



## **Meeting of the Financial Services User Group**

**6-7 June 2016**

**MINUTES**

### **Supervision, enforcement in retail financial services**

Collective consumer protection is a new competence of BaFin since July 2015, with the entity having a supervisory role in case of systematic breaches of relevant rules. To this end, BaFin is now equipped with a new structure, including seven thematic departments. Its task is to ensure that financial services products are comprehensible and, to this end, they place emphasis on transparency, information, training of relevant staff and prevention of irregularities. They also have the power to prohibit certain selling practices and answer to complaints (around 20.000/year). Once a year they also organise a consumer protection day. They cannot conduct mystery shopping or investigations, nor formally authorise products, but they often make use of their intervention powers in case of irregularities.

### **Trends and developments in the insurance/pension sector**

Bund der Versicherten e.V., represents 50.000 insured persons, is member of Better Finance and is qualified for class actions. The representative of the association presented German pension system, which has three pillars: the state statutory pensions, the occupational pensions and the “reister-rente” with bank and investment saving plans and the one on private pensions. In Germany at the moment there are discussions on how to improve the system, since there is now a low interest rates phase and, in the past, products were sold promising higher returns than those that can be expected at this moment in time. Consumers have been misled and now are paying the price for the additional capital reserves insurance companies have to build up to protect strong guarantees included in the insurance contracts. Solvency II, with its risk management requirements, is likely to lead certain small companies to cease activities. CMU can be a solution for better investments but should be opened up to retail investors. On PRIIPs, it is still unclear which DE products can be qualified as PRIIPs and further uncertainty stems from the fact that, for certain products, DE legislation already prescribes that a specific (different from the one required in EU legislation) KID should be provided. The speaker strongly supported the idea of a pan-EU personal pension product but warning that attention must be made (the FSUG has outsourced a study on the topic) to the decumulation phase of pension products.

### **Financial guidance**

Project Leader Financial Market Watchdog at vzbv delivered a very interesting presentation on the work of the vzbv, DE federation of 40 consumers organisations, also member of BEUC. Vzbv provides generic advice before and after the signature of the contract,

independent from sales incentives and based on the individual needs of consumers. If consumers then want to have specific advice, they are told to go to an independent advisor (still relatively small market segment). For the purpose of providing this generic advice, a 19-pages questionnaire has been elaborated to guide consumers and advisers are trained every year to improve the quality and coherence of the service. FSUG members asked several detailed questions since this is the topic of one study they have outsourced at the end of 2015.

### **Consumer protection in the German capital market – players & products**

According attorney at Bergdolt & Schubert, it is not easy for a German judge to establish whether the activity carried out by a provider corresponds to “anlageverntter” or “anlageberater”, with the first one referring to advice not exploring the needs of the relevant person and the latter being a specific advice resulting in the recommendation of a product. Liability regime is very different but it is not easy to prove a provider has given a specific advice and not a general guidance. The only solution would be to invert the burden of proof by placing it on banks since consumers normally do not have witnesses (or, if they do, these are members of family or close friends, thus considered to be partial). There were exchanges of views whether more financial education could improve the situation, with FSUG members stressing that changing the behaviour advisors would bring more effects.

### **Cyber-Security – Regulatory challenges for the financial services sector**

A representative of Ernst & Young expressed his view that data are now seen as a new source of advantage in time of rapid technological changes with a complex regulatory environment. Advanced analytics, social media and mobile computing are business changers, with people more and more willing to share (e.g. via apps) personal data to obtain personalised services, especially because they are not aware of the consequences. Regulation is too slow and often not harmonised so cannot keep the pace of technology (and of fintechs willing to find the weakest regulatory framework), cyberattacks are on the rise as more data can be found online. Moreover fintechs, unlike traditional players, do not defend personal data as strongly since they are new entrants and do not face reputational risks. Most companies, while equipped to counter cyberattacks, are not equipped to understand from where they come from and why. However, the weakest link of the chain is represented by the consumer, often setting weak passwords or opening links contained in spam emails. A solution to this problem might be encryption, especially via Blockchain (where more trustees make it more difficult to breach the system), but it is yet to be proved that the system is as secure as it appears.

### **Integration of financial services: new solutions through fintechs**

A representative of a German bank said there are around 400 fintechs in Germany, with main areas being credit/lending and asset management/investment, robo advice and social trading. There was a peak in 2015 but over the recent months the number has dropped a bit. In total, fintechs invest €1.5bn all over Europe (€1.08bn in the UK only). Future fields of activity could be represented by artificial intelligence, bitcoins, bots (artificial intelligence+messaging), Uber-style banking and finance. Banks are not to be seen only as competitors of fintechs since they are now in the middle of the fintech movement, which for them is a threat but also an opportunity (they are running their own labs, cooperating with or acquiring them). Even Google, Amazon, Facebook and Apple now have banking licenses and are entering the payments market. Most important issues linked with fintechs are privacy,

transparency and liability since not often full disclosure about roles, costs and risks is granted. The biggest challenge is indeed to protect consumers while making finance easier.

### **Trends and current developments in investor/financial services user protection in Germany – the political view**

A member of the Bundestag and member of the Bundestag's Finance Committee, presented the FSUG with the most relevant issues in the field of financial services being discussed in Germany at the moment. Given the period of low interest rates, the first issue is that saving is not as profitable as it was before, with consumers still confusing nominal interest rates and real interest rates. Saving is only profitable if one can take risks, which is now only possible for rich people but not for the average middle-class. The second issue is the pension system, as in the 90s the second pillar was extended to face the problem of ageing society. Unfortunately the costs have increased and the quality of products has been steadily decreasing. However, there are many views on how to reform it and not even the ruling party is clear on which road to take. The issue is likely to be dealt with after the 2017 elections. The other issue Germany is facing is digitalisation: opportunity comes with risks and DE consumers are particularly conservative. The consequence is that it is difficult for them to decide whom to trust for the treatment of their personal data and that there is a urgent need of finding the right balance between innovation and privacy. When asked for one measure at EU level that could improve consumers' life, the member of Bundestag stated that the EU should do something on collective redress – without going into further detail because of time constraints.

#### **FSUG Work Plan: Pension Decumulation**

The contractor (Ernst and Young) presented the draft interim report to the group. 43 papers have been reviewed so far, 13 interviews conducted (with 5 still to be carried out) so far with the aim of having at least one consumer organisation responding for each country. Preliminary findings are as follows: there is not enough shopping around, the longevity risk is not addressed and there is lack of flexibility to meet personal needs. Products and relevant information are complex, there is not enough financial literacy and advice is costly. Competition is also low because of the level of maturity of the market. FSUG members acknowledged that the report goes in the right direction while needing a lot of improvement, especially when it comes to robustness of data. They will therefore collect comments and send a consolidated version to the contractor within two weeks. In July, the group will also start to draft an internal position paper on the issue so that it can be published once the contractors' final report is ready.

#### **FSUG Work Plan: Financial Guidance**

The contractor (Observatoire Epargne Europeen) was not able to present the interim report – which was received by the Commission last week- due to a serious medical problem of the leader of the project, which might as a result not be able to continue working on the project. To this end a request for an extension of the deadline might soon be introduced. Comments were already provided to the contractor, especially on the difference between the concepts of financial guidance and regulated advice and on the need to deepen the data collection exercise for certain countries. At the next meeting, the group will also start to draft an internal position paper on the issue so that it can be published once the contractors' final report is ready. In

parallel, FSUG members have also decided to draft an internal position paper on the definition of advice.

### **FSUG Work Plan: Other issues**

FSUG members also focused on other issues included in their 2016 Work Plan. A section has been added to the FSUG paper on big data, which will be finalised next week. The group also took on board comments made by DG JUST (E1 and E5) on CPC and CMS data. These comments were included in the latest version of the enforcement and supervision paper which will be finalised as soon as the new CMS data are released (according to E1 this should happen by early July). In September, relevant Commission colleagues will be invited to the FSUG meeting for a specific discussion on the paper. Members also decided to draft a reply to ACCIS which had challenged the findings of the FSUG paper on credit data.

Rapporteurs were appointed to summarise lessons learnt at the meeting and present them to the Commission at the next meeting, which will take place on 14 and 15 July.