



Meeting of the Financial Services User Group

Minutes

20-21 September 2022

Thierry Stoll Room DG FISMA

Welcome remarks, adoption of the agenda, approval of the minutes of the July meeting
(Daniela Bankier, DG JUST E.1)

The agenda for the meeting was adopted and the minutes of the last meeting were approved.

The Commission welcomed the members and thanked them for their commitment. The work of the FSUG has always been important for Commission services and the FSUG input will be valuable in the next years to help with the issues affecting financial services users around the EU and to support the Commission in its policymaking.

Individual presentation by the members – tour de table

FSUG members introduced themselves, their experience related to the protection of retail users of financial services and the organisations they work for.

Exchange of views with the Commission

The Commission gave a short presentation of the files DG JUST E.1 is currently working on and their connection with the work of the FSUG, especially the Consumer Credit Directive review and the Distance Marketing of Financial Services proposal.

Election of the Chair and Vice-Chairs

After a short presentation of the candidates for the Chair position (Alin Iacob, Patricia Suarez), members elected Alin Iacob as the Chair of the FSUG for the four-year mandate, following a secret vote. Three vice Chairs were selected for the four-year mandate: Patricia Suarez, Vinay Pranjivan (following his candidacy for a vice Chair position) and Maria Lissowska. The selection followed the rules of procedure.

Commission representatives from DG JUST and DG FISMA presented their ongoing work on key files and replied to FSUG members questions:

The review of the Mortgage Credit Directive (Gintaras Griksas, FISMA B.3)

The contractor in charge with the study on the impacts of the Mortgage Credit Directive (“MCD”) gave a presentation of the state of play of the MCD study, covering the problems

identified and the possible solutions, in view of the ongoing review of the Directive. The contractor mentioned that the ongoing study is building on the work that was previously done in this regard (preparing its formal evaluation of the MCD). The purpose of the study is to establish the new objectives that MCD should have and identify what the Commission should do about the problems identified, as well as the extent to which the MCD is still suitable to the issues caused by the pandemic (digital transition, crises etc.) and how it applies to new products. For example, the MCD does not currently cover in a proper manner the update of green mortgages. The contractor presented the latest activities undertaken in the past few months, including research covering the position papers received, contacts with stakeholders (among which mortgage credit providers and intermediaries), the current legislation in Member States and the interplay with other pieces of legislation. The contractor also gave a presentation on the study tasks, such as the public consultation organized, desk research (legal research), surveys (online surveys in the form of an open consultation, with 78 responding stakeholders; and 75 respondents to stakeholder surveys), interviews with stakeholders (45 scheduled, out of 247 contacted), consumer surveys (online surveys with a total of 2626 respondents showing which issues might be problematic with the current framework of the MCD – for example, the way information is provided), case studies (11 different thematic case studies on national measures on the most important points of consumer credit – credit worthiness assessment, credit databases, pre-contractual information, early repayment, tying and bundling, in order to identify which are potential outliers in the way Member States regulated different issues). After collecting all the data, the contractor will assess it, in order to evaluate the effectiveness and efficiency of national solutions implemented, which could be relevant for the MCD review. The contractor also mentioned that an interim report will be provided to the Commission mid-October and that the final report will be concluded in November.

FSUG members inquired, among other issues, if the report will include the latest market trends (such as the increase of Euribor) or if it will cover information on the percentage of over-indebtedness and what are the Commission's intentions regarding this issue, considering that it is a very pressing issue in the current context. The contractor emphasised that all developments are taken into account and will be covered in the report. FSUG members also expressed concerns about the representation of consumer associations and respondents and the discrepancy between industry respondents and consumers and consumer organisations. They mentioned that it is important to find a way to balance the feedback and interests for the MCD review. They also touched upon the consumer survey, underlining that the number of respondents should be representative for the population of each Member State. They also highlighted that it is important for consumers to have available options in the upcoming legislation when they are faced with payment constraints (moratoria, restructuring of their mortgage loans). In connection with this, it was furthermore mentioned that consumers are not usually properly informed about the consequences of moratoria, for example, which might lead to an abundance of non-performing loans. As such, envisioned measures should cover solutions to these problems (such as personal insolvency schemes). The importance of forbearance measures and allowing measures on caps for interest rates should also be kept in

mind. The Commission took note of all the important points and mentioned that the timing of the proposal, if any, will be decided taking into account the results of the study.

Some FSUG members also raised some concerns regarding the funding for Commission-funded studies, stating that some consumer associations would like to be more involved in the policy-making process by providing input to stakeholder consultations, but sometimes they are restricted in doing so by the lack of resources.

The review of the Consumer Credit Directive (Elena Brolis, JUST E.1)

The Commission gave a short introduction on the status of the Consumer Credit Directive (“CCD”) review and its timeline. It also emphasised the Commission’s role of facilitator in the upcoming negotiations. On the scope, the Commission stressed that it is important to cover all the relevant products and not leave any possible legal loopholes and gaps. With regards to the creditworthiness assessment, the Commission presented the amendments to the provision in the proposal, including the “right to be forgotten” introduced by EP. The Commission also presented the differences between its proposal and the co-legislators’ amendments in relation to pre-contractual information, non-discrimination, right of withdrawal, right of early repayment, caps, debt advice, debt collection, the admission, registration and supervision of non-credit institutions and penalties. With regards to the EBA view on green loans, in terms of timing, the Commission mentioned that it expected to obtain EBA advice on green loans next autumn.

FSUG members mentioned, among other points, the need for measures against the creditors’ practice of using social media data. In relation to caps and forbearance, some FSUG members stressed that more robust measures should be adopted and that the current measures might not be strong enough to avoid over-indebtedness. It was also mentioned that fixed caps should be dynamic caps, given the current difficult situation. One member showed that in Portugal, for example, there are strict caps in place on interest rates and APR and that the dynamic model implemented works very efficiently, reflecting the market. They also mentioned that some Member States’ arguments that too stringent creditworthiness assessments might lead to consumers going to the illegal market are not applicable. Some members have also showed that there is a practice in relation to databases, where if consumers do not provide certain information, it will be more difficult for them to be granted credit. Also, with regards to the creditworthiness assessment, there was also concern among some members regarding the assessment done when loans are being renewed. As such, members considered that there should be clear rules for consumers to be able to get their debts restructured when they are over-indebted. Some FSUG members also highlighted that crowdfunding for private borrowers represents almost 40% of all crowdfunding activities. Some FSUG members also stressed the importance of the non-discrimination article in the CCD, showcasing examples of how consumers have dealt with restrictions to accessing credit in other Member States; this practice also affects the principle of the single market, in their view. With regards to debt advice, members also underlined that it should not be applied only to people in financial difficulty and that the scope of this measure should be extended. Moreover, they mentioned that debt advice should also work as a preventive measure against over-indebtedness. On the

issue of deferred debit cards, FSUG members also argued that, as they represent a credit for consumers, they should be covered by the provisions of the CCD.

The Commission took note of the members' concerns and ideas and offered some clarifications on caps, credit worthiness assessment, crowdfunding and the issue of over-indebtedness.

A digital euro for the EU (Laszlo Butt, FISMA B.4)

The Commission presented some background on the initiative, the potential for Central Bank Digital Currency ("CBDC") and how some smaller countries and China have already implemented it. The aim is for electronic money which are issued by central banks to be used but the public in everyday payments and serve as a monetary anchor in the digital age (although cash will remain an important monetary anchor). CBDC is requested more and more, given the digitalization of society and the decline in the use of cash, and has the advantage of being fungible in terms of risk. The Commission also noted that financial inclusion is an important issue which will be considered in regard to this initiative. The Commission mentioned that only cash can be presently used retail purposes and, as such, a Digital Euro regulation is required to enable the use of central bank liability for electronic retail payments. Only with such a regulation in place, the European Central Bank can decide if they will issue the digital euro. The planned adoption date is the first quarter of next year. On this initiative, the European Central Bank held a public consultation in 2020, while the Commission held a call for evidence and a targeted consultation in 2022. At the moment, the project is in the Impact Assessment phase. Finally, the Commission underlined that this is a joint project between the Commission, which will provide the legal framework, and the European Central Bank, which will have its own responsibilities on the monetary policy and the specific design and implementation of the Digital Euro. The regulation will cover various issues such as legal tender, accessibility, privacy, financial stability, and international use.

FSUG members expressed concern about the issue of black economy and that this digital transition will not help in the fight against this type of practice. The Commission assured members that the Digital Euro would not be a step against abolishing cash and that it would be issued in parallel with cash through an electronic system, ensuring traceability. The issue of anonymity in transactions was also raised by FSUG members. Some members also highlighted that not all Member States currently use Euro as their national currency and inquired about future plans in this regard. Some FSUG members also expressed concern about the functions of the Digital Euro and asked clarifications about the similarity with other digital currencies. The Commission took note of all the arguments raised and clarified some points. Currently, the anonymity issue is being addressed and a balance is sought between preventing the black economy and concerns about privacy. The international aspect of the project is being analysed, but it is quite difficult to implement and raise number of risks. The Digital Euro will be different from other types of digital currency, as holders will have a direct claim on the central bank. The proposal will take into account designing a solution for people who only use cash, through the off-line version of the currency.

Open finance framework – enabling data sharing and third party access in the financial sector (Mattias Levin, FISMA B.4)

The Commission gave a short presentation on the initiative and its objectives, as well as its timeline. Open finance represents, in essence, the possibility of data sharing of users' financial data. At the moment, it is mainly contractual and on an ad-hoc basis and there is no specific framework in place. This concept has drawn a lot of interest in the recent period, along with the recent horizontal proposals in this area – Data Governance Act, Digital Markets Act, sectoral data spaces etc. This initiative has, in the Commission's view, the potential to improve products and services for consumers, from a financial perspective. There are indeed also potential risks, related to privacy, data misuse and discrimination. For data sharing to work, there needs to be trust and confidence. To inform the Commission's thinking on how to best achieve that, a public consultation was held over the summer. The results show that most respondents see the benefit, but also the risks of data sharing in finance. In parallel to the consultation, there has also been work with an expert group. The Commission highlighted that the contours of a potential framework remains to be determined. Areas of particular interest relate to the scope of the data sharing, as well as the best way to strike the balance between maximizing the benefits for consumers, while preventing and avoiding risks. Another issue covers the best way to achieve standardization. The aim is to conclude early next year on the best way ahead.

FSUG members highlighted the need to address the safety and privacy issues, as well as the need to ensure informed consent for consumers. It is important in their view to ensure data sharing which is also safe for consumers and not only advantageous to firms. Another angle to be analysed is the competition one, as some firms refuse to share data. The Commission took note of all the concerns raised by FSUG members and agreed that it is important that data sharing benefits consumers. FSUG members also discussed the possibility of drafting and submitting a collective position paper with regards to this initiative.

Shareholder engagement: Action 12 of the Capital Markets Union Action Plan (Agnes Le Thiec, Agnes Fridely, FISMA B.1)

The Commission gave a presentation on the status of implementation of Action 12 of the Capital Markets Union ("CMU") Action Plan on shareholder engagement and corporate actions. DG JUST is in charge of this action, in collaboration with DG FISMA. The Commission presented the issues at stake: the cross-border exercise of ownership rights, the lack of harmonisation and standardization in Member States of rules on the attribution of entitlements to and shareholders' exercise of voting rights, the complex and divergent corporate action processes (such as small investors are not able to exercise their voting rights) and the use of new technology – which has the potential to improve the value chain and facilitate the exercise of shareholder rights in a cross-border context. Action 12a covers the definition of shareholder and voting rights and corporate action processing. In this regard, the Commission will assess the possibility of introducing an EU-wide, harmonised definition of 'shareholder', and how the rules governing the interaction between investors, intermediaries and issuers as regards the exercise of voting rights and corporate action processing can be further clarified and harmonised. On Action 12a, there will be a study to provide input into

the review report of the SRD2. This assessment will be completed as part of the evaluation of the implementation of the Shareholder Rights Directive II (“SRD2”) by the end of 2023/beginning of 2024. Action 12b refers to the use of new technologies. On this point, the Commission undertook to investigate, by Q4 2021, whether there are national regulatory barriers to the use of new digital technologies that could make communication between issuers and shareholders more efficient and facilitate the identification of shareholders by the issuers or the participation and voting by shareholders in general meetings. With regards to the state of play on Action 12b, there is a Staff Working Document planned to be published in Q4 2022 on this issue. FSUG members expressed their willingness to work on these issues in close cooperation with the Commission services.

Presentation by DSW of their study on barriers to shareholder engagement (Christiane Holz, DSW)

DSW presented the results of a study on barriers to shareholder engagement. In their view, it is important to facilitate cross-border investment. Intermediaries are obliged to facilitate the exercise of cross-border voting rights. However, in practice, this is applied in a different, usually problematic manner. Following their findings, DSW proposed some policy recommendations in order to improve the intermediated shareholder engagement process by: abolishing barriers to shareholder engagement, tackling problems resulting from complex voting chains and omnibus accounts, simplifying the information to the very necessary, discarding the requirement to give advance notice for participation in a general meeting, harmonizing record dates and documentation requirements for shareholders and introducing an EU-wide definition of “shareholder”.

DSW highlighted the need for shareholder engagement to be included in the FSUG work programme – as we move on to a greener economy, it is important for shareholders and private investors, to be involved and to have proper access.

Some FSUG members mentioned the importance of including shareholder engagement in their work programme as this is a very important issue at EU level and retail investors represent an important actor on the market. The objective should be to make capital markets attractive, simple and transparent. Some members also highlighted that the problems faced by shareholders go beyond voting rights and cover transfer of shares, dividend pay-outs etc.

Update on activities relevant for the FSUG

Following the presentations on the key files relevant to consumers in the field of financial services, members shared an update on their activities which might be of interest for the FSUG’s work and on newly identified risks to consumers in financial services.

Members of the FSUG showed several issues with which financial services users are currently dealing with. One of the most pressing issues raised was the rise in the cost of living, which is turning into a crisis for many consumers. It is important to provide tools in order to help consumers overcome this issue. They are usually turning to small amount loans or Buy Now Pay Later schemes, which can be very risky. Following the pandemic, there have been interesting developments in the use of financial services by consumers. Credits, but also savings, increased. Moreover, the inflation increase has not generally impacted the

willingness to take credits. Consequently, many consumers fall into over indebtedness, which is another pressing issue. Consumers are requesting more and more exemptions from repayment or restructuring of their loans. Recently, there has also been a rise of out of court instruments to recover debt. In relation to investments in crypto assets, as there has not been any consumer protection in this area, many users are currently in challenging situations. Since the Ukrainian war, there have also been many cyber-attacks on financial institutions. Moreover, members also highlighted that there should be improvements to insolvency-related mechanisms. With the increase of Euribor, some members noted that users are turning to fixed-rate mortgages. For those consumers who want to change the conditions of their mortgage agreement to switch to a fixed-rate mortgage, it might be problematic to do so at this moment and more conditions would be imposed. On the other hand, some members mentioned that in some cases variable-rate mortgages might be more advantageous, as the fixed-rate mortgages might be problematic, in terms of pricing, and, consequently, more unattractive to consumers. Another important issue raised by FSUG members covered the Commission's potential actions to accelerate the measures regarding the green deal, while balancing access to financial services for households.

FSUG members also stressed that elderly should be taken into account when considering access to financial services, especially in relation to the digitalization processes. Members also raised the issue of improper communication of information to consumers. On the issue of deferred debit cards, it was showed that consumers are actually using these cards to cover their mortgage payments and this may represent a problem. These products are risky, as there are very high interest rates associated with them and, as such, their use without proper information may lead to over indebtedness.

In view of all the current issues raised, FSUG members discussed their work programme for 2022-2023 and selected the topics of interest.

FSUG work programme 2022-2023

FSUG members discussed and agreed on the topics of interest to be included in the work programme 2022-2023:

- 1) open finance;
- 2) the review of the revised payment services Directive (PDS2);
- 3) retail investment strategy;
- 4) the review of the Mortgage Credit Directive (MCD);
- 5) implementation of the capital market union (CMU) action plan;
- 6) over indebtedness and personal insolvency;
- 7) access to cash.