

Summary of Conclusions

Securities and Markets Stakeholder Group

Date:	6 October 2023
Time:	9:00h – 17:00h
Location:	ESMA, 201-203 rue de Bercy, 75012 Paris, France
Contact:	stakeholders@esma.europa.eu

No Item

1. Report from the Steering Committee

The SMSG Chair welcomed all participants to the meeting. She reported to the Group that she had received a response from the Commission regarding the Group's [Position Paper on Depositary Receipts and Geopolitical Risks](#) detailing the measures taken to allow EU investors to withdraw from the Russian market. Christiane Hölz, Vice-Chair, noted that the window to withdraw had been very short and not all banks had informed their clients. The Group agreed that the SMSG Chair and Vice-Chair would prepare a response to the Commission requesting them to extend the deadline for investors to withdraw.

The ESMA Chair also welcomed the Group to ESMA's offices.

2. Adoption of summaries of conclusions

The summary of conclusions from the joint meeting between the Board of Supervisors and the SMSG on 5 July 2023 and from the SMSG meeting on 6 July 2023 were adopted.

3. Recent market developments

a. French responsible investment study

SMSG member, Adina Gurau Audibert, presented the results of an annual responsible investment study on the French market. The study showed that responsible investment in the SFDR sense had increased in 2023 by 7%. The study showed that there had been movement from article 9 to article 8 funds. The study had also collected information on the use of labels, on funds' exposure to green bonds, on the percentage of impact funds proposed and the use of the Sustainable Development Goals (SDGs) and of climate indicators, as well as the use of a coal policy in funds.

SMSG members discussed the report and made comments supporting the need for a label and noting the large percentage of article 8 funds, and the underlying of the MMFs included. It was noted that it was difficult for companies to align with SDGs but that they were an important communication tool to

retail investors. It was also noted since the introduction of the questions on sustainability preferences, fewer ESG funds are sold to retail investors.

ESMA staff noted that ESMA's recent [progress report on Greenwashing](#) had looked into impact investing and the role of engagement. They also noted the need for a European label to help encourage a single European market.

b. Loading the DICE against pensions

SMSG member, Lubomir Christov, presented a report by the Carbon Tracker Initiative entitled "[Loading the DICE against pension funds](#)" as some of the findings are also relevant for asset managers and long-horizon portfolios. He summarised the main message of the report as being that climate change could have serious consequences for investments (or a "Minsky Moment") within a shorter timeframe than commonly assumed by economists because their projections do not align with those of climate scientists.

SMSG members discussed the report and noted the need for the risk to be incorporated in the price, that disclosure by companies is important for assessing climate risk (e.g. the location of properties), that pension funds are the largest institutional investors, and that there was a need to provide guidance for how sustainability preferences of investors are considered. They also noted need to stabilise methods for climate stress test scenarios.

ESMA staff noted that ESMA will begin stress testing funds in 2024 and will aim to publish a report by early 2025.

c. Crypto promotion in social media

SMSG member, Agustín Reyna, presented work done by BEUC under the Unfair Corporate Practices Directive (UCPD) related to the role of social media in the marketing of crypto assets. He argued that the promotion of crypto assets by social media platforms and influencers leads to some consumers mistakenly investing in crypto assets. The aim of the work was to explore which legal tool could be the most efficient way to intervene.

SMSG members discussed the presentation including the need to label "partnership" of crypto providers with influencers, social media platforms etc. more clearly as advertising, the need to understand the social media business model, the cross-border element of influencers and the related difficulty of regulating them, and the need to educate investors and remove misleading information. One member noted the use of taxation channels in another jurisdiction as an example of another potential legal channel. The SMSG Chair noted that ESMA's role under MiCA was restricted to warnings, which they had already issued.

ESMA staff noted the useful deployment of UCPD. They noted that ESMA has issued warnings, including to influencers. On the global level, IOSCO and the FSB were also working on this issue. On the cross-border nature of the activity, MiCA has rules on reverse solicitations that require ESMA to produce guidelines.

4. Risks to retail investors of securities lending

SMSG member, Guillaume Prache, presented a potential investor protection issue related to a perceived inconsistency between ESMA's [Guidelines on securities lending by UCITS funds](#), from 2012, and its [public statement on securities lending to retail clients](#) under MiFID II, from 2023. He pointed out that when an individual investor holds securities via UCITS funds they receive a higher percentage of net profit than when they hold them directly as in the latter case a “fair and proportionate fee” for the broker is included versus no profit margin for the fund management company in the former case.

SMSG members discussed the issue including the need for fund managers to receive revenues for managing funds and the potential relationship with Investor Compensation Schemes and with voting rights.

ESMA staff clarified that securities lending to retail clients is allowed under MiFID and is currently left to intermediaries' discretion; ESMA therefore felt it was important to provide clarification. The statement therefore stresses the risks of the practice and identifies some behaviours that would not be compliant with overarching MiFID investor protection principles. They also noted that ESMA performs convergence work in this area, including a peer review follow-up in 2023 that will be presented.

5. Joint ESA stakeholder advice on DORA

SMSG member, Christian Stiefmueller, presented the advice produced by three of the stakeholder groups of the European Securities Authorities (ESAs) on the Joint Committee's consultation on DORA. The advice had been adopted by the Group via written procedure and covered various aspects related to the classification of ICT related incidents, contractual arrangements with third-party providers, and the harmonisation of ICT risk management tools.

The SMSG Chair noted that it was the first time the ESAs' stakeholder groups had produced joint advice and it was useful to cooperate for reasons of expertise and to include legislation that is only in the scope of one ESA, such as BRRD. She also suggested that the SMSG rules of procedure could be amended to include a lower minimum number of SMSG working group members in the case of producing joint advice.

ESMA staff evoked the challenge of balancing the high-level, cross sectoral work with producing workable standards. They also noted the complexity of the supply chain model. They noted that the consultation had received a large response which was still being evaluated and that more detailed feedback could be provided at a later date.

6. Sustainability reporting

a. European Sustainability Reporting Standards

SMSG member, Piotr Biernacki, presented an overview of the final first set of European Sustainability Reporting Standards (ESRS). He noted several challenges including the inconsistency in the approach of reporting between CSRD/ESRS and SFDR (materiality vs compliance) and remarked that further mis-sequencing of legislative initiatives would cause further inconsistencies.

b. Taxonomy Reporting

SMSG members, Piotr Biernacki and Florence Bindelle, presented some observations from SMEs and issuers points of view on the experience of the first year of taxonomy reporting. They noted various operational issues including unclear definitions, lack of data and lack of tools. They also presented the results of a study by PWC that showed that the proportion of taxonomy aligned activities is larger than expected but represents a small part of companies' activities and that companies find the taxonomy text difficult to apply.

SMSG members discussed both the ESRS and the taxonomy reporting presentations. They highlighted the need to stabilise reporting and for companies and analysts to take time to understand the templates. On the other hand there is a need to improve the (currently low) comparability of reporting. Finally, it was noted that, given the mismatch in regulations, companies will need to rely on ESG ratings and so the ratings' transparency should be improved.

ESMA staff stated that CSDR/ESRS is an important base piece on which to build sustainable finance regulation. They acknowledged that information that is not material for one company may become material when it is aggregated by asset managers who would therefore have an exposure to an ESG risk or impact. They also acknowledged the important role of auditors and noted the open consultation from the IASSB on this subject. Finally they noted that ESMA's own analysis would be published soon.

c. Guidelines on enforcement of sustainability information

ESMA staff presented an overview of ESMA's upcoming draft Guidelines on Enforcement of Sustainability Information (GLESI) on which a consultation is expected to be launched in December 2023. They indicated that ESMA's existing Guidelines on Enforcement of Financial Information (GLEFI, ESMA32-50-218) would be the reference for the GLESI.

SMSG members provided some initial views including on the need to maintain a balance between enforcement and dialogue due to the comparative novelty of reporting of sustainability information. In response to a question by an SMSG member, it was also clarified that the supervision of auditors takes place at national level with a cooperation body at EU level (the Committee of European Auditing Oversight Bodies, CEAOB).

7. MiCA

SMSG member, Giovanni Petrella presented the draft advice on ESMA's first consultation on MiCA. He made several remarks including that there should be a balance between investor protection and innovation and that the regulation and oversight for entities active in the crypto space should be the same as intermediaries providing economically equivalent financial services in the traditional finance space. He also made more specific remarks on supporting the "two-track approach", the need to clarify when retail clients would be covered by an investor compensation scheme (ICS), the preference for preventing conflicts of interest, the unclarity around "reverse solicitation", the need to clarify MiCAR's application to decentralised financed operations, and the need to monitor CASPs' use of their MiCA authorisation.

The Group adopted the advice.

ESMA staff noted the importance of making sure retail investors were aware of protections offered by MiCA and their limitations in comparison to MiFID. ESMA staff also agreed on the need to provide further guidance on reverse solicitation.

ESMA staff presented the second consultation package on MiCA. The SMSG is being consulted on sustainability indicators, transparency, record keeping, format of white papers, business continuity, cooperation between NCAs, ESMA/EBA and third-country authorities, and on Guidelines on suitability assessments.

SMSG members decided to form a working group to provide advice to ESMA.

8. Call for evidence on shortening the settlement cycle

ESMA staff presented the call for evidence on shortening the settlement cycle. They explained the context of the call particularly that CSDR Refit will mandate ESMA to assess the possibility to shorten the settlement cycle.

SMSG members discussed the issue including the more fragmented EU market (compared to the US market), the increase in settlement risk, and the various operational challenges implied versus the need for international competitiveness.

9. Follow-up on peer reviews

ESMA staff presented the follow-ups of two peer reviews. The follow-up of the 2018 peer review on the Guidelines on Exchange-traded funds (ETFs) and other Undertakings for Collective Investment in Transferable Securities (UCITS) issues found that NCAs have strengthened their practices, guidance and supervisory work in the area of ETFs and UCITS but that there were still concerns in relation to the level of costs for some UCITS using EPM techniques and that further work on EPMs would continue at EU level.

The 2017 peer review on the Guidelines on certain aspects of the compliance function under MiFID found that five NCAs needed to improved practices when supervising firms under the Guidelines. The follow-up report found that they had made progress with some additional elements that still needed to be considered.

10. AOB

ESMA staff gave an update on the MiFIR review and consolidated tape provider. They also thanked SMSG members who responded to an ESMA survey on divergence risks.

An overview of [upcoming ESMA consultations](#) was circulated for information.

PARTICIPANT LIST – SMSG 6 October 2023

Name	Organisation	
Alemanni, Barbara	University of Bocconi	present
Avgouleas, Emiliios	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	EuropeanIssuers 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	excused
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)	excused
Oberndorfer, Martha	Advisor to Austrian Public Sector Clients of ESG	present
Pedersen, Morten Bruun	Danish Consumer Council	excused
Petrella, Giovanni	Università Cattolica	present
Prache, Guillaume	Better Finance	present
Reyna, Agustín	BEUC	present
Riess, Rainer	Federation of European Securities Exchanges (FESE)	present
Saade, Virginie	Citadel	present
Santillán, Ignacio	Spanish Investors Compensation Scheme for investment firms (FOGAIN)	present

Name	Organisation	
Schuurs, Pieter	Europex	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
Kevin Phelan	Convergence Team
Isabelle Grauer-Gaynor	Head of Corporate Finance and Reporting Unit
Marie Lyager	Corporate Finance and Reporting Unit
Cecile Rechatin	Corporate Finance and Reporting Unit
Antonio Barattelli	Head of Investment Management Unit
Patrik Karlsson	Investment Management Unit
Salvatore Gnoni	Head of Investor Protection and Intermediaries Unit
Amandine Cordier	Investor Protection and Intermediaries Unit
Benjamin Burlat	Market and Digital Innovation Department
Dora Blanchet	Head of Sustainable Finance Unit
Stefano Sirtori	Team Leader, Trading Unit
Alberto Garcia	Trading Unit
Antonio Ocana Alvarez	Trading Unit
Louise Waller	International and Institutional Affairs Team