

Summary of Conclusions

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

Date:	8 November 2018
Time:	9:00 – 12.30
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1. Opening Remarks

The ESMA Chair welcomed all to the meeting. He informed the participants that the SMSG Chair Ruediger Veil could not attend the meeting due to unfortunate personal circumstances. He highlighted how important it is that members of the Board and the members of SMSG can meet in this forum. The ESMA Chair also noted that the SMSG met for its last meeting in its current term and that a lot of valuable work had been carried out in that period.

2. Brexit: Risk management in the period around 30 March 2019 in the area of financial services – the No Deal scenario

The SMSG member Eric Litvack gave a presentation outlining the main challenges he saw as possible effects from a no deal scenario in relation to the UK exit from the EU, in terms of access to the UK CCPs.

He mentioned the collective problem that is posed by this challenge and the need for the public sector to make contributions to solve this problem together with the private industry so that the need for clearing services can be ensured in the EU 27 for the industry. Clarity would be needed at the latest 90 days before the exit date.

SMSG member Rainer Riess outlined the main problems that he foresaw as a result of a no deal scenario as regards access to markets and data. He mentioned what he considered to be the most important aspects in order not to harm the aim of competitiveness of the EU 27, financial market stability and level playing field. He noted that cooperation agreements between the EU and UK are of essence. Access must be maintained to UK



data for markets and access to derivatives CCP should be ensured. Furthermore a cautious approach is needed as regards the re-calibration of liquidity and transparency provisions. Reference data only regarding EU27 can be considered as highly uncertain and lead to unintended consequences. He noted that third country proprietary trading firms in many cases are major providers of liquidity to the EU exchanges and their possible withdrawal could pose a risk in that regard.

SMSG member Ignacio Santillan highlighted the risks that could follow from a varying approaches of different NCA's to new and existing establishment across the EU27 on issues such as outsourcing arrangements. He saw a need to answer questions such as the applicability of UK compensations schemes covering EU 27 clients in the future.

ESMA Executive Director Verena Ross explained the role of the Supervisory Cooperation Network that ESMA has set up in order to assist NCAs to reach consistent decisions on issues such as authorisation of new business in their jurisdictions, and make sure that NCAs share cases they are working on (in an anonymous form). She informed the meeting that some 100 case have been dealt with so far and noted that some firms clearly are very late in their application processes, which was the reason for the warning ESMA issued in the summer. She noted that retail engagement rules are often based on national rules and can vary among different countries and that firms seem to be aiming to profit from such differences.

The ESMA Chair noted that there is no specific arrangement for the financial sector in the withdrawal agreement. The view of the ESMA Board of Supervisors is that in principle it is for the private sector to solve the issues related to a no-deal Brexit. He noted that EMIR 2.2 is progressing well and that UK CCPs are highly important for financial stability. Furthermore he stated that equivalence decisions will only be taken under strict conditions. ESMA is working on MoUs, which should be in place in case of a no-deal situation. ESMA is in dialogue with the Commission on a number of issues in relation non-centrally cleared OTC contracts as repapering could potentially lead to new obligations. As regards MiFID II data requirements, those are based on EU membership so a recalibration will be an inevitable consequence from the UK leaving the EU.

Andrew Bailey, FCA Chief Executive and ESMA Board Member, updated the meeting that the UK is preparing for several scenarios including the transitional scenario, and noted the proposed use of temporary recognition. The Bank of England is looking at the recognition of CCPs. He confirmed that there are several challenging issues to address as regards MiFID.

3. MiFID II Implementation

SMSG member Kerstin Hermansson presented some observations on the application and implementation of MiFID II and raised the most relevant issues for discussion, including



LEIs, periodic auctions and data quality as regards reporting overlaps, non-equity transparency, and consolidated tape providers.

ESMA Board member and SMSC Chair Elisabeth Roegele, updated the meeting on some of the activities undertaken as regards the MiFID II implementation efforts including e.g. a work shop held with trading venues. She confirmed that data quality is a challenging topic not least in light of UK data which risks overstating EU27 liquidity. She remarked that ESMA is in close contact with the Commission and Council on the issue of consolidated tape. She made a reference to the Q&As that ESMA is doing and has posted on its webpage.

SMSG member Tim Ward noted that investment research had decreased significantly for SMEs and that the cost had increased.

The ESMA Chair made reference to ESMA monitoring the impact of MiFID II for investment advice and he also made reference to the very good progress on LEI use across the EU. The meeting discussed the policy consequences for bonds as a result of data quality issues.

SMSG member Veerle Colaert presented a few observations in relation to product intervention powers and their relation to national measures. She noted that product governance issues seem to go hand in hand with product intervention measures and that in certain markets retail investors do not get access to products that interest them which seems to be due to an overly cautious application of certain MiFID II rules.

The view was expressed by some SMSG members that the possibility to take risk in the market should not be kept only for professional investors and that MiFID II had not been construed in order to hinder investments. Others pointed more to the risks arising from mis-selling.

ESMA Board member and IPISC Chair Merel van Vroonhoven presented the latest ESMA measures on investor protection. She noted that there were good reasons not to allow retail investors to buy CFDs and binary options. Further she emphasised the work done into data analysis to see what investors really do invest in.

ESMA also informed the meeting on the rules applicable to the possibility for opt-out from the target market regulation.

The ESMA Chair thanked all for a fruitful discussion.

4. FinTech

SMSG members Veerle Colaert and Jean-Marc Servat delivered a presentation on the main conclusions from the SMSG work on ICOs and crypto assets. The presentation highlighted the effect of MiFID/MiFIR on national measures as unresolved questions, and



pointed out new issues, particularly the legislation applicable to transferable securities and other financial instruments. The SMSG members advised ESMA to work on level 3 guidance on the concept of transferable securities and tokens, as well as approaches to be taken towards sandboxes and innovation hubs.

SMSG members pointed to the uncertainty regarding the legal nature of crypto-assets and the possible consequences of the qualification of some of them as financial instruments; clarity is needed on how a CSD based on blockchain technology may be authorized by an NCA; there is a potential need for a bespoke regime for platforms that fall outside of MiFID and MAR; and there is also a need to address in the regulation new activities and provide clarity on whether these new activities fall under MiFID.

ESMA Board member and Chair of FISC Jean-Paul Servais presented ESMA's work on ICOs. He pointed to the public statements and warnings made in the area of ICOs and VCs that ESMA has done. He emphasised that the topic is at the forefront of the activities of the ESMA Board of Supervisors and all the work ESMA is doing in order to contribute to the establishment of the legal nature of these kind of instruments. He confirmed that the system varies across Europe and that for some of these instruments there would not be a requirement for a prospectus. He noted that the lack of information and the anonymity seems to be one main attractive feature of the system.

SMSG members made comments regarding e.g. the need for a stable legal framework that shows ownership and where rights are enforceable.

The ESMA Chair concluded noting the evolution of financial markets that is currently taking place due to financial technology and which ESMA is monitoring closely and he thanked all for the discussion.

5. SMSG Vice Chairs closing remarks

Vice-Chairs Jarkko Syrila and Christiane Hölz thanked, also on behalf of the SMSG Chair Ruediger Veil, all Board members for their time and availability in meetings with the SMSG during the past mandate period.