



## **Minutes of the Financial Services User Group (FSUG) meeting**

**28 – 29 March 2019**

### **Adoption of the agenda and approval of the minutes of the previous meeting**

The minutes of the previous meeting were approved, and the agenda of the meeting was adopted.

### **Opening address by Director Mario Nava and discussion on FSUG recommendations**

Director Mario Nava welcomed the Group, in his new capacity of Director of the “Horizontal Policies” Directorate in DG FISMA. He informed the Group on the recently published call for expression of interest to select additional FSUG members and encouraged the members to share the information among their peers. He then reiterated the importance of FSUG inputs into policy-making and voiced appreciation for the work of the Group, especially with regard to replies to public consultations, which is the most natural channel to provide input into the policy initiatives. The Director welcomed the fact that some of FSUG members are also members of the EBA, ESMA and EIOPA stakeholders groups, which contributes to consistency of policy-making. Finally, Mario Nava thanked FSUG members for their list of recommendations, which cover a large spectrum of issues.

FSUG members asked questions about which are the European Commission priorities on consumer protection in financial services and how they are established.

DG FISMA replied that they are working on future priorities, also in view of the appointment of a new Commission College, and that FSUG recommendations will be taken into account, for instance on retail investors topics. At the next FSUG meeting, members will have the chance to discuss their recommendations with the Commission services.

### **Information about the new call for application**

A [continuously open call for application](#) for the selection of members of the Financial Services User Group (FSUG) was published on 27 March on the European Commission expert groups’ website. Applications may be sent at any time up to three months before the mandate of the group expires.

The FSUG secretariat will send through the link to the webpage where the call for application can be consulted and invites members to spread it among their contacts.

## **Tour de table**

Members gave an update on issues and risks for consumers in Member States and presented activities of FSUG interest.

### *Updates from Member States*

- DK: following the Danske Bank scandal, a new package with several measures against money laundering was launched.
- UK: from 1 April, the Financial Ombudsman Service will be able to require financial services firms to pay significantly more compensation to consumers and businesses.  
Digital-only banks have difficulties to achieve profitability. Monzo, for instance, recorded high net losses in its most recent financial year.
- DE: Germany's 10-year government bonds (bunds) yield is currently close to 0%. This situation carries risks for consumers, that could be pushed to choose risky investments to get higher return.
- PT: there is a proposal to review the Portuguese financial supervision system, with a new authority being created for resolutions. With this new system the Bank of Portugal would lose power and some independence (the government would directly appoint a Board member). The debate is ongoing.

### *Developments at EU level*

- On 21 March, the European Parliament and Member States agreed on the core elements of reforming the tasks, powers, governance and funding of the ESAs.  
With this review, the role and powers of the EBA as regards anti-money laundering supervision has been strengthened. In particular, the EBA is given the tasks of collecting information from national competent authorities, enhancing the quality of supervision through the development of common standards, performing risk assessments and facilitating cooperation with non-EU countries on cross-border cases.  
ESAs will also be able to use the product intervention power for practices and products that cause consumer harm.  
The Commission had proposed that industry and market participants that benefit from the ESAs work should contribute to their funding, but this proposal was not retained by the co-legislators. However, the agreed rules will allow the ESAs to accept voluntary contributions from Member States or observers as long as they do not put the independence of the ESAs into question.
- On 27 March, the Council has agreed its general approach on secondary markets for non-performing loans. The ECON committee is supposed to have a debate and vote the report by Gualtieri and De Lange on the NPL Directive on 1 April [*post-meeting note: the vote was postponed*].

## **Presentation of the Behavioural study on the digitalisation of the marketing and distance selling of retail financial services (Julien Brugerolle, DG JUST E1)**

DG JUST presented the experiment design and main results of the behavioural study on the digitalisation of the marketing and distance selling of financial services, which points to the need to rethink how information is disclosed to consumers online.

The study main objectives are to depict the landscape of online retail financial services providers in the EU, to map and assess the commercial practices online, to identify and test drivers behind the effectiveness and propagation of some of these commercial practices as well as the corresponding remedies, and to draw a set of policy recommendations

The main recommendations, based on the study conclusions are:

- Ensure that existing legislation is rigorously enforced to maintain a level playing field for all market actors and to protect consumers;
- Improve the quality of information provided to consumers when they buy financial products and services online;
- Take measures to protect vulnerable consumers, for instance by improving the quality of the information provided (tables, allowing comparison);
- Ensure that the speed of the purchasing process does not lead to poor consumer decision-making;
- Increase transparency around personalisation and targeting;
- If tools are provided to help consumers during the purchasing process, ensure that these are fit for purpose and designed such that consumers can use them;
- Monitor technological developments and design technology-neutral legislation.

The study will most probably be published on Tuesday 9 April, on the same day of the launch of the online public consultation for the DMFSD evaluation.

Members stressed the dangers of Fintechs pushing consumers to decide in a fast way.

In the following exchange with FSUG members, DG JUST mentioned that the Omnibus Directive (part of the New Deal for Consumers) which is currently in *trilogues* should introduce new principles to enhance the transparency of comparison websites and online marketplaces. DG JUST also introduced [algo:aware](#), an ongoing study coordinated by DG CONNECT to analyse the opportunities and challenges of algorithmic decisions which will focus also on credit scoring. Such study might be presented at the next FSUG meeting.

### **Presentation on Enforcement of consumer law (Evelina Tumasonyte, DG JUST E3)**

Regulation (EC) No 2006/2004 on consumer protection cooperation (the CPC regulation) lays down a cooperation framework to allow national authorities from European Economic Area countries to jointly address cross-border breaches of consumer rules.

DG JUST presented the improvement brought by the [new CPC Regulation \(EU\) 2017/2394](#), that will be applicable as of 17 January 2020:

- Extended scope to allow for cooperation in new areas (including mortgage credit and payment accounts, unless where there are detailed cooperation mechanisms);
- New procedures for coordinated actions to investigate and tackle widespread infringements;
- New market surveillance system allowing “entrusted” external bodies such as consumer and trade associations and European Consumer Centres to issues alerts to authorities and the Commission;
- Reinforced mutual assistance for bilateral cases.

The new CPC Regulation also strengthens the powers of competent authorities to cooperate in the cross-border context, including by carrying out test purchases and mystery shopping, to suspend and take down websites, to impose interim measures, and to impose penalties proportionate to the cross-border dimension of the imputed practice.

Members stressed the importance for national authorities to have enough resources and for EU authorities to check whether enforcement is agile and efficient. DG JUST highlighted the importance of cooperation and exchange of best practices between enforcement authorities to reach this goal.

DG FISMA briefly introduced the work of FIN-NET, a network of EEA national organisations responsible for settling consumers' complaints in the area of financial services out of court.

### **Presentation on Crypto-assets: Classification & applicability of EU law (Elisabeth Noble, EBA)**

The EBA presented their work on Fintech and crypto-assets.

The EBA has a general mandate to monitor new and existing financial activities and to promote a coordinated approach to the regulatory and supervisory treatment of innovative financial products and services. In March 2018, it published a [FinTech Roadmap](#) identifying a series of priority work streams relating to authorisations and the regulatory perimeter, innovation facilitators, crypto-assets, cyber-security, consumer protection, and AML/CFT.

Understanding opportunities and risks arising from financial innovations is one of the 2019-2020 strategic priorities for EBA, which this year has already published a report on crypto-assets, guidelines on outsourcing arrangements including outsourcing to cloud, as well as a joint ESAs report on regulatory sandboxes and innovation hubs.

In its report on crypto-assets, EBA found that crypto-asset activities in the EU are still relatively limited and do not appear to give rise to implications for financial stability. However, crypto-asset activities do not constitute regulated services within the scope of EU banking, payments and electronic money law, and this brings potential risks for consumers and investors.

EBA foreseen actions for 2019 include:

- Monitoring financial innovations, and assisting competent authorities in monitoring institutions' crypto-asset activities and consumer-facing disclosure practices for those products;
- Engaging in BCBS work on prudential treatment options for banks' exposures to crypto-assets and reviewing the need for guidance to support a common application of current prudential rules;
- Monitoring of AML/CFT risks and engaging in ongoing FATF work.

EBA recommendation to the Commission is to carry out a holistic cost benefit analysis of crypto-assets, since DLT solutions are now being extended to other sectors (e.g. healthcare)

Members stressed the dangers of crypto-assets for retail consumers, and the need for legislators and supervision authorities to take action on this complex matter and foresee risk mitigation measures.

### **Update on the FSUG 2019 external meeting**

The 2019 external meeting of the FSUG will take place in Rome (Italy) on 12 and 13 September. The Bank of Italy should participate with a presentation on the banking ADR and possibly on the financial education study they have just carried out.

### **Presentation on Sustainable Finance – Taxonomy stream (René van Merriënboer, DG FISMA B2)**

DG FISMA presented the EU Taxonomy of sustainable activities, grounded in the legislative package from May 2018 following the Action Plan on Financing Sustainable Growth. It consists of a proposal setting out criteria to determine the environmental sustainability of an economic activity ('taxonomy') and a work stream of the Technical expert group on sustainable finance (TEG) which assists in developing the technical details of the taxonomy that will feed into a delegated act.

The objective of the taxonomy is to foster sustainable investment to reduce the climate investment gap by creating a harmonised list of economic activities that can be considered environmentally sustainable for investment purposes and that comply with four conditions:

- Substantially contribute to at least one of the six environmental objectives<sup>1</sup> defined in the proposed Regulation;
- Do no significant harm to any of the above mentioned environmental objectives;
- Comply with minimum social safeguards; and
- Comply with quantitative or qualitative Technical Screening Criteria.

These conditions are meant to determine whether an activity can be considered to substantially contribute to the objectives, while doing “no significant harm”.

Members raised the issue of consistency with financial services Ecolabel criteria, which are being developed in parallel to the taxonomy. DG FISMA agreed with the point, but stressed that both the Ecolabel criteria and the taxonomy will be updated with time. FSUG members also raised the issue of ‘green washing’.

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<sup>1</sup> The six environmental objectives as defined in the proposed Regulation are: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy, waste prevention and recycling; (5) pollution prevention and control; (6) protection of healthy ecosystems.

## **NPLs and consumer protection: discussion on the study to be outsourced**

The sub-group leader presented the progress made with drafting the Terms of Reference for the study on non-performing loans (NPLs) to be outsourced. The sub-group discussed on the way the updated definition of NPL impacted positively NPL rates.

The sub-group agreed on three main objectives for the study:

- Mapping NPLs in the countries with a high NPL rate (Greece, Italy, Portugal and Ireland), including the identification of type of debt;
- Understanding the process of offloading and its timing, including the link with macroeconomic conditions. Rules of provisioning must be analysed in each of the four countries selected. This objective might be met by performing certain case studies;
- Assessing the secondary market solutions, including identification of actors, their incentives, availability of data on market values. The assessment should also consider if players are socially beneficial or harming the society. This objective will imply mostly literature review.

Overall, the study should also assess consumer protection rules in the selected countries. Concerning the criteria for consumer detriment, a set of specific questions must be developed by the sub-group, to be inserted in the Terms of Reference.

The timing is good to perform a study on NPLs since it will allow to monitor the situation before the entering into force of the NPL Directive. Later on, the study can be followed by monitoring exercises.

Timeline proposed by the sub-group leader and agreed by the group:

- By end of April: draft Terms of Reference to be sent to the sub-group;
- By mid-May: input and feedback from sub-group;
- draft to be then submitted to the entire Group and to the Commission ahead of the May FSUG meeting;
- May FSUG meeting: discussion on the draft and adoption of Terms of Reference.

Members of FSUG reminded the sub-group of the need to indicate the number of key stakeholders to be interviewed and to include a schedule of the deliverables (progress report, draft report, final report).

## **Helping consumers understand how their money is invested: discussion on the study to be outsourced**

It was reconfirmed that a small-scale research will be contracted for this topic. More details on content and structure of the study to be prepared for next meeting of the FSUG, in May.

## **Update on the FSUG 2017-2018 Annual Report**

FSUG members adopted the Annual Report without objections. The final version of the Report can be published on the website.

## **Presentation of a DSW survey on “MiFIDII – Do the new rules serve private investors?”**

DSW organised an online survey on the topic of MiFIDII. There were almost 500 replies from private investors. The respondents assessed negatively the new financial market rules (94% negative replies). The main concerns relate to information overload and lack of tradability of bonds. Newly available information on costs is assessed as fairly good. 75% of respondents indicated that they do not feel better informed by the KIDs, still preferring to look into prospectuses, where the binding information is. The majority of respondents is in favour of lighter rules for experienced investors.

DSW intends to extend the survey to Member States through Better Finance and that could be an opportunity to include also a question on risk categories.

As next steps, DSW intends to include the findings in a reply to relevant national authorities in Germany and to feed them into the European Commission review of MiFIDII.

## **Risk Outlook**

The leader of the sub-group proposed to go into more depth with the FSUG recommendations and to identify the risks that may affect each recommendation. To start the work on this further development, the leader of the sub-group will devise a set of questions and send them to the Group. FSUG members who already have relevant material for risks related to the recommendations should send the materials to the sub-group leader. The recommendations and the associated risks will serve as a base to develop the debate with EC services during the next FSUG meeting(s). The Group agreed to cover only the long-term risks related to Brexit (less competition, less economies of scale), but not the short-term and immediate ones.

In the Risk Outlook structure agreed during the FSUG meeting in January, still a contribution on banking risks is missing. The responsible group member will send it soon.

## **FSUG paper on responsible lending: reply to EC consultation on CCD evaluation**

The sub-group leader gave an overview of the paper and its main parts: background, concept of responsible lending, drivers and symptoms of irresponsible lending and recommendations to European Commission, European Parliament and Council in view of the review of the Consumer Credit Directive (CCD). It was requested, for ease of reading, to insert at the beginning of the paper a table of contents with active links.

The paper is based on the external study on “Irresponsible Consumer Credit Lending across the EU in the Post-Crisis Era”, but the paper goes much beyond the study, addressing more issues. As decided by the FSUG in previous meetings, the paper will accompany, as an attached document, the FSUG full-fledged reply to the EC consultation on the review and evaluation of the CCD. The Group mandated the leader of the sub-

group to fill-in the reply to the public consultation. In the text boxes, open for editing, references to the paper should be made. The questions referring to areas that were not assessed will be marked with "I don't know" reply. The deadline for the reply is 08/04. The FSUG decided to publish the paper on the FSUG website also on 08/04.

In view of further dissemination of the paper, members of the Group should suggest relevant parties to whom to submit it. The paper can be sent to EU institutions, relevant MEP, members of ECON committees, EC services. The secretariat of FSUG will circulate the paper to the relevant EC services.

### **Internal discussion on FSUG reply to the public consultation on eco-label**

There will be a stakeholder meeting on 04/04 in Seville, organised by JRC. A significant presence of civil society is expected, which was welcomed by FSUG as a positive development. The member of FSUG who will be present there will provide a written update to the Group very soon after the meeting and will assess whether the FSUG should reply to the public consultation or not. This decision must be taken quickly by FSUG since the deadline for the public consultation is 06/05 ([http://susproc.jrc.ec.europa.eu/Financial\\_products/index.html](http://susproc.jrc.ec.europa.eu/Financial_products/index.html))

### **Internal discussion on dissemination of FSUG Recommendations to the Commission 2019-2024**

During its intervention at the beginning of the FSUG meeting, Director Mario Nava encouraged FSUG members to disseminate their recommendations. He also informed FSUG that they can address questions to the future Commissioners during the hearings in the European Parliament. As such, the Chair of FSUG invited the members to propose suggestions about persons to be targeted for this. One member suggested writing a manifesto, in which to include the clusters of recommendations and to explain the impact on people's lives. FSUG members agreed with this proposal. The deadline for a first draft of the FSUG manifesto is mid-April.

### **Update on Coercive tied-selling**

The sub-group leader gave an overview of the draft paper. The most important terms were defined and clarified: cross-selling vs coercive selling, bundle package vs tied package. The Group discussed the findings of a study, which verified the consistency of the increase of the banks' commissions and checked if there are relations between the increases in commissions and the number (total value) of anchor services, such as mortgage loans.

One member of the Group explained that the costs' regimes for banks could differ from country to country. For instance, in Denmark, the Court decided that banks could not raise fees without a solid justification referring to costs.

In the context of transparency of costs of current accounts, the Group discussed the issue of transparency linked also to costs of credit transfers. With the very recent introduction



of instant payments, clients should benefit from cost-advantageous fast credit transfers. The “urgent” transfer option is very expensive and instant payments are gradually rendering it obsolete. However, banks continue to offer it without sufficient explanations and with misleading display on the screens of internet / mobile banking applications.

In fact, instant payments favour banks, too, as other person-to-person solutions for credit transfers become unnecessary, including cash transfers. Instant payments present an opportunity to break the monopoly of credit payments, which are mostly used for online commerce. Still, a note of caution was raised by one FSUG member who reminded that current legislation allows for refunds on erroneous direct debits, but not on transfers. This translates in a risk for instant payments, for consumers.

It was mentioned that BEUC position is that instant payments should not be more expensive than ordinary SEPA transfers and, therefore, members of FSUG are encouraged to send examples from their countries of expensive pricing for instant payments to the representative of BEUC.

Regarding the paper on coercive tied-selling, the Group discussed whether or not including in the paper several EU-cross border issues, which in fact are obstacles to switching.

The paper will be finalised and it will include recommendations. Additional members joined the sub-group to help drafting the recommendations. The paper will be circulated via email to Group members by mid-April, for feedback.

The sub-group leader and members of the group agreed that coercive tied-selling is a priority topic considering its close link to switching and to payment accounts. The European Commission is now performing the evaluation of the Payments Account Directive and the Group showed interest in replying to the public consultation that will take place towards the end of 2019. Updates on the timing of the public consultation of the Payments Account Directive will be provided by DG FISMA in due time.

### **Wrap-up session on subgroups’ discussions**

Digitalisation of financial services – conduct of business and big data: the sub-group will complete a scoping exercise of their paper by the end of May, circulate and prepare preliminary policy recommendations by the end of July and finalise the paper by the end of September. The paper will focus on three types of outcomes: impact on discrimination, inclusion and access; impact on competition and value for consumers; manipulation of behavioural biases.

Digitalisation of financial services - accessibility issues: to avoid overlaps with the other sub-group working on digitalisation, it was clarified that one sub-group will address accessibility issues focusing on vulnerable categories of users, while the other sub-group will have an inclusive view on digitalisation impact for all users, from the perspective of Fintech and big data. There will be a close connection between the two papers, ensuring complementarity, without overlapping.

ADR – work will continue via email and an updates will be presented to the Group during the meeting in May.

### **Topics for next meeting(s)**

FSUG members would like to receive updates from the Commission on:

- Feedback from the Commission on the FSUG reply to the public consultation on CCD
- Interim findings of the public consultation on CCD, when available
- Algo:aware project