

SUMMARY OF CONCLUSIONS

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

Date: 18 November 2021
Time: 09:30 – 12:30
Location: Microsoft Teams
Contact: federica.briganti@esma.europa.eu

1. Opening remarks by the ESMA and SMSG Chair

The ESMA Chair welcomed the Members of the Board of Supervisors and the Member of the Securities and Markets Stakeholder Group (SMSG) by highlighting the importance of the engagement with stakeholders through the SMSG. The SMSG Chair welcomed the new ESMA Chair and stressed how highly the SMSG values the opportunity to discuss new market and regulatory developments with the Board of Supervisors.

2. Digital finance

Birgit Puck (ESMA) presented ESMA's work conducted following the call for advice on digital finance in close coordination across the European Supervisory Authorities (ESAs). She explained that ESMA looked into the growth and speed of digitalisation in finance, and its impact on value chains. Furthermore, she highlighted that ESMA's work also focused on the new phenomenon represented by mixed activity groups (MAGs). She also gave an overview of the preliminary recommendations which suggest an update of the disclosure requirements; the promotion of ways to enhance the level of consumer protection in relation to the provision of services in a digital context; and the adoption of a holistic approach to the regulation and supervision of fragmented value chains, also bearing in mind the European Commission's legislative proposal for a Digital Operational Resilience Act (DORA). Finally, she outlined the recommendation to develop possible ways to enhance structured cooperation between financial supervisors and other relevant authorities (e.g. data protection, competition...). She announced that there will be a discussion of the draft report at each ESA's Board of Supervisors in Q4 2021.

Christian Stiefmueller (SMSG), rapporteur of the working group, presented the SMSG's advice on Digital Finance. He explained that the advice underlines the importance of digitalisation and sets out guiding

principles that should inform the process of digitalisation, including regulatory consistency and legal certainty to prevent market fragmentation. According to the advice, it is important to maintain both a 'level playing field' among providers of services and develop safeguards against competitive imbalances. Furthermore, it is important to maintain high standards of protection for users, generally, and their data, in particular. In relation to data centric business models and fragmentation of value chains, the SMSG highlighted the systemic risk aspect. The advice suggests a joint ESAs coordinating team responsible for DORA to overcome the complex allocation of supervisory responsibilities. The SMSG highlighted the potential of digital tools to address fragmentation in a positive way. The SMSG also advised on platforms and bundling of services, by highlighting the emergence of digital platforms in retail financial services. On mixed-activities groups, the SMSG reiterated that it is necessary to have a systematic approach as well as differentiations amongst different services and more clarity on what is the regulatory scope.

The ESMA Chair thanked the SMSG for the presentation, highlighting that consumer protection risks are an important area of focus for ESMA.

3. Retail investor protection

Rodrigo Buenaventura (ESMA) presented the call for evidence launched by the European Commission by highlighting that ESMA's advice will assist the Commission in the preparation of legislative proposals implementing aspects of the upcoming retail investment strategy and is due by 30 April 2022. The advice will include among others:

- 1) Disclosure: identification of significant overlaps, gaps, redundancies and inconsistencies across investor protection legislation, in particular to avoid information overload and overly complex information, while ensuring investor protection;
- 2) Digital disclosure: including assessment of how regulatory disclosures and communications can work best for consumers in the digital age;
- 3) Digital channels and tools: an assessment of both risks and opportunities with respect to retail investing stemming from both the increasing availability of digital tools and the increasing levels of direct investor participation.

Beyond its call for evidence, which was opened for consultation, ESMA plans to develop the technical advice in close co-operation with national competent authorities, who have direct supervisory experience on these topics, and the SMSG.

Tilman Lueder (European Commission) highlighted that the main issue is the direction the EU legislator wants to take on retail investor protection and whether the approach should be client centric or product centric. While recognizing that digital is the future, the European Commission is exploring ways to assess tools to establish investor profiles (for instance a passport) and to consider what an online client-centric approach could look like.

Guillaume Prache (SMSG) presented the Better Finance study on inducements. In particular, the requirement for Member States (i) to ensure that commissions do not impair the duty to act in accordance with the best interest of clients and (ii) to require management companies to act in such a way as to prevent undue costs being charged to UCITS funds and their unitholders. These requirements were in his opinion not sufficiently enforced.

Henning Bergmann (SMSG) gave a presentation on the SMSG's work on the call for evidence. The SMSG set up a Working Group to provide feedback to ESMA in the context of its call for evidence on retail investor protection. The working group suggested multiple improvements of the existing disclosure regime through

the following suggestions: (i) simplification and consistency of the framework would help investors to better cope with inherent complexity, (ii) to discard information which has no value for the investor, (iii) to apply complaints-handling consistently as per the ESAs report published in March 2021, (iv) to have regulated firms and unregulated firms subject to the same regulatory framework, (v) to align and simplify different regulations dealing with costs, since many investors struggle to understand costs and the impact of costs on value.

The working group was still discussing other issues such as: finding a match between requirements of the regulatory framework and the usefulness of the information for the investor, financial literacy effectiveness and importance of drawing on the lessons from behavioural finance, simplification of the framework and simplicity of the products, comprehensibility and comparability and new tools to be explored for more meaningful comparability. Furthermore, it was highlighted that new challenges arise around social media and open finance, items also being discussed within the working group.

The SMSG discussed the information that should be given to distributors and consumers in order to take rational decisions, how to align different pieces of regulations, how to ensure a high level of comparability and the idea of a client centric disclosure approach.

4. Sustainable finance

Chris Vervliet (SMSG) gave a presentation on the interaction between the Sustainable Finance Disclosure Regulation (SFDR), the Markets in Financial Instruments Directive (MIFID) and the taxonomy, highlighting the challenges in terms of complexity and the consistency between concepts and legislations. He commented that different problems arise in this context: the difficulty to implement the new legislation (MIFID update and SFDR) in the absence of data and within a tight timing. He stressed the need for ESMA to play a strong role to ensure a level playing field with regard to acceptance of imperfection, tolerance of incomplete data, use of proxies and avoid gold-plating and regulatory arbitrage.

Montserrat Martínez Parera (ESMA) provided feedback highlighting that, from a supervisory perspective, the sustainable finance and regulatory framework are growing but not at the same speed. This situation may lead to consumer protection issues, including green washing and the lack of transparency. She highlighted that supervisors are aware of the challenges involved and the reputational risks for all actors concerned.