.

The ESMA Chair thanked the presenters and noted there were many points for further consideration, such as Value for Money, benchmarks, and data.

#### **4. Concluding remarks**

The SMSG Chair concluded by noting that the discussions held today had shown the importance of joint meetings and that, although finding consensus takes time, it is helpful.

The ESMA Chair concluded by thanking all participants for the discussions and commented on the value of hearing views from across different parts of the market as they provide valuable input for ESMA's regulatory work and its convergence efforts.