

# **Meeting of the Financial Services User Group (FSUG)**

## **DRAFT Minutes**

**22-23 February 2024**

### **Adoption of the agenda, approval of the minutes of the November meeting**

Agenda adopted and minutes approved.

### **Tour de table: update from members on their activities of FSUG interest and on newly identified risks to consumers in financial services**

The FSUG members started off with a “tour de table” to update each other on various financial issues relevant for consumers in different Member States and informing about main legislative and non-legislative developments in support of protecting consumers. Key topics included crypto and cash concerns, the green transition, the reintroduction of shares with multiple voting rights in Germany, and issues with PAD, where challenges persist in facilitating basic payment account access for vulnerable individuals, indicating a need for a review of the directive in the next EC mandate. Over-indebtedness emerged as a major focus, with some raising the issue of lack of clarity on what debt advice should include. Consumer protection activities and emerging risks were emphasized, alongside initiatives for sustainability and financial literacy.

### **Update from the Commission on proposed legislative files relevant for the FSUG in the field of retail financial services**

Eric Ducoulombier, Head of Unit B3 at DG FISMA, provided updates on the state of play on the proposed payment regulations, emphasizing the swift progress of the Instant Payments Regulation proposed in October 2022, which received unanimous support from co-legislators and is set to enter into force around April. Proposals for PSD3 (Payment Services Directive 3) and PSR (Payment Services Regulation) are progressing. Since June 2023 the Parliament progressed rapidly. ECON voted its report and negotiation mandate in February. The Council is reviewing the proposal but is less advanced than the EP, which wants to adopt its report and mandate before the election recess. Reaching a final agreement on PSD3 and PSR between co-legislators in 2024 appears unlikely. The Digital Euro proposal is progressing slowly in EP and Council. The cash tender proposal is progressing quicker than the digital euro proposal.

Mr Ducoulombier also noted that discussions on future work and the priorities of the next Commissioner have commenced. There is a possibility that some files relevant to consumers, such as PAD and MCD, may be revised under the new Commission. However, final decisions will rest with the future new Commission. The floor was opened for questions and the questions centred on over indebtedness and the PSR vote in the ECON committee.

## **Presentation by ASUFIN on the upcoming new structures for out-of-court resolution in Spain and their expected impact on consumers**

ASUFIN presented a soon-to-be-approved new independent consumer-protection authority, called the Financial Client Protection Authority, which would be established, among other tasks, to address complaints from financial service users. Currently, the Bank of Spain addresses issues ranging from cheques, cash, financing, accounts and deposits resulting to 34,000 claims to the Bank of Spain. Similarly, the Securities and Exchange Commission addresses investment issues and has 1,000 claims while the General Directorate of Insurance and Pension Funds addresses insurance matters and has over 10,000 claims. The objectives of the Financial Client Protection Authority include establishing a system for extrajudicial dispute resolution, promoting financial education, and addressing issues and damages related to conduct rules, good practices, and abuses of contractual clauses. Claims are restricted to under 20,000 euro claims. Decisions would be binding.

In response to the financial crisis and the increasing number of court cases were designated a specialized for such disputes in some areas. Following a public consultation in 2017, a draft law was formulated in 2022, gaining approval for mandatory reports in 2023. However, the project dropped due to a change in government, still needs to be approved by the Spanish legislator.

For financial claims, the resolution would provide the claimed amount and interest, while non-monetary claims might result in compensation ranging from 100 to 2,000 euros. The process would have a 45-day timeframe for internal resolution proposals and 20 days for notification to involved parties, ensuring a maximum total duration of 90 days. While collective claims have been advocated by ASUFIN, they have yet to be encouraged or accepted. Regarding collective redress, the outcome from the EU negotiations on the Commission proposal on alternative dispute resolution would be important.

## **EBA presentation of its Peer Review on the supervision of creditors' treatment of mortgage borrowers in arrears under the Mortgage Credit Directive (MCD): findings, follow-up measures recommended to competent authorities and best practices identified**

Dr Margaux Morganti from EBA presented the EBA Peer Review on the supervision of creditors' treatment of mortgage borrowers in arrears, which assessed the conduct supervision approaches of seven competent authorities (CAs) in this area. The seven CAs (CY, EL, HU, LT, NL, PT, SK) were selected based on objective criteria, such as the relevance of the requirements in Article 28 MCD on forbearance measures and the EBA Guidelines on arrears and foreclosure (EBA/GL/2015/12) in a given Member State.

A Peer Review is a key tool for the EBA to deliver on its supervisory convergence mandate and is performed by an *ad-hoc* Peer Review Committee (PRC) set up for each review.

The MCD Peer Review assessed whether the conduct supervision and the steps the seven CAs had taken effectively ensured that consumers in payment difficulties benefit from reasonable forbearance by creditors, as set out in the EBA Guidelines on arrears and foreclosure, and the EBA Opinion on good practices for mortgage creditworthiness assessments and arrears and foreclosure (EBA/Op/2015/09).

The findings showed that, overall, the supervision of the reviewed CAs is effective and that they have adapted their supervision to reflect changes in economic environment. The Review found that the seven CAs have implemented the EBA Guidelines on arrears and foreclosure in their entirety. The Review also showed two main approaches in the supervision of Article 28 MCD and the EBA Guidelines, i.e., CAs with a responsibility for conduct supervision only, and CAs with conduct supervision and also prudential supervision, with some CAs adopting prudential-led monitoring.

In line with the EBA Peer Review methodology, the PRC proposed a number of follow-up measures for CAs aimed at strengthening the consistency of supervisory practices and outcomes in order to ensure an equally high standard of consumer protection across the EU 27 Member States. A follow up report will be undertaken two years after the publication of the Peer Review report and will assess the adequacy and effectiveness of the actions undertaken by CAs in response to the follow-up measures. The follow-up report could also cover those CAs that were not subject to this Peer Review.

The Peer Review also identified a number of best practices, the adoption of which might be of benefit for other CAs, and these include, *inter alia*, (i) the degree and level of cooperation and extensive interaction among departments involved in the supervision of creditors' treatment of borrowers in arrears (NL, PT); (ii) a specific team which supervises the product approval and review process conducting different projects and investigations on this (NL); (iii) the implementation of several supervisory tools for monitoring creditors' engagement and provision of information to borrowers (EL, NL, PT, SK): and (iv) a quick response to the changing economic environment (LT, PT).

The floor was opened for questions which resulted into a discussion on the different supervisory practices in the different CAs within the Member States and the importance of creditors' adequate provision of information to, and engagement with, consumers. One FSUG member mentioned that national supervisors often prioritize prudential regulation over consumer protection, considering the two policies opposing rather than complementary.

### **Consumer in the financial services market in Poland - problems seen through the prism of the activities of the Stop Bank Lawlessness Association**

Aneta Wydrzynska presented the history of the founding and activities of the Stop Bank Lawlessness Association<sup>1</sup> (SBB). In the beginning, it initially focused on solving the problem of abusive contracts by advocating for legislation in Parliament on elimination of abusive clauses in contracts and also by supporting members in litigation against banks. The association

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<sup>1</sup> Stop Bankowemu Bezprawiu

conducted a number of information campaigns including sending letters to the Presidents of all courts and billboard campaigns where the statement was “judges apply EU law”. Between 2018 and 2021, the association sent 5 complaints to the European Commission through which they drew attention to the non-compliance with Directive 93/13/EC. The Commission services are still engaged in informal dialogue with the Polish authorities to assess whether there are grounds to open infringement proceedings against Poland.

The president of the association was one of the parties in C-520/21 before the CJEU in 2021. The Court issued a judgement which was an important guideline for judges in interpreting the effects of unfair abusive clauses in mortgage agreements. The president was also a party in case no C-756/22 whereby the CJEU confirmed the valorization of the amount of credit granted/paid to the consumer which is not due to the banks. Polish consumers have gained protection against bank claims amounting to approx. 23 billion. The SBB maintains active engagements with both the European Commission and various Polish authorities, including the financial ombudsman and the financial supervision authority. She then spoke about basic information about Poland in the context of the consumer of financial services. While Polish banks offer modern services, scandals such as the “polycydeposit” scheme, three major banks declaring bankruptcy and also the sale of corporate bonds to elderly customers without information on risks. Some issues for consumers are: lack of fixed rate for long term mortgages, inadequate consumer protection, and ineffective enforcement of consumer rights. In 2023, only 2 penalties were imposed for infringements on collective consumer interests. Additionally, prolonged court proceedings and inconsistencies in applying and respecting CJEU judgments by certain judges pose significant hurdles. National judges often consider themselves as protectors of financial stability. As a result, they tend to avoid pro-consumer judgments of the CJEU for fear of negative impact on the national banking sector. There are other factors that affect the willingness of national judges to apply the judgment of the CJEU and to send preliminary questions to the CJEU. These include the time-consuming nature of such initiatives, especially when there is substantial emphasis on speeding up the judicial process. Additionally, the national judges' perception of national contract law also plays a role in their decision-making process. The number of problems is increasing annually and there's an urgent need for enhanced support for consumer organizations and a substantial overhaul of the Polish financial supervision authority.

**Presentation by the Commission services on main conclusions of the high-level Commission conference of 20 February 2023 on financial literacy, resilience and inclusion; exchange of views with the FSUG members**

DG FISMA representative provided a short overview of the various activities taken by the Commission to promote financial literacy, including the development of the joint EC-OECD/INFE financial competence frameworks (one for adults and one for children and youth) and the actions under the proposals for the retail investment strategy to encourage Member States to promote learning measures that support the financial literacy of (prospective) investors. He informed the FSUG that on 20 February the European Commission together with the Belgian Financial Services and Markets Authority organized a high-level conference on financial literacy, resilience and inclusion where relevant stakeholders discussed best practices on financial literacy. He explained the aim of the conference and presented the key takeaways.

Financial literacy levels in the EU are low according to a recent barometer. People need to be in control of their money as being financially literate not only matters for financial well-being but also for general well-being. Therefore, a balanced approach is needed in which financial literacy initiatives go hand in hand with sound consumer protection and financial supervision. Consumers should not distrust financial services but remain skeptical and take conscious financial decisions. The ongoing digitalization (and the challenges consumers face due to scams and the ongoing evolution towards a more cashless society), prevailing practice like buy now pay later schemes, and the delivery of effective and inclusive financial literacy initiatives are some of the challenges in this area which were discussed with a view of developing best practices. Financial literacy is expected to stay high on the political agenda.

Questions were then raised regarding the balance between consumer scepticism and trust in financial services. It was noted that while a healthy level of scepticism is necessary, financial literacy initiatives alone have limitations and must be complemented by robust consumer protection regulations, effective supervision, and sound governance practices.

### **Over-indebtedness study – lessons learned and key future priorities to deal with over-indebtedness**

DG JUST representative gave a presentation on the results of the study on over indebtedness. The revised Consumer Credit Directive 2 (CCD2) marks a significant step forward, drawing inspiration from successful legislative frameworks such as the GDPR. The Commission was bold in its initiative on over indebtedness. However, it is important to note that this is just the beginning of our efforts. The Commission might in the future, issue new calls for grants since it believes that the topic of indebtedness should remain high on the political agenda. The study has 5 main tasks:

1. Understanding the EU landscape: Mapping the prevalence of over indebtedness across EU member states.
2. Consumer perception survey: Assessing consumers' opinions and perceptions regarding over indebtedness.
3. Macroeconomic analysis: Assessing the impact of COVID-19 on over indebtedness.
4. Legal analysis: Examining EU and national-level regulations pertaining to over indebtedness.
5. Behavioural analysis: Understanding consumer behaviours and choices contributing to over indebtedness.

Questions were mainly targeting the transposition of regulations, with discussions about potential transposition workshops and also the markets within member states. Implementation emerged as a crucial aspect of the discussion.

### **Opening remarks by Marcel Haag, Director for Horizontal policies at the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA)**

Marcel Haag (Director for horizontal policies within FISMA) recalled the first meeting of the FSUG and discussed the importance of the RIS package. He stated the importance of user's

interests being defined very clearly in the proposals, rather than leaving the industry to decide. The FSUG Chairperson ,showcased the importance that FSUG holds to the studies especially on mortgages. However, Marcel Haag explained that there is no budget left for the studies in DG FISMA. However, he expressed his commitment to explore ways of securing funding, but prospects are low. The FSUG Chairperson also raised the issue of finding a way to remunerate the FSUG members for their work, as it was the case at the beginning of the Group, taking into account that they should perform a lot of specialised tasks and that most of them are individual members or representatives of low-resourced national consumer organisations.

### **Update from the Commission on the state of play on negotiations for RIS package**

The meeting on the Retail Investment Strategy (RIS) scheduled for March 7th and 8th with the Council promises to be significant. The Belgian Presidency has indicated RIS as a top priority - their objective is to secure a general approach by the end of their mandate.

Two points of contention stand out: the partial ban on third-party inducements for non-advised sales and the concept of "value for money." The Belgium Presidency intends to present a paper advocating for pragmatic solutions to ensure workable benchmarks for assessing value for money. However, in the Parliament, reaching a consensus in the ECON by the time of the planned vote on March 20th may be challenging but not impossible. The rapporteur seems to want to keep the date.

Within the European Parliament, the rapporteur has proposed to completely remove benchmarks in her draft report. Discussion on compromise amendments are on-going. There will be discussions on February 27<sup>th</sup> which will centre on value for money and the partial inducement ban.

Discussions in Council are also still on-going. No decisions have been taken yet on key issues.

Members of the Financial Services Users Group (FSUG) are keen to contribute their opinion to rapporteurs and potentially issue a press release. However, there's a concern that the FSUG remains relatively unknown to the public. It would be useful and timely if FSUG's position paper on Value for Money would be circulated ahead of the rapporteur's meeting on 27 February.

### **Discussion and approval of the FSUG opinion on the use of Value for Money benchmarks for investment products**

The draft proposed opinion has been approved by the FSUG.

### **Update from the Commission services on FSUG external meeting in Vilnius in June**

DG FISMA representative informed about the discussion he had with the FSUG Chair and FSUG hosting member regarding the preparation of the venue and possible agenda points to be put on the FSUG external meetings on the agenda. DG FISMA is about to send the invitation to the FSUG members so that FSUG members can safely book hotel and flights.

### **Discussion and approval of the FSUG annual report**

The document includes the most important papers and activities performed by the Group from the beginning of its current mandate until the end of 2023. It includes summaries of responses

to the Commission consultations on the Retail Investment Strategy (RIS) and to the Sustainable Finance Disclosure Regulation (SFDR), of the FSUG proposed studies on Over-indebtedness (personal insolvency) and on Mortgages, of the FSUG own initiative papers and opinions – on PSD2 review and on Personal Insolvency. Some letters sent – to Commissioner McGuinness on digital euro and the FSUG Statement on COP 28 and the interview of the FSUG Chairperson in the DG FISMA Newsletter are also part of the Annual Report.

The most important lessons learnt from the speakers of our external meeting in Helsinki (Finland) are also included in the Annual Report, together with the FSUG Key Topic, which this year is about Independent Debt Advisory Services, as efficient tools to fight over-indebtedness and the necessary support needed both at EU and national level. However, a paper on FIDA, although prepared, was not formally adopted for inclusion in the report. Nevertheless, it will be included in the 2024 report since it was formally adopted in the meeting. All adopted minutes were included in the report, with slight adjustments to the report made by FSUG members before official approval.

### **Discussion and approval of the Recommendations to the new Commission**

Given that the EU Parliament will end its term in June, it is important that the Recommendations to the new Commission are sufficiently detailed and consistent in all sections of the document. The FSUG members discussed and agreed that it would be ideal to have a summary of the recommendation, and a more detailed approach later in the document. The Recommendations should be further discussed in writing by FSUG members with the aim to approve the final document as soon as possible.

The FSUG members also discussed the PEPP regulation and whether it would be good to revise it now given discussion on value for money. Pensions are of crucial importance due to the aging population in the EU. Another aspect that was discussed was the proposal of access to cash and if an FSUG opinion on the current access to cash would be a good solution. Other topics discussed included the audit reform, retail investment issues, insurance and payment fraud.