

Meeting of the Financial Services User Group - Draft Minutes

28 September 2023,

VIRTUAL MEETING,

09.30 – 17.00

Adoption of the agenda, approval of the minutes of the June meeting

Agenda adopted and minutes approved.

Welcome and short overview of recent developments by Eric Ducoulombier, Head of Unit, DG FISMA B3

Eric Ducoulombier welcomed the participants and provided an overview of the Commission initiatives proposed on 28 June on modernising payment services and opening financial services data¹. He informed that usual contribution would be needed from all the stakeholders as the Council and the Parliament will continue their discussions until the agreement is reached, while the Commission will continue to play its role. Two meetings already took place in the Council which is very positive on proposals. Meetings with EP Rapporteurs have also been planned. The start in the negotiations have been encouraging so far.

On Retail Investment Strategy, co-legislators started the discussions on the two Commission proposals, the omnibus proposal amending inter alia MiFID, IDD, UCITS and AIFMD as well as the proposal draft regulation amending the PRIIPS Regulation. Two discussions already took place in the Council. Disclosures, marketing and PRIIPS issues have been discussed and progress has been made. More difficult issues – inducements, Value for the Money still to be discussed. ES Presidency seems to be ambitious.

As regards the new Consumer Credit Directive, it will be published in the Official Journal of the European Union in the coming weeks, and then Member States will have two years to implement it. An important provision regards debt advisory services. An FSUG member informed that EBA Guidelines and ECB Guidance are not consistent with some CCDII provisions, namely the creditworthiness assessment during forbearance and the debt advice, stressing the urgency to amend them. In turn, Commission services informed the FSUG that EBA had already started checking what would need to be changed in the EBA Guidelines on loan origination and monitoring to ensure coherence with CCDII.

Updates from members on their activities of FSUG interest and on newly identified risks to consumers in financial services

The Portuguese government is working on a legislative proposal to give a right to consumers to rearrange their variable rate mortgage with a possibility to have a fixed rate for the next 2 years – probably by paying only interest and deferring the capital repayment 6 years after.

¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3543

The Netherlands, in which residential real estate prices are roughly double of that in its neighboring countries largely due to tax deductibility, started limiting transferability of mortgages from one property to another for tax reasons and this seems to be locking the residential real estate market.

Finance Watch is organising an event on personal insolvency on 7 November.

Discussion on potential FSUG studies

Members are working on two proposals for studies.

The current concept paper for a study on mortgages and variable interest rates represents a good basis, and we will assess internally whether we can launch a study on this in 2024. The study, if launched, should ideally be ready by end of 2024, so that the results could be used for the next Commission's policy priorities, including a potential revision of the MCD.

Members will also keep working on the concept paper for a study on personal insolvency. DG JUST is currently conducting a study evaluating the transposition of the Restructuring Directive, which will look at how many Member States used the option to extend the provision on debt discharge for entrepreneurs also to consumers and whether they did it under the same conditions as for entrepreneurs. Interim results of the study will be available in early 2024. The FSUG study should not overlap with that one.

The new Consumer Credit Directive

DG JUST presented the new Consumer Credit Directive (CCD), recently agreed by co-legislators (European Parliament approved the final deal on 12 September, the Council to adopt it on 9 October). The main elements of the new directive are:

- Enlarging the scope of the current CCD (Article 2);
- Including a warning on the costs of credit in advertisement and banning certain ads (Article 8);
- Improving timely provision of pre-contractual information disclosure by showing key information upfront and adapting it to digital tools (Article 10-11);
- Addressing tying, inferred agreement and ban on unsolicited credit granting and including a provision on equal access to bundled insurances for cancer survivors (Articles 14, 15 and 17);
- Better specifying the information to be used for the assessment of consumer creditworthiness, and ensuring credit is not granted if the assessment is negative (Article 18);
- Introducing measures to limit the cost of the credit, such as caps (Article 31);
- Ensuring consumers in payment difficulty are granted forbearance measures before enforcement proceedings are initiated, where appropriate (Article 35);
- Requiring Member States to ensure debt advisory services are available (Article 36); and

- Introducing a provision to set fines of a minimum maximum amount of at least 4% of the annual turnover of the infringing creditor or credit intermediary in case of widespread infringements (Article 44).

Proposals for the amendment of the Payment Services Directive 2 (PSD3 proposal) and for the Payment Services Regulation (PSR)

Commission services gave a presentation on the proposed amendments of the Payment Services Directive (PSD3) and the proposal for the Payment Services Regulation (PSR). Structurally, PSR sets out rules for Payment Service Providers (PSPs) on the conduct of business, providing payment services, while PSD3 – rules for registration, authorisation and supervision. From now on e-money institutions would become payment institutions but still subject to some specific requirements. Also PSR and PSD3 are proposed to be included in the scope of the Regulation on Consumer Protection Cooperation. Key proposed innovations include: a set of measures to mitigate risks of fraud, remove obstacles for open banking, ensure a better level playing field between banks and non-bank PSPs by adding non-banks in the Settlement Finality Directive, enhancement of the implementation and enforcement framework, registration of independent ATM providers and increase transparency for ATM charges. Overall, FSUG have welcomed the proposal, but underlined that some instances of fraud have not been addressed (e.g. spoofing), the term “gross negligence” lacks a clear harmonised definition, while it should be mandatory to share fraudulent IBANs among PSPs and not only be done on a voluntary basis; finally leaving it fully to the industry to develop the exchange of information without prescribing certain rules risks not achieving the intended objectives. Moreover, it has been suggested that once the payment has been authorised, there should be a possibility to stop finalising the transaction or block the money when the payer realises that he authorised a very likely fraudulent transaction. Regarding the availability of cash, while the transparency is important, consumers should be able to continue receiving cash for free, including if retailers were to replace the ATMs that banks decide to close. Regarding the definition of gross negligence, the Commission informed that the concept is already enshrined in national laws, which makes it very difficult to regulate at the EU level without going against the traditions in Member States.

Proposals for a digital euro and legal tender of euro banknotes and coins

The Commission services explained the contents of the proposals informing that the digital euro will be complementary to cash and it will be a choice for users whether to use it. The digital euro will not be a crypto currency. The digital euro could be used both online and offline. The online use will have the same features as other means of online payments, in terms of privacy. Offline payment transaction will be fully anonymised in the same way as paying with the cash. The aim of the digital euro would also be conducive to financial inclusion. The proposal does not oblige, but gives a possibility, for the ECB to issue the digital euro. Any PSPs will be able to distribute the euro, but banks will be obliged to distribute it. Micro enterprises / SMEs would only be obliged to accept the digital euro if they accept other digital means of payments. The FSUG Chair was grateful that the Commissioner had replied to the opinion that the FSUG issued on digital euro and for detailing how FSUG recommendations have been taken into account. The FSUG noted that it would be useful for the Commission to consider how citizens

from non-euro area countries could benefit. The Commission services explained that the Regulation enables non-euro area MSs to enter into an agreement with the ECB and allow their citizens to use the digital euro. Although it is not its main purpose, the digital euro could also be used as a store of value, but within the quantitative limits that would be decided by the ECB.

Proposal for financial data access (FIDA)

The Commission services presented the legislative proposal for a framework for Financial Data Access, aka FIDA proposal, whose main objective is to enable customers to control the data they wish to share and to regulate how data should be managed in a responsible way. It has been underlined that the sensitive data regarding the credit score of natural persons, life, sickness and health insurance is out of scope of the proposal. The proposal covers a wide range of financial institutions and introduces a new category of regulated entities called financial service information providers. The FSUG members have shown an overall scepticism about the proposal, underlying that it does not regulate how consumers would be remunerated for the data they agree to share and the safeguards for data misuse are not adequate. FSUG members were concerned that vital products may not be offered to consumers unless they agree to share their data. There also needs to be an extension of use cases in Article 7 (data use perimeters).

Work in the FSUG subgroups

Mortgages subgroup: to work on terms of reference for study to be outsourced in close collaboration with the Commission.

Personal insolvency subgroup: to work on terms of reference for study to be outsourced in close collaboration with the Commission.

New subgroup on debt advice: interested members to contact Dieter, the subgroup Chair.

Subgroups Chairs: to fill in/add relevant information in the “work programme 2023-2024” excel table with expected timeline for the subgroup work and kindly send to the secretariat by 15 November.

Preparation of FSUG recommendations to the future Commission and of the FSUG annual report

As regards the Annual report 2022-2023, members who led the work on opinions/consultation should draft half a page summarising the work done and send them to the Chair, Vice-Chairs and the secretariat by 25 October.

FSUG members should also send ideas for Recommendations to the new Commission to the Chair and Vice-Chairs by 25 October.