Minutes of the Financial Services User Group virtual meeting

23 April 2021

Welcome remarks, adoption of the agenda, approval of the minutes of the February meeting

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

Procedure for the renewal of the FSUG mandate

The current Financial Services User Group's term will be ending in June. A new call for application will be published in the next months to select members of the next group. The Secretariat will inform members of the next developments.

Tour de table with a focus on measures to protect retail financial services consumers in the light of the COVID-19 crisis

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

Developments at national level

- In DE, the COVID-19 crisis had an impact on general meetings of shareholders, who can hardly exercise their rights in virtual general meetings that had been legally enabled as a response to the COVID pandemic, especially as – during virtual meetings - companies can determine that shareholder questions need to be sent to the company in advance, which hampers the discussion at general meetings. This is also happening in other Member States. For instance in FR, shareholders are supposed to vote ahead of the meeting, before the Board discussion. In PT, votes are casted in advance, which is problematic because shareholders have to decide before having the opportunity to engage with the Board.
- In BG, in July 2020, the National Assembly adopted a bill introducing a ten-year absolute limitation period for the debts of consumers, enabling individuals unable to repay their debts to relieve themselves of his their debts after the expiry of the period in question. The Constitutional Court ruled on the retroactive effect of such limitation, hence a ten-year absolute statute of limitations for debts of individuals will start running for the existing debts from June 2021.

- In DK, banks provided several relief measures to consumers. They also had some relief in capital requirement to help consumers. However, house prices are increasing a lot, as well as inequalities.
- In SK, very strict measures were applied to respond to the health crisis, with a significant deterioration of the financial situation of households. Inequalities are raising among businesses as well (small vs. big businesses). There were 130 000 request for deferral of repayments, which is a big figure considering that the active population amounts to 2,7 million people.
- In IT, the payment moratoria for mortgage credit was supposed to end in March, but they are postponed until the end of the year.
- In the UK, there is a lot of concern about exports to EU for small businesses, considerably down because of complexity of procedures. A million SMEs will be in danger when the government reduces support.

Developments at EU level

- BEUC: Earlier this year there was a follow up meeting of the Commission roundtable to assess the impact of payment moratoria best practices published in June 2020. They are assessing whether new best practices are needed e.g. to enhance transparency of costs associated to forbearance measures. Several BEUC members highlighted that excessive costs were charged to consumers for payment moratoria (for example VZBV called on BaFin to look into it). Test Achat in BE called on banks not to charge any administration fees related to mortgages repayment.
- COFACE: Level of distress of families is mounting steadily and there are more and more upset people, especially families dependent on jobs impacted by the confinement measures.
- The Commission work on Ecolabel for financial services is continuing. It would be good to follow up with the next FSUG.

Presentation on Instant Payments (Audrius Pranckevicius, Katarzyna Kobylinska-Hilliard, DG FISMA B.3)

FISMA colleagues gave a presentation on Instant Payments, explaining that instant payments in euro are a type of SEPA Credit Transfers that reach an account of beneficiary within seconds, 24/7. Instant Payments can be made via online banking but also at point of interaction. In order for instant payments to work, payment services providers at both ends of transfer must adhere to the SEPA Instant Credit Transfer Scheme (SCT Inst Scheme). Today there is around 65% adherence in the EU and the Commission is working to reach (nearly) 100% and to increase the use of instant payments EU-wide. In the Retail Payments Strategy of September 2020 high level objectives are set out to promote the offer and use of instant payments in the EU as well as to facilitate the emergence of competitive home-grown and pan–European payment solutions. Currently analytical work is ongoing as well as an extensive consultation with stakeholders. The Commission is focusing on, amongst other, on consumer aspects, in particular concerns related to consumer protection (fraud/scams, errors when inputting IBANs, difficulty/impossibility of refunds). The main questions with regards to consumer aspects addressed to the group were:

- What are your experiences with consumer complaints regarding regular and / or instant credit transfers made to the wrong / fraudulent beneficiary?
- How are such complaints solved?
- Do you see any trends specific to instant credit transfers?

FSUG members stressed that for instant payments (IPs), an account should be reachable. A BEUC position paper suggests mandatory adherence to SCT Inst. Consumer protection measures are needed in case of disputes with merchants. There should also be much more alignment of prices for regular and instant CT. Finally, on IBAN verification: this is implemented already in the UK and NL and should be implemented on EU-wide basis.

FSUG members also indicated that instant payments are only accessible to those with a smartphone, leaving out a significant part of the population. Is there work ongoing to address this? There is a perception that there is lower consumer protection with instant payments. It is important to reassure consumers and also to make sure it is clear to them who pays for IP-related fees.

FSUG members added that the main deterrent for the consumers are the fees in those Member States that consider instant payments as a premium service. Why would consumers pay a high fee for instant payments if debit card payments are free. With regards to fraud, there was a high amount of fraud in Portugal because for instant payments you had to associate your mobile phone to your account. There was a fraud where people were asked to associate someone else's phone number to their account which resulted in fraudsters having access to the funds.

FISMA colleagues stressed they are aware of the issues that are mentioned. Some of them are not easy to address. It is a delicate balance between acceptable fees for consumers that are sufficient to create a viable business case for the payment services providers. The ultimate goal is to promote IPs as they have a lot of potential benefits for both payment service providers and users.

FSUG members questioned whether merchants that move to IPs risk no longer accepting other payment means. This should be avoided in order to not exclude more vulnerable consumers.

FISMA colleagues replied that all instruments have costs for consumers, including cash and cards. Regulations can try to create a conducive environment for emergence of beneficial products for consumers and other users. In the end, the market has to develop and offer an attractive product. With regards to fees, indeed the discrepancies in the level of consumer fees for SCT Inst. are difficult to understand. On the smartphone question, FISMA colleagues replied that in general, SCT Inst can be initiated in the same ways as a regular SCT. The fact that you can initiate from an app is an additional feature. Furthermore, not all IP solutions that are being developed are using the smartphone. Some solutions are considering cards as a way to initiate IPs. It is not our goal to replace existing solutions with IPs, but to add it as another possibility.

AGE Platform Europe is co-chairing ERPB working group on access and availability of cash. Through an ongoing survey, they will have more information on the significant numbers of non-digital consumers which should also be useful to keep in mind in this context.

Forthcoming end of LIBOR (Alessandra Atripaldi, Rik Hansen, DG FISMA C.3)

FISMA colleagues informed FSUG members on the recent publication of a market consultation on the possible designation by the European Commission of a replacement rate for Swiss Franc LIBOR (CHF LIBOR) pursuant to article 23b of Regulation (EU) 2016/1011. They explained that LIBOR is the most used interest rate benchmark globally. In 2017, it was announced by the UK Financial Conduct Authority (FCA, the supervisor of LIBOR’s administrator) that LIBOR was not robust enough and would no longer be supported after 2021. On 5 March, the UK FCA announced the cessation of LIBOR. Legislation was recently adopted in the EU to give the Commission powers to designate a replacement for LIBOR.

The EU will be very much affected by this cessation considering the relevant exposure to contracts referencing LIBOR. There is, in particular, a relevant number of contracts referring CHF LIBOR, including retail contracts for example in the context of a mortgage credit. Market participants asked the Commission to use its new powers to designate a replacement for CHF LIBOR which could replace such disappearing benchmark in EU contracts. The Commission therefore launched a public consultation end March, that will expire on 18 May, inviting market participants to express their views on whether the Commission should use these powers, and which replacement rate should be used.

In the case of LIBOR in Swiss Franc, the industry working group established by the local central bank has recommended to replace the rate with an overnight rate called SARON (compared to the 3 month LIBOR rate that current contracts have). One of the difficulties is that this transition includes a move from 3 months to overnight, and from a forward looking rate to a past rate. It is important to ensure that the switch is value neutral.

The designation of a replacement benchmark is a very important step for the Commission to take. FISMA colleagues therefore asked FSUG members to provide feedback via the public consultation.

FSUG Members acknowledge that this is a very technical issue of which the essence is that the benchmark ensures neutrality and that there is no or limited impact. Can you explain what it is you expect from respondents?

FISMA colleagues agreed that it is a technical topic and that they do not expect individual consumers to respond to the consultation. This is why it was addressed also to retail investors organisations. FISMA knows the feedback from banks, and finds it important to hear the voice of the consumer and retail associations before taking any decision.

FSUG members added that in Denmark, the benchmark was manipulated. It will therefore be important from the consumer perspective to have a good and neutral referencing rate.

Action 1 of the CMU Action Plan (the ESAP) (Emmanouil Filippakis FISMA C.1, Leah Dahmani, FISMA B.1)

The Capital Markets Union (CMU) is a dominant objective of the EU. The new CMU Action Plan focusses on removing barriers. As the barriers to the single market remain, the initial set up of the CMU actions need to be complemented by new measures addressing the new challenges that have emerged. The first action of the CMU Action Plan includes the setting up of the ESAP.

The problem today is that information is fragmented and difficult to access. Often it is also not free. Information is mostly available in non-comparable digital formats and there is a high demand but a low supply of fully trusted and comparable ESG data/information. As a consequence, EU companies are less visible/attractive to cross-border investors. There is lower integration of national capital markets and SMEs have lower access to market funding. It also results in a slower "green transition' and market inclusion.

The objectives of the ESAP are to facilitate access to information by investors, to provide comparable and re-usable data and enable digital use.

A targeted public consultation took place, 8 online surveys during 7 e-workshops, as well as many bilateral meeting with national authorities, and other relevant entities such as EDGAR, which can be qualified as being the US equivalent of ESAP. FISMA colleagues presented the main outcomes. Major features of the ESAP will be scope, information quality, source of information and timeliness.

FSUG members voiced that they have a strong interest in ESAP being implemented. They pointed that users include professional investors, but also private investors which have different needs. Benefits could outweigh the costs for issuers and institutional investors but be costly for individual investors. It is also important to be cautious in transferring information into the ESAP project. On the language in ESAP, members indicated that it would be useful to have the information in English and in the national language. FISMA colleagues remarked that the ESAP could help individual investors via time saving less fees for data access. They added that there will be probably be a phasing in for the scope, including for voluntary filing by SMEs

Enquiring about the integrity of information supplied to ESAP, Members asked whether there will be some kind of indication whether the information has been independently verified by third parties including to avoid green washing. FISMA colleagues reminded that for this, the ESAP will mainly rely on EU legislation and that in any case, the primary emitters of information will remain responsible for its content. However the ESAP may include validation tools. Quality and traceability should be of the main components of ESAP. FSUG members added that the big weakness will be the disclaimers. They expressed their hope that the current administrative burden will be solved by ESAP. Members added that some data access threshold should probably be imposed (to prevent complete download of all information). One remarked that in many Member States, issuers of information have to pay to submit data and users have to pay to access the data and wondered whether this is this a lack of harmonisation at European level.

On governance and infrastructure, FISMA colleagues stated that stakeholders generally believed that one or several relevant European authority should be involved. FSUG members emphasized that the governance issue is essential and must be run along public standards.

Finally, enquired about the type of information that would be allowed on a voluntary basis in the ESAP, FISMA colleagues replied that discussion are ongoing and that the Commission is examining whether information similar to mandatory information and possibly other information such as in relation to supply chain for instance, could make sense.

Remarks from Eric Ducoulombier – Head of Unit FISMA B.3

Eric Ducoulombier, Head of Unit of the Retail Financial Services unit in DG FISMA, welcomed the work of the FSUG and expressed gratitude for the valuable and constructive work of the group. The work of the FSUG has accompanied the DG FISMA and DG JUST agenda's but FSUG members have also added their own topics. This is very broad and very impressive.

For the future, DG FISMA and DG JUST continue to count on the FSUG to work alongside with them. The Commission Decision on which basis the FSUG was created, will remain the same. The new call for applications is being drafted and will be published in the coming weeks.

An update was then given on the Retail Investment Strategy. With regards to the timeline FSUG members were informed that a public consultation would be launched on the future Retail Investment Strategy, which will be open for 10-12 weeks. Towards Q4 of 2021 the results of the long awaited study on the retail investor's journey will also be received. Based on all this information the strategy document will be drafted. The planned adoption is February 2022. Following the strategy, the identified actions will have to be implemented. This may include legislative work. The main objective is to improve the investor's journey. Both from a demand and supply side the sector specific approach should be revisited and replaced by something of a more holistic nature.

FSUG members agreed with the remarks on a holistic approach rather than a silo's approach. Concerning MiFID/MiFIR, members asked whether this would be part of a consultation that would then feature in the strategy.

Eric Ducoulombier replied that the split between MiFID/MiFIR and some topics such as inducements is the reflection of the horizontal work being done on retail investment. It is yet to be decided what will remain part of MiFID/MiFIR and what will be part of the Retail Investment Strategy. So some issues, such as inducements, will be addressed in the strategy and therefore approached holistically.

FSUG members added that in the morning session COVID-19 related impacts were discussed. It became clear that the situation is quite bad for some citizens, and yet the measures for mortgages will end. Members fear that some citizens will lose everything and asked whether the Commission considers to act.

Eric Ducoulombier replied that there is a lot of understanding from the Commission side. He added that there are however also risks related to mortgage moratoria for financial stability. It is important to be mindful of not creating a new problem to solve an existing one.

FSUG members reported that in Portugal there is a proposal to extend the moratoria. However, Portugal could not extend on its own as it would create an unlevel playing field. It should be kept in mind that moratoria are not only to allow waiting until resuming economic activity, but also to ensure that those who asked a moratorium will be able to continue paying as they did before. A key issue is to protect the main residence. To ensure that people cannot be removed from their main residence.

Eric Ducoulombier added that he is fully aware of the hardship many people are facing. It is worth passing this message to a higher level. The Commission tries to support EU citizens as much as possible.

DG REFORM activities in providing technical support (Radka Konstantinova, DG REFORM B.5)

DG REFORM was created one year ago (previously known as SRSS) and provides technical support instrument (TSI), in various areas including the financial sector, to improve Member States' capacity to design, develop and implement reforms and prepare, amend, implement and revise recovery and resilience plans (art.4(a)(b) of Regulation (EU)2021/240).

DG REFORM offers expertise and tailor-made support, through expert missions, analysis and reform partnerships. It has around a thousand projects ongoing in a wide range of reform areas.

As regards financial services, DG REFORM offers technical support in many areas: anti-money-laundering, capital markets, crisis management, financial literacy and consumer protection, green finance, insolvency, insurance undertakings & pensions.

For example, DG REFORM is conducting a project to support Croatia in enhancing consumer creditworthiness through an effective credit reporting infrastructure (unified and streamlined flows of credit data and information sharing infrastructure) through recommendations and the design of a roadmap for implementation. DG REFORM is also working on a project to prevent financial misselling to the elderly in France by providing a set of tools to detect and prevent risks of selling non-suitable financial products to older people. Other projects include the promotion of digital financial literacy in banks' consumer services, the design of positive credit registers through best practices and assessing potential risks to consumers posed by increased use of data and related technologies by (insurance) firms and identify supervisory actions that may be necessary to fill the gaps.

FSUG members asked whether DG REFORM conducts ex post assessments, and how the funding of these project works.

DG REFORM confirmed that after the conclusion of every project there is a follow up on the commitments from Member States. The added value of DG REFORM action is providing expertise, so no financial transaction with Member States takes place and no co-financing is needed. Beneficiaries are public authorities, including national developing banks.

Presentation of the subgroup work and discussion

- **FSUG opinion on COVID-19 related measures** (led by Daniela Vandone): Revised draft shared with all FSUG members for finalisation and approval in writing by end of May/beginning of June.
- **NPLs impact on consumer** (led by Rym Ayadi): Draft to be shared with FSUG members for comments in the next days. Then Revised draft to be shared with all FSUG members for finalisation and approval in writing by end of May/beginning of June.
- **Digitalisation and accessibility** (led by Anne-Sophie Parent): Stable draft already shared with FSUG members. Revised draft to be shared with all FSUG members for finalisation and approval in writing by end of May/beginning of June.

Renewed Sustainable Finance Strategy public consultation (Silvia De Iacovo, Emmanuel Buttin, DG FISMA B.2)

FISMA colleagues explained that the impact of climate change and environmental degradation are becoming more visible. The European Green Deal sets clear objectives, including climate neutrality by 2050 and a cut of emissions of 55% by 2030. The Covid outbreak and recovery phase show how critical the need is to strengthen the resilience of our societies.

The results of the public consultation were presented. The general sentiment of respondents was positive towards the overall objectives and direction of travel of the EU's Sustainable Finance Strategy.

Main opportunities include:

- New innovations and technologies
- Utilise the Covid-19 recovery phase for redirection of capital
- Create a conducive framework through legal measures (EGD)
- Creation of financial incentives for sustainable growth
- New skills / knowledge / education

Main challenges include:

- Lack of credible information / available and reliable data
- Investor uncertainty, lack of long-term policies and clear rules
- Lack of incentives
- Inadequate technical expertise / capacity
- Continued greenwashing
- How to handle stranded assets

Results show that 68% of respondents would like to be systematically shown sustainable investment products by default by financial advisers.

Pillar 1: Strengthening the foundations for Sustainable Finance

Main results indicate strong support for the development of a free, public environmental data space for companies and for EU action on ESG research and ratings. There is also support for further definitions, standards and labels for sustainable financial assets and financial products as well as for measures relevant to corporate governance, long-termism and investor engagement.

Pillar 2: From retail investors to project pipelines: increasing opportunities and maximising impact across the entire financial value chain

Main results show strong support for the use of digital tools. Results also indicate support for measures to mobilise retail investors, better measurement of the impact of sustainable finance on sustainability factors, green securitisation, actions promoting intra-EU cross-border sustainable investments, and EU actions regarding project pipelines. Public incentives are perceived as being effective for boosting sustainable investments. More action is expected for global coordination to achieve the Paris Agreement and SDGs

Pillar 3: Reducing, managing and building resilience to sustainability risks

Main results show support for more transparency and effectiveness of ESG factors being incorporated into credit ratings and for action to enhance the availability, usability, and comparability of climate-related loss and physical risk data in the EU. There is mixed support for taxonomies of low and negative impact activities and some concerns about transitional and physical risks and support to better integrate them into financial institutions' practices.

FSUG members agreed with many results of the public consultation. In terms of financial literacy there is great support for supporting Employee Share Ownership and hope that the Commission will do further work on this.

Questioned about the next steps, FISMA colleagues replied that in the summer there will be another sustainable finance package, including the strategy, the Delegated Act on Art. 8 of the Taxonomy Regulation, and the proposal for a EU Green Bond Standard.

FSUG members indicated that while consumer education is welcome to improve retail investors' understanding of sustainable products, it is crucial that financial advisors (sales people) are also adequately educated on those–products to better meet the needs and expectations of consumers.

FISMA colleagues replied that under the CMU Action Plan there are actions on financial literacy which FISMA plans to follow up on in the strategy.

GameStop case: impact on investor protection - MiFID review (Nicole Georgeon, DG FISMA C.3)

In February, the US SEC replied to an inquiry by the US Senate on the GameStop case. The SEC is still doing a study in order to determine whether no laws were broken and whether existing US legislation is sufficiently strong to prevent further similar events.

Although the GameStop case mostly affected US citizens, the EU is assessing whether the current EU framework provides for the necessary safeguards. The outcome of this assessment will be considered in the context of the MiFID review and the retail investment strategy.

The three main elements under scrutiny:

Investor protection: MiFID rules require proper disclosure of information that allow investors to take a well-informed investment decision. The Commission is assessing in close cooperation with ESMA the effect of payments for order flow (PFOF) when brokers and other investment firms route the orders of their clients to a specific execution venue (like high frequency trading firms or others). This practice exists since some years in the EU but so far, except in limited circumstances where issues clearly appeared, it seems that there is no evidence of any major lack of compliance with the existing framework regulating this practice. Some even consider that this business model can lead to best execution for investors as the more order flows the market maker gets, the more the spread narrows. But considering the lack of transparency of this model, and the risk of breach of rules on inducement, conflict of interest and best execution in particular, more analysis and further information collection are necessary before drawing any conclusion.
The Commission is working on an impact assessment for the review of MiFIR. One of the elements is the creation of a centralised database – a consolidated tape -which would provide for all financial instruments a comprehensive overview on prices and volumes of traded securities in the EU across the many existing trading venues. This would improve overall price transparency across trading venues and access to such data should give to the investors a trustful benchmark to assess the quality of the execution venue. Many elements still need to be assessed, including the influence of social media circulating financial information, the level of financial knowledge/literacy of investors, the complexity of products that can be purchased online, etc. FISMA will soon launch a public consultation covering amongst others these specific questions that, together with the outcome of the on-going retail investment study, will be used for the impact assessment for the MiFID review planned next year.

- Market Abuse: the current regime includes measures regarding market manipulation that already address new forms of trading or strategies that may be abusive (including algorithmic and high frequency trading). The current Market Abuse Regulation still appears to be sufficient. In the context of the periodic review of MAR, FISMA will assess whether the framework could be further improved and reinforced.
- Short selling: The Short Selling Regulation provides for safeguards to protect both companies and investors. It gives intervention powers to national regulator and to ESMA at EU level. Last year, in the midst of the Covid-19 pandemic, ESMA and some national regulators made used of their special intervention powers. FISMA continues to assess whether any changes in the regulatory regime are necessary.

FSUG members indicated that payments for order flow is the most important element to assess when reviewing the GameStop case, which in their view should be banned. Members are looking forward to the conclusions of the Commission on this topic.

FISMA confirmed that the PFOF is a very important element to assess and mentioned that various approaches vis-a-vis this business model exist. MiFID II includes a specific article to regulate the practice of inducements. The Commission must first get a better view on whether the current framework is or is not respected and is strong enough, before taking further steps.

FSUG members consider that changes in the system are also necessary with regards to short selling. Required threshold are still too high and some actors managed to remain just below the current thresholds, leaving outside investors and issuers "in the dark". Establishing a consolidated tape would be helpful, however, so far, there seem to be insufficient interest in the market to do so. Also it will be important to avoid further market fragmentation and further shifting of liquidity to dark markets, as it has been the case since the introduction of MiFID. There are also issues linked to the required quality enhancement.

FISMA agreed that the question of quality enhancement linked to the inducement is also a very important element to assess in the PFOF model. Other points mentioned will be considered in the context of the impact assessment on MIFIR and when assessing any necessary changes on the short selling regulation.

AOB

- **Annual report on 2020 and 2021 work:** The Chairing Trio will coordinate the work and liaise with members to get input on the papers/projects they were leading.
- **Virtual farewell:** a doodle will be shared to set a date for our virtual farewell drinks, to which previous FSUG secretariat colleagues from the Commission will be invited too.