ESA's Joint Committee Discussion Paper on the Use of Big Data by Financial Institutions

Introduction:

EFPA welcomes the ESA's joint committee's consultation and mostly endorses and shares the definition, scope and description sections of the paper.

We are responding to this consultation based on the need to contribute to the informed choice and decisions to be made by banking and financial customers.

Big data and all new technologies should be welcomed as an important tool to improve the quality and the efficiency of financial services. As financial advisers, we are convinced that face-to-face and personalized advice is what is needed to protect investor. What is called "digital advice", is often a simple asset allocation tool, that could benefit the customers when it is complementary to a right customer analysis followed by explained and justified recommendations.

Questions:

1. Do you agree with the above description of the Big Data phenomenon? If not, please explain why. Please also mention whether you consider that other characteristics are relevant to understanding the use of Big Data.

Yes, EFPA mostly agrees with the ESA's description of Big Data stated and presented in this paper.

2. Which financial products/activities are (likely to be) the most impacted by the use of Big Data and which type of entities (e.g. large, small, traditional financial institutions,

Fintechs, etc.) are making more use of Big Data technologies? In light of ESAs' objective to contribute to the stability and effectiveness of the financial system, to prevent regulatory arbitrage, do you consider that there is a level playing field between financial institutions using Big Data processes and those not using them (e.g. because they do not have access to data or the (IT) resources needed to implement Big Data processes) or between established financial institutions and potential new entrants (e.g. Fintechs) using Big Data processes? Please explain.

EFPA thinks that the entire financial sector is willing to use the Big Data technology in its processes, to reduce costs, and often trying to strength the service. However, Big Data requires big investments that are not affordable for many SMEs and start-ups. Large financial institutions and big Fintech are the ones who are using this technology. Therefore, Big Data could arise a problem of expulsion of the SMEs from the market, as they lack the resources to access this technology.

EFPA is particularly concerned of the potential risks of using certain technologies for purposes of replacing the professional capacity to provide advice, which should always be based on a careful (then, often expensive) analysis of each customer based on the interaction with the adviser (KYC) to help to find out the real financial objectives of the customer. Financial advice, being a service that could only be rightly provided through an adequate but time consuming process performed only by experienced and qualified professionals, could easily tempt providers to offer it through cheaper although more unreliable technologies due to the lack of human interaction.

EFPA considers that Big Data requires specific regulation in order to preserve legal certainty. 'New facts need new Law' (*Garrigues*). Regulators should ensure a level playing field, and if Big Data is extensively used, it should not reduce customer security or the service's standards.

Finally, another important concern is to avoid any misuse of private data.

3. Do you offer/are you considering using Big Data tools as part of your business model? If so, please briefly describe: i) what type of entity you are, e.g., long established, start-up, a product provider, an intermediary; ii) the service you provide; iii) the nature of your clients; iv) your business model; v) whether the Big Data tools/strategy were developed by an external company or internally and whether you have related agreements with other entities (including non-financial entities)23; vi) what are the types of data used (personal, anonymised, user data, statistical data etc.) sources of data; and vii) the size of your Big Data related activity and/or forecast activity (e.g. to what extent are business decisions already taken on the basis of Big Data analysis; what other business actions could be based on Big Data in the future)?

Financial advisors are aware of the use of Big Data to enhance the service provided to clients. Digital financial advice is a relevant tool for their professional activity.

4. If you are a consumer or a consumer organisation, do you witness any of the uses of Big Data? In what fields?

N/A

5. Do you consider there are (non-regulatory) barriers preventing you (or which could prevent you in the future) from collecting and processing data? Are there barriers preventing you from offering/developing Big Data tools in the banking, insurance and securities sectors? If so, which barriers?

EFPA is a professional licensing, standard setting and certification body for financial planners and financial advisors in Europe. It was created with the purpose of increasing professionalism in the European financial services sector. As it cannot be otherwise, the data we collect from our certificate holders is handled under the personal data act, and it is not shared with third

parties. Moreover, in the training provided, EFPA looks after the compliance of these obligations by their associates.

6. Do you agree with the above short, non-exhaustive, presentation of some of the main applicable requirements? If not, please explain why. Please also mention whether you consider that other legal requirements are essential and should be mentioned.

We do agree. EFPA considers that the principle of technical neutrality has to be preserved.

7. EFPA thinks that customer interest and protection should be prioritize. In terms of customer's protection requirements, we are confident that the level of requirements for certified financial advisers and financial planners, which are high competence, full compliance (now with and supported by MiFID 2), submitted to CPD, and the commitment with a code of professional conduct, are strong barriers preventing our certified professionals to make misuse of data. As we believe the present regulatory requirements are satisfactory, we do not believe that further regulation is necessary.

From the point of view of financial advice, an especial regulation on Big Data tools would be convenient in order to guarantee a safer use of these tools. Additionally, financial supervisors may develop the respective technical standards.

8. Do you consider the potential benefits for consumers and respectively financial institutions to be accurately described? Have you observed any of them in practice? If so, please provide examples. If not, please explain whether you are aware of any barriers that may prevent the above potential benefits from materialising?

We believe the risks and potential benefits are well identified and described. Recently, more processes and services are supported by Big Data use, and certified financial advisers are increasingly confronted to situations where either the segmentation results, the lack of sufficient quality or guarantees of certain processes, or just some unbalanced handling of data;

could generate reputational risk affecting customer trust, or even some compliance or legal risks.

9. Do you agree with the description of the risks identified for consumers and respectively financial institutions? Have you observed any of these risks (including other risks that you are aware of) causing detriment to consumers and respectively financial institutions? If so, in what way? If not, please explain why. Please also mention whether certain risks for consumers and financial institutions have not manifested yet but have the potential of developing in the future and hence need to be closely monitored by Supervisory Authorities.

Regulation is unfortunately always a bit behind technology developments, a reason to be especially prudent these days of permanent digital innovation.

10. Is the regulatory framework adequately addressing the risks mentioned above? Bearing in mind the constant evolution of technologies/IT developments and that some of the above mentioned regulatory requirements are not specific to the financial services sector (e.g. GDPR), do you think further regulation is needed to preserve the rights of consumers of financial services in a Big Data context? Please explain why.

As mentioned above, regulation never addresses adequately an ever-changing technology. Therefore, what regulation has to do is to remove the obstacles for the use of new technologies, preserving consumers' rights.

11. Do you agree that Big Data will have implications on the availability and affordability of financial products and services for some consumers? How could regulatory/supervisory authorities assist those consumers having difficulties to access financial services products?

Certainly, Big Data transforms the access to financial services. Consequently, there is a serious risk that some segments of the financial customers will stay apart due to the use of Big Data and the digital illiteracy of older customers. Inclusion and re-inclusion should be addressed.

Moreover, there is a risk of abusive use of the available data on customers' profile in order to sell them inadequate products.

Besides, there is also a risk of over-offer, and of acquiring products that do not meet clients' needs. Supervisors have to train their staff on these new technologies, in order to protect clients.

12. Do you believe that Big Data processes may enable financial institutions to predict more accurately (and act accordingly) the behaviour of consumers (e.g. predicting which consumers are more likely to shop around, or to lodge a complaint or to accept claims settlement offers) and could therefore compromise the overarching obligations of financial institutions to treat their customers in a fair manner? Please explain your response.

Big Data could be a means for the better compliance of conduct requirements. It allows knowing the customer better, assessing its profile better, and guaranteeing the offer of adequate products. Nevertheless, there is a risk of taking advantage of the available information for selling unnecessary products that allow entities to make an additional profit.

13. Do you agree that Big Data increases the exposure of financial institutions to cyber risks? If yes, what type of measures has your institution adopted or is going to adopt to prevent such risks? What could supervisory/regulatory authorities do in this area?

Certainly, the use of Big Data mechanisms create and multiply some of financial institutions' risks, which may have a systemic impact that should be identified and supervised by financial authorities.

14. Would you see merit in prohibiting the use of Big Data for certain types of financial products and or services, or certain types of customers, or in any other circumstances?

No. It would be unrealistic. Support of a level playing field but no prohibitions that could not be enforced.

15. Do you agree that Big Data may reduce the capacity of consumers to compare between financial products/services? Please explain your response.

The use of Big Data does not necessarily reduce the capacity of consumers to compare between financial products/services. On the contrary, with a correct design, supervised by financial authorities, it may facilitate the comparison between products and services.

Standardization of offers is an unwanted side effect of digitalisation. It is a bit like the clear tendency towards passive investment, positive in what affects costs reduction for customers but dangerous for the effective functioning of the stock exchange market.

The use of Big Data should not affect that the professional vision should be decisive. That is, the criteria and the experience of the human advisor should be and stay the dominant.

16. How do you believe that Big Data could impact the provision of advice to consumers of financial products? Please explain your response.

It is already impacting the industry. Roboadvise (called also digital advice) is starting to have large effects if the financial advise panorama, due to its lack of regulation, price cuts and the customer lack of understanding of the limits of the algorithm solution.

Clients should be advised on the differences between an algorithm and the personal relation 'face-to-face' of financial advisors.

Big Data by financial advisors constitutes a tool, which allows financial advisors to offer a more efficient advice and have better quality.

17. How do you believe Big Data tools will impact the implementation of product governance requirements? Please explain your response.

Introduce product governance in financial services' distribution is already a difficult task that Big Data could make it easier.

18. How do you believe Big Data tools will impact know-your-customer processes? Please explain your response.

Big Data enhances product governance, which may anticipate to the design of Big Data algorithms. So that, MiFID II requirements on product design should extent to the design of Big Data algorithms.

19. What are key success factors for a Big Data strategy (i.e. the adaptation of the business model/plan towards Big data driven technologies and methods)?

Big Data constitutes only a tool for the business. Therefore, the use of Big Data should never be confused with the business itself. For instance, never rely only on the digital Big Data factor; be just a complement of face-to-face advisers, take advantage of the opportunities but stay alert with the challenges.

20. What are the greatest future challenges in the development and implementation of Big Data strategies?

Security, and keep Big Data in a complementary role.

21. This Discussion paper refers to a number of measures and tools meant to ensure compliance with conduct and organisational regulatory requirements as well as data and consumer protection rules in the context of big data analytics. Are other measures and tools needed? If so, what are they and what they should cover?

It would be convenient that there is a compliance officer on the use of Big Data in financial institutions, additionally to internal standards and conduct regulation.

Any other measure to ensure that customer would not be manipulated, and his privacy preserved.

22. How do you see the development of artificial intelligence or blockchain technology in connection with Big Data processes?

N/A

23. Are there any other comments you would like to convey on the topic of use of Big Data by financial institutions? In particular, are there other relevant issues that are not covered by this Discussion Paper?

Just an encouragement and support to ESA's, to keep the focus on these very important issues which are fundamental to today's changes in financial services.

EFPA is positive about the use of Big Data to help and advance our industry. Technology is part of our lives and if we take a time perspective, we will realise how the financial industry has improved its process gaining time, allowing more operations and reducing costs. From the advisers' side these new tools are helping to better serve the customers. Today the need for financial advice is greater than ever as we observe several key challenges to individuals' financial security around the world: In the EU with the zero interest rate scenario, and generally, with the high level of cash, the increase of longevity, the retirement income gap, the

lack of engagement, the lack of financial literature and the access to advice, and thus, a right use of Big Data will help.

Nevertheless, according to a 2015 report by *Accenture*, many consumers have indicated that they want the on going ability to access human advisors. We are sceptical about today's 'black box' algorithm situation. There are elements of advice than an algorithm is unlikely to replace such as holistic financial planning, retirement and tax advice, i.e. According to *Celent Research* "many retail investors are not entirely comfortable with handing over their assets to a computer and still need hand-holding with human advisors". What we are talking here is people's money. We need with no doubt to protect our customer's savings. Prof. *David Wright* and former IOSCO Secretary General said recently that 'bad advice can ruin lives'. Regulatory speaking, we think we cannot go any further until we are sure that the algorithm running the tool is as save as the traditional way. It is a fact that the banking industry reputation is at its lowest level. It is a key sector in our society and in order to improve it, we need to regain the confidence of the costumers, and to minimise as much as possible the potential wrongdoing. We need to improve our customer's literacy, because we need the human interaction. Customers may not provide all the information to the algorithm, and then we need a human advisor to acknowledge this discrepancy. Because the client's needs may change suddenly, we need a human advisor to take it into account. The risks for making unsuitable financial decisions as a result of lack of information or because of errors in the tool are not negligible.