

SUMMARY OF CONCLUSIONS

Securities and Markets Stakeholder Group

Date: 3 February 2022
Time: 10:30 – 15:30
Location: Microsoft Teams
Contact: federica.briganti@esma.europa.eu

1. Report from the Steering Committee

The ESMA and SMSG chair welcomed Pieter Schuurs as new SMSG Member. The ESMA Chair highlighted the overview of consultation papers expected to be launched in 2022 and shared with the SMSG.

The Steering Committee reported that the SMSG, since the last meeting held in September 2021, has finalized the following workstreams: 1) the advice on short selling, 2) the response to the call for evidence on certain aspects relating to retail investor protection, 3) the advice on the call for evidence on packaged retail and insurance-based investment product (PRIIPs).

2. Adoption of summary of conclusions from 18 November 2021

The summary of conclusions was adopted.

3. Recent market developments

- Christiane Hölz (SMSG) presented the DSW / BetterFinance research conducted on the intermediaries' implementation of the Shareholder Rights Directive (SRDII). She highlighted that the survey amongst shareholders' associations to assess the effectiveness of SRDII shows several obstacles preventing the effective cross-border exercise of shareholder rights across the EU. They have conducted an additional survey to analyse the neo-brokers' assessment of their need to comply with SRD II. According to the results, certain neo-brokers publicly state they do not fall within the remit of SRDII. Taking into account the results of the surveys, DSW/Better Finance have elaborated specific

policy recommendations to improve shareholder engagement. SMSG Members discussed the issues, by highlighting the difficulties experienced by shareholders not only in exercising voting rights but also in engaging in companies. In its feedback ESMA staff recognised that obstacles persist when shareholder rights are exercised cross-border and these constitute a detriment not only to investor protection but also in promoting sustainable finance.

- Chris Verliet (SMSG) presented his views on the impact of inflation on investor protection. He highlighted that in his opinion investing is a social right that should be accessible to all, but which is currently affected by increasing inflation in a long-term low interest rate environment. In addition, MIFID suitability requirements and especially the focus on the assessment of the ability to take risk loss may lead investors to safer assets (such as government bonds) with no or very low upward potential. He states that this type of over-protection results in a situation where investors with a defensive investor profile who invest in such “safer” assets may not suffer losses in nominal terms, but when taking the impact of inflation into account, they suffer losses in real terms. He concludes that the combination of high inflation, low interest and an excessive focus on clients’ ability to bear losses results in a wealth tax on the vulnerable. SMSG Members discussed (i) the constraints of MIFID II and the need for disclosing and increasing the awareness of return-on-investment net of inflation and (ii) the meaning of “safe investment” in the current environment. ESMA staff highlighted that the inflation risk increases the exposure for investors to capital markets and that the suitability test only applies when advice (or portfolio management) is being provided. ESMA has conducted a review of its Suitability Guidelines in 2018 to deal with behavioural biases. The Guidelines now clearly state that questionnaires should not induce clients to give a certain reply. The risk profile nevertheless remains a very important tool to give adequate advice.

4. Call for Evidence on retail investor protection aspects

Henning Bergmann (SMSG) gave a presentation on the SMSG’s report on the call for evidence on retail investor protection. The SMSG suggests multiple improvements to the existing retail investor protection regime, including but not limited to, a further simplification and increase of consistency of the overall regulatory framework and an alignment of regulatory frameworks applicable to regulated and unregulated firms. The SMSG also discusses a number of risks and opportunities of innovation. Furthermore, he highlighted the importance of addressing the new challenges that arise around social media and open finance. ESMA staff thanks the SMSG for its very rich advice and gives feedback on the responses received to the call for evidence. ESMA received 63 answers, a majority from banks, asset managers and associated institutions. ESMA confirms to be aware of the need to simplify, and of the importance of cross-sectoral consistency. ESMA is, therefore, in close contact with EIOPA in this respect and agrees with the “same risk – same rule” principle. In regard of open finance, ESMA wants to take a cautious approach, taking the need for confidentiality and data protection into account, and refers to the differences between payments services and investment services in this respect. In regard of financial education, ESMA states that the ESAs work together closely. One of the challenges is to define who should be responsible for what (regulators, government, education system).

ESMA's chair confirms that the advice is extremely rich and helpful and especially appreciates that the advice is based on a consensus within the SMSG, which is very valuable for ESMA.

5. PRIIPs

Giovanni Petrella (SMSG) presented the SMSG working group's advice on the call for evidence on PRIIPs, highlighting that the SMSG, despite being a strong supporter of the overall aim of the PRIIPs Regulation, believes that the goal of enhancing investor protection by improving disclosure and establishing uniform transparency rules on PRIIPs has not yet been reached, and some changes to the current regulatory framework are needed. The SMSG highlighted that a reform should start with the PRIIPs Regulation, where key provisions on the content of the document must be amended. The SMSG favors a targeted amendment to Article 8 of the PRIIPs Regulation to include past performance information within the main contents of the KID for relevant funds and insurance-based investment products.

ESMA staff thanked the SMSG for the work conducted in relation to PRIIPs and noticed that it covers all the aspects raised. An open hearing will be held to collect additional input. ESMA is broadly in line with most of the points raised. However, on performance information the views are split. There are technical issues, and differentiation might be needed depending on product categories. Also on the question whether there is a need to include more ESG-information, ESMA would welcome more input during the public hearing. On the idea of digitalisation of the KID, ESMA is aligned with the SMSG. Especially the idea of layering is promising, even though the devil may be in the detail. Finally, the main difficulty is that a trade-off is always necessary between comparability (which involves many technical issues) and meaningfulness.

6. ESMA Strategy

The ESMA Chair saw the following key achievements over the past years: great progress in supervisory convergence; enhancement of risk assessment capability and progress in the field of sustainability and digitalisation. She presented ESMA's future strategy by highlighting that over the past years ESMA's mandate has broadened, in particular in relation to the supervision of Central Counterparties (CCPs) and data services providers (DRSP), while also the scope of supervisory convergence has been enlarged. Looking forward she highlighted some of the key challenge ahead, such as the ongoing digitalisation of financial markets (accelerated by COVID), the need to promote sustainable finance, the need to promote international co-operation in a competitive environment whilst taking note of the uncertain political and economic situation. She stressed the need to deliver high quality work in a timely manner and requested input from the SMSG on what ESMA should focus on beyond what had been set out.

SMSG Members provided input to ESMA's future direction, highlighting issues of an organisational and technical nature, and recommending a number of key areas in respect of the content of ESMA's future work.

1. Organisation

- need for even more inclusiveness and stakeholder consultations, both formally (SMSG and CWGs) and informally;

- balance of competences within ESMA staff could be improved by being open for hiring new staff members with experience
 - o in the private sector - this would further increase quality, give more practical input, but would also require strict conflict of interest rules
 - o in the technology sector - to be well-equipped for the upcoming RegTech and SupTech challenges;
- In case of urgency, it should be possible to convene the SMSG on very short notice;
- The relationships with EBA, EIOPA and the ESRB should be intensified;
- The relationship between Level 1, 2 and 3 should be reconsidered (even though this is outside of ESMA's remit), since ESMA's hands are currently often bound as too much is strictly regulated in L1 or L2. There is a need for more impact for ESMA and an increased willingness to give mandates to ESMA;
- The relationship with markets / industry: need for more market information;
- There is a need for more agility of ESMA.

2. Technical issues

- ESMA should increase the information on costs and performance of certain products by developing publicly accessible databases ("datahub for the market"). The SMSG considers that a weakness of the ESAs is the lack of data, especially on retail investment products – there is not even a database on UCITS. The French supervisor has a "library" of Key Investment Documents (KIDs) which does not allow to compare products and is difficult to search. The SMSG recommends creating an EU-wide database which is easily searchable. Currently, ESMA needs to pay external data-vendors to get access to information but has no impact on the methods applied and no-one supervises those vendors;
- ESMA's infrastructure needs attention, including the question how large amounts of data can be stored;
- These changes need to be paired with measures to mitigate technology and data protection risks.

3. Content of ESMA's work

- The SMSG stressed the importance of focusing on retail investor participation in financial markets (and the necessary protection in doing so). The Commission's Retail Investor Strategy will create a lot of extra work in this respect.
- ESMA should become more involved in shareholders' rights, duties and engagement.
- Need to increase level of investor participation in the markets, underpinned by regulatory change (e.g. bond market is almost entirely wholesale due to regulatory requirements since 2007);

- There is a need for more confidence in ESG data by ensuring the quality of data disclosed by companies. This will determine the future of sustainable finance. The role of the European Single Access Point (ESAP) in this respect is important – info will need to be digitized from the start and will be available for everyone.
- Need to clarify what greenwashing means;
- Lack of regulation on crypto-assets damages the market, which may have long term consequences for investors who lost money in crypto and do not make a difference with other financial products;
- The SMSG supports promoting supervisory convergence and suggests further work in relation to (i) what is to be considered non-misleading, clear and intelligible information – many documents do not meet this standard - and (ii) the digitalisation of financial markets;
- Attention for competitiveness;
- Need for proportionality – it might get too expensive for some small players to be approved / licensed;
- Cross-border issues are very relevant (supervision, home-host division, complaints, coverage by investor compensation schemes).

The ESMA chair is grateful for all the input and sees the following common themes around which the SMG provided guidance: (i) how to interact with the market and collect all relevant data, (ii) the importance of promoting sustainable finance and ESG in all its aspects and (iii) the organisation around the legislative process and ESMA's supervisory convergence activities.

7. Consultation Paper on review of suitability guidelines

ESMA staff presented the consultation paper on the review of suitability guidelines. The SMSG provided feedback in particular with respects to the principal adverse impact and the difficulties related to the alignment with the taxonomy. The SMSG decides to set up a working group to develop the issues raised during the discussion. Mr Chris Vervliet will be the rapporteur of this group.

8. Proportionality

ESMA staff gave a presentation on the set-up of the Advisory Committee on proportionality and ESMA's proportionality related work. The SMSG highlighted the importance of embedding proportionality in all ESMA's work and asked to be involved in the 2023 development of recommendations.

9. AOB

- The SMSG decided to set up a working group on inflation and its impact on investor protection;
- The SMSG Chair announced that the retail investor aspects of crypto-assets” will be discussed during the next SMSG following ESMA’s suggestion, with Ivana and Christian presenting; and
- Piotr Bernacki (SMSG) suggested to discuss the topics of “sustainability reporting” and “Taxonomy Regulation related Q&As” in an upcoming meeting;
- Martin Scheck suggested to discuss the CSDR settlement regime, and in particular the penalty regime;
- Adina Gurau Audibert suggested to discuss a report on fee-based and commission-based advice (KPMG study);
- Guillaume Prache suggested to discuss a BETTERFINANCE report on inducements.



PARTICIPANT LIST – SMSG 3 February 2022

SMSG MEMBERS

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| Barbara Alemanni | Full professor University of Genoa and SDA Bocconi affiliate professor |
| Henning Bergmann | CEO and member of the Board of Deutscher Derivate Verband (German Derivatives Association) |
| Geoffrey Bezzina | Chairman (in executive role), Board of Management and Administration, Office of the Arbitrator for Financial Services, Malta |
| Piotr Biernacki | Vice President of the Polish Association of Listed Companies and President of the Foundation for Reporting Standards |
| Florence Bindelle | Secretary General at European Issuers AISBL |
| Lubomir Christov | Advisor to the Bulgarian National Association “Active Consumers” |
| Veerle Colaert | SMSG Chair and Professor of Financial Law, KU Leuven University |
| Jasper De Meyer | Financial Services Officer, European Consumer Organisation (BEUC) |
| Urban Funered | CEO, Swedish Securities Dealers Association |
| Adina Gurau Audibert | Head of Asset Management, Association Française de la Gestion financière (AFG) |
| Christiane Hölz | Lawyer, DSW |
| Dermott Jewell | Policy and Council Advisor Consumers' Association of Ireland |
| Eric Litvack | Managing Director at Société Générale |
| Sari Lounasmeri | CEO at Finnish Foundation for Share Promotion |
| Stjepan Mandić | Founder and Managing Director of Concepto Ltd |
| Martha Oberndorfer | Member of the Advisory Council, Austrian Shareholder Association |
| Morten Bruun Pedersen | Senior economic advisor at the Danish Consumer Council |
| Giovanni Petrella | Full Professor of Banking, Università Cattolica |
| Guillaume Prache | Managing Director, Better Finance |
| Rainer Riess | Director General, Federation of European Securities Exchanges (FESE) |



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| Virginie Saade | Head of Government and Regulatory Policy for Europe at Citadel |
| Ignacio Santillán | CEO, Spanish Investors Compensation Scheme for investment firms (FOGAIN) |
| Martin Scheck | CEO and Member of the Board of the International Capital Market Association (ICMA) |
| Alexander Schindler | Member of the Executive Board, Union Asset Management Holding AG |
| Pieter Schuurs | President & COO of ICE Endex |
| Christian Martin Stiefmueller | Senior Adviser, Research & Advocacy at Finance Watch AISBL |
| Chris Vervliet | Deputy Secretary & Member of Select Committee European Works Council at KBC Group, KBC Asset Management, Brussels (Belgium) |

ESMA

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|---------------------|---------------------------------|
| Verena Ross | Chair of ESMA |
| Natasha Cazenave | Executive Director of ESMA |
| Roxana De Carvalho | Head of Department, GVS |
| Frederiek Vermeulen | Team Leader, GEA |
| Valerio Novembre | Policy officer, INI |
| Jacob Lonqvist | Senior Cooperation Officer, GEA |
| Matteo Rava | Senior Policy Officer, INI |
| Salvatore Gnoni | Head of Unit, INI |
| Christian Winkler | Head of Unit, RAE |
| Emmanuel Dumas | Senior Policy Officer, INI |