



Minutes of the Financial Services User Group meeting

19-20 April 2018

The minutes of the previous meeting were approved.

The Commission welcomed the new member, Alexandre Caget. He replaces Christian Bevacqua.

Presentation of the EC proposal for a Crowdfunding regulation

The Commission updated the FSUG on the contents of the recently adopted proposal for a crowdfunding regulation intended to fulfil the Commission's commitment under the CMU to develop alternate channels of finance. Follow-up now lies with the Council and Parliament and the timetable for next meetings in this context has not yet been decided. In comparison with the US and China, the EU crowdfunding market is visibly lagging behind. In the EU proper, the UK alone accounts for about 70-75% of the whole EU crowdfunding market. The Commission proposal seeks to stimulate the development of cross-border crowdfunding platforms whose threshold is fixed at below €1 million over 12 months.

FSUG representatives asked questions about the criteria used to collect data about peer-to-peer business and to what extent this covered real estate. The Commission undertook to provide more precise information by way of follow-up.

FSUG representatives were also concerned with the apparent pro-business focus of the proposal, the risks it would promote regulatory arbitrage, the burden placed on consumers to evaluate the risks of investing in a particular platform, and the absence of metrics and of reporting requirements on the performance of any crowdfunding platform as a whole. The Commission responded to these concerns in detail and recalled that forthcoming co-decision discussions may change some of the current substance.

Information point on the external meeting (Porto, in June)

The relevant member presented the suggested schedule of the external FSUG meeting (19-20 June 2018). A conference with FSUG speakers would be organised on day 1, with day 2 devoted to FSUG internal discussions. Some topics were already identified, but the whole programme was subject to discussion. Members were selected as speakers for the different topics (non-performing loans, risks for consumers, switching, cryptocurrencies, fintech, robo-advisors and smart contracts). In addition there will be two presentations from PT speakers – names to be confirmed. On day 2, the meeting will end around 15.00 so that some members could still take the direct flight to Brussels.

The Commission confirmed that members will be supposed to fly to Porto on Sunday and come back on Tuesday or Wednesday, depending on the availability of flights – 3 nights maximum will be reimbursed in case there is no connection arriving before 23.00 on Tuesday. Those wishing to fly to Porto for the weekend can do so, bearing in mind that flights will only

be paid by the Commission if equally or less costly than the options for Sunday evening. Otherwise, the difference will be borne by the member.

Presentation of the draft report on irresponsible lending

The contractor (Prof. Cherednychenko) presented the group with the draft final report. Consumer credits are “simple” products which can cause high detriment nonetheless (pay-day loans, low interest rates, increasing level of debt for EU consumers). Responsible lending would be achieved if products were designed in the best interests of consumers, from the design phase to the credit-worthiness step. The focus should be on suitability for them, not on profitability for providers. One should assess credit-worthiness, not credit risk. Lenders should also avoid to provide credits to those who cannot then repay. Problematic areas are high-cost credits, information asymmetries, behavioural biases, and some regulatory failures (e.g. no strict rules on credit-worthiness) together with poor enforcement. Cross-selling is also problematic, as peer-to-peer lending. All these areas would need to be considered, according to the contractor, by the Commission for the upcoming evaluation of the Consumer Credit Directive.

Most members praised the findings of the report –apart from one member who considers it brings no added value- but also underlined the importance of measuring detriment for consumers, mention foreign currency loans as problematic, have less UK focus and put some nuances on short-term loans (they still serve a purpose). The distinction between credit risk and credit-worthiness was particularly praised.

Via the Secretariat, Members already sent some comments to the contractor, with more to come right after the meeting. The report will be finalised by end April.

Presentation of the EC Sustainable Finance Action Plan

The Commission informed the FSUG about the recently adopted Sustainable Finance Action Plan, which is the strategic paper that, following the recommendations of the High Level Working Group on Sustainable Finance, will guide the Commission initiative on this field until the end of the mandate. The goal is to divert 180 bln € per year to sustainable investments. For this aim, a legislative package will soon be published containing four actions: the first one is a taxonomy meant to enlist sustainable investments according to Environmental, Societal and Governmental (ESG) criteria. The second action is to intervene on fiduciary duties, while the third and fourth ones will focus respectively on retail investors and on corporate reporting. The underlying objective is to take sustainability into account when making investment decisions, so the issue is how to incorporate ESG consideration into the economic indexes (a voluntary "ecolabel" is envisaged for financial products, as well as a comparison website, the need for financial advisors to ask their customers' preferences regarding sustainability).

Some FSUG representatives started criticizing the choices, but the Commission underlined that the work is still in progress and no final choices have been made. In deeds, FSUG representatives welcomed the action plan, and highlighted that the "ecolabel" should not lead to sub-optimal investments, i.e. that such considerations should not lead to prefer lower-yields investments because that would determine a long-run slowing of the economic growth in Europe.

At the same time, the competitiveness issue has been raised (funds for interesting brown investments could be raised outside the EU, lowering the average returns for the EU investors, unless the ecolabel becomes a wider standard).

Discussion on risks for consumers stemming from Brexit

The representative of the Commission pointed out that the negotiations are conducted by the Task Force under Article 50 TEU. In terms of transparency, the Commission has published all negotiations documents submitted by the EU and various notices on the legal and practical implications of the withdrawal of the United Kingdom. The European Council has published the guidelines on the framework for the future EU-UK relationship. Regarding financial services the Commission services have published the following notices:

- occupational retirement institutions
- asset management
- banking services
- insurance
- credit rating agencies
- financial instruments
- post-trade financial services
- statutory audit

https://ec.europa.eu/info/brexit/brexit-preparedness_en?field_core_tags_tid_i18n=22857

Furthermore, the three European Supervisory Authorities and the Single Supervisory Mechanism have also issued opinions and guidance. Last year ESMA published an opinion on risks of funds relocating, following Brexit:

https://www.esma.europa.eu/sites/default/files/library/esma34-45-344_opinion_to_support_supervisory_convergence_in_the_area_of_investment_management_in_the_context_of_the_united_kingdom_withdrawing_from_the_european_union.pdf

EIOPA issued the opinion on insurance contracts:

https://eiopa.europa.eu/Publications/Opinions/2017-12-21%20EIOPA-BoS-17-389_Opinion_on_service_continuity.pdf

Recently, the Joint Committee published the Report on Risks and Vulnerabilities in the EU Financial System, analysing also risks related to Brexit.

<https://esas-joint-committee.europa.eu/Publications/Reports/Joint%20Committee%20Risk%20Report.pdf>

Members enquired about the contingency plans to mitigate risks related to Brexit.

The representative of the Commission explained that the Commission is working with ESAs on contingency planning, but it is up to the individual firms to prepare their contingency plans. Supervisors need to ensure that firms are to prepare for different scenarios. As far as the EU is concerned, there are tools for dealing with market disruptions, and ESAs are conducting regular stress tests. It was stressed that Brexit will have negative effects and the negotiations aim at controlling it but cannot completely neutralise its effects.

Members discussed the situation of the asset management sector, possible transfer of assets to new locations, or the impact of Brexit on the possibility of servicing contracts.

Presentation on level two EC measures of Shareholders' rights Directive

DG JUST.A3 presented the group with the Directive, the empowerments and aims of the implementing acts under the Shareholders' rights Directive. It also provided the FSUG with the related timeline.

Retail Financial Services' Action Plan – Action 11 (e-idas)

Following a presentation made at the previous FSUG meeting, the Commission (FISMA & CNECT) updated FSUG participants on developments since the selection of experts for the group set up under Action 11. A public call yielded 15 experts representing financial institutions and consumer organisations. Three existing Member State expert groups are contributing 7 experts each: on eIDAS and anti-money laundering (regulatory and supervisory level). The group is jointly managed by FISMA, CNECT and JUST with the support of the EBA for the coordination of expertise from the anti-money laundering sub-committee.

The group is in charge of advising the Commission as it defines issues and policies that will facilitate the cross-border opening of bank accounts in the EU based on electronic identification means and know-your-customer due diligence. In future, ways will be found to enrich the work of the new expert group with the consumer perspective provided by the FSUG.

DG CNECT provided a short explanation of the eIDAS Regulation (910/2014), primarily intended to facilitate the cross-border use of electronic identification means and trust services for electronic transactions in the internal market. The Regulation contains a chapter on electronic identification which deals with the cross-border use of eID means for at least public services used in the Member States for the purposes of ID authentication. The eIDAS Regulation could be of benefit for the private sector as well, including in financial services. The new group will provide a useful outlet to that end. Should there be interest, DG CNECT would be willing to make a more extensive presentation about eIDAS at a later FSUG meeting.

In the absence of DG JUST, DG FISMA recalled that the latest amendments to the anti-money laundering directive recognises the use of eIDAS as well as any other any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities. DG JUST is also involved in the group's work from the consumer and data protection perspective.

FSUG participants raised the following issues to which the Commission responded in detail: unbanked refugees; existing ESAs guidelines on what customer due diligence measures should be applied by credit and financial institutions to mitigate money laundering/terrorist financing risks presented by their customers;; how to balance KYC considerations against the PAD requirement for consumers resident in the EU to have access to a basic bank account; concerns about the abuse of biometric data through technological manipulation; authentication requirements in the eIDAS Regulation; the added value of this group at a time when private online companies (Amazon, Google), are already providing clients with identifiers. By way of follow-up, the Commission will also share next month a study providing a preliminary mapping of the eID/KYC issue in relation to cross-border onboarding in the EU.

Presentation of EC proposal on Injunctions/Collective Redress

FISMA.D3 presented the EC proposal on Injunctions and Collective Redress, starting from the current framework, then describing in detail the measures the Commission is putting forward to enhance consumer protection (identification of relevant entities, new powers...). Members welcomed the proposal but also raised a question on the protection of investors against issuers, as the Market Abuse Directive is not included in the Annex – the question will be answered by FISMA colleagues in the coming days, also depending on MiFID rules.

Public Consultation – Fitness check on the EU framework for public reporting by companies

DG FISMA representative presented the aim and scope of the public consultation regarding the public reporting by companies. He explained that the public consultation is one of the actions of the Action Plan financing sustainable growth. The objective the public consultation is to check whether the extant body of Union law is still fit for purpose.

The group decided to reply to the consultation.

Presentation of EC Fintech Action Plan

DG FISMA representative presented the objectives of the Fintech Action Plan:

- Supporting innovation scaling up,
- Supporting the uptake of technology,
- Enhancing cyber-security.

Discussion about risks associated with Fin-Tech, other than cyber-crime, followed the presentation. Members pointed out the need to look at the governance and code of conduct of Fin-tech firms in order to limit risks for consumers and users.

Summary of the work of sub-groups

The subgroup on Distribution of Investment Products was presented by DG FISMA with the findings of the study which will be published next week. They decided not to issue a FSUG paper on this, focusing instead –to be decided after the report has been analysed- on advice, to be presented at an EC hearing on June, 29th.

On cryptocurrencies, the subgroup clarified the definition and the relevant elements of consumer protection. A general paper on potential impact will be produced.

The subgroup on irresponsible lending discussed the report of the contractor and decided to come up with FSUG recommendations – to be drafted by September.

Having outsourced a report to a contractor, the subgroup on digitalisation and financial inclusion, is waiting for a first report (June), with the final report expected in September.

The subgroup on digitalisation and big data is gathering examples of problems and best practices in the field.

The subgroup on enforcement is drafting a letter on the ESAs reform to be addressed to the Chair of the relevant Working Group in the Council and the Chair of the relevant EP Committees.

Presentation of EC evaluation of the Consumer Credit Directive

JUST.E1 provided the group with a presentation on the soon-to-be-launched Evaluation of the Consumer Credit Directive. The Evaluation is expected to be launched in the coming weeks and be finalised by the end of 2019 or the beginning of 2020.