FECIF response ESAs Consultation on Big Data

March 2017

General comments

FECIF fully endorses the opening section of the ESA consultation paper, and shares its concerns about protection of the private sphere. However, there is a slight concern that the paper sometimes confuses two aspects, namely compliance and serving the client. While both aspects are crucial in a sustainable commercial relationship, we feel that client service is too often subjugated to the blind and uncritical application of far-reaching rules. Very often the spirit of the law is lost behind the formal adherence to process.

Our main concern, well reflected in this paper, is that consumers can make an informed choice about important financial matters, and can take the decisions that will impact them over the long term. We believe that dumping more information on the customer will not necessarily result in better-informed choices; we are equally worried about leaving the choice to 'black-box' algorithms.

Our strong belief is that face-to-face advice is the best way to help customers take these decisions, in all but the simplest situations. New technologies, algorithms and the developments of tools based on big data are very welcome as a source of innovation that could potentially benefit customers, provided there is a level playing field with existing approaches, customers are kept in the driving seat and decisions or recommendations can be explained.

Questions

Q1) The view of the ESA's cannot be more to the point regarding Big Data. Every aspect is covered, but this is among the most delicate subjects touched, so far, by the EC.

Q2) FECIF believes it is important for regulators to ensure a level playing field across different types of players in Financial Services. While innovation, new products and services facilitated by the development of technologies might eventually improve the value delivered to consumers, this should not be at the cost of lower security or control standards applied to new players. For example, they should be held to the same standard as existing players in terms of KYC but also in making sure consumers can make an informed choice, not hiding all the complexity behind a sleek façade.

Additionally, Big Data should be restricted to the financial markets and regulatory compliance to avoid any unsolicited use of private data. There should be no leeway to allow interference with the private sphere of any individual or group of individuals, such as families or other social organizations. There is no reason to prohibit a priori all forms of innovation, as they might deliver value to consumers, but it is essential that consumers are informed, and that they have a real option to avoid being targeted by such approaches (see Q5, below).

Q3) With financial advisers, the aggregation of data is offered through the sytsems of asset managers/bankers/insurers, or via client analysis providers. This is a top down feed. There is a clear threat that the influx of data on an adviser's desk, where in depth knowledge of the client is added by that adviser, can be outsourced and pumped back to/by the provider of data for its own marketing purposes (point 70). When such a system is used, it should be clear that the adviser cannot be accused of breaching a client's confidence. Of course, as mentioned in Q2, legal proceedings should also be able to monitor the whole file.

Q4) N/A

Q5) Today, the only barriers available are by the IFAs who have developed in-house schemes of processing data, without using direct feeds from any external source.

The main problem with the availability of data lies with the acceptance of the client of the exploitation of his/her data. This is a catch-22 situation; either the client accepts the use of his/her data, or the relationship is severed, aborted or, in the best of cases, ignored. As one cannot live in the western world without a banking account, there is no escape (points 19 & 59). Indeed, there should be a banking institution for those who refuse to cooperate. This would only apply to the commercial use, monitoring and sale of data, not to regulatory requirements.

The Regulatory framework applicable to Big Data touches the very essence of privacy with more than commendable comments especially in points 17 & 19 and footnotes 26 & 27, where customers are recognized in having the right to object, especially if financial institutions "purchase data for own purposes".

Q6) FECIF fully agrees with this development by the ESAs. However, a clear distinction should be made regarding anti money laundering process. That institutions should question the origin of funds when it collects them is legitimate. However, financial institutions now often apply the same process to the client who withdraws his/her assets or monies from its books. Many financial institutions block any large withdrawal without a "sound" reason. This should not be accepted by FECIF and CIFA and opposed by regulatory bodies.

Q7) Any of the comments written here by the regulatory bodies are relevant. The use of Big Data should only be proportionate to the relevant field, and not spread outside. Institutions should have an obligation to prove that extra Big Data, outside their own KYC, is needed for their trade. If not deemed necessary, the client should have the legal right to remain outside such algorithms (again points 19 & 59). And in any instance consumers need to understand what is offered to them and on what basis, if they are to make an informed choice.

Potential benefits and risks for consumers and financial institutions are illustrated in the comment following point 35.

In this respect, the universal use of sales targets for the sales forces of financial institutions conveys the image of cross selling and mis-selling to vulnerable clients, especially if the behavioural profiles have been monitored and taught to the employees by unscrupulous managers (footnotes 87 & 88). The heart of the question is this: are advisors loyal to their employer or to their client? Only IFAs can answer without doubt that they only respond to clients needs (point 44).

Current regulation (e.g. MiFID) already prescribes that financial services and products should be targeted to specific 'segments'. With the development of Big Data, there is a risk that such segments are created ex-post, based on customer behaviour, potentially biased by sales incentives in the vertically-integrated networks, as has happened in the past. This might distort segment targeting beyond recognition, rendering regulation obsolete.

There is also a risk that Big Data-driven products or services end up being more expensive that traditional alternatives because development costs are allocated to smaller segments of clients.

Q8) Yes, the risks are well identified in the paper, and it is likely that they outweigh the benefits. In this environment, potential gains are in day-to-day basic transactions which can be enacted any time, any place. However, this implies 24/7 controls which are costly. Similarly, basic investments "could" also be traded, but markets never stop and this also has an implied cost, as that of the developers. Savings in implementing compliance to the (as mentioned in point 28) 12 Directives (!) currently in force is relevant. But the aggregation of personal private data not fit for the purpose is unacceptable.

Q9) The situation described reverts to today's perception. It is a fact that regulation and legislation are always a step behind history. Therefore, it is difficult to be sure that all has been seen and analysed, even if this is a very fair and objective view of the difficulties encountered.

Q10) It is highly unlikely that the current texts cover the whole of the subject, irrespective of their intrinsic value, as the topic keeps evolving every day.

Q11) Since the global view of markets will no longer be a mutual view of things but the addition of individual behaviours, expenses will undoubtedly escalate to the detriment of the clients' funding of these costs. Furthermore, older clients and those refusing or not being able to use technology should continue to be able to obtain the assistance of real financial people.

Q12) No, the use of Big Data is precisely intended to influence peoples' lives as explained in points 72 & 73. This cannot be ignored as recent political events have contributed to change the perception of democratic states. Big Data is therefore a threat to individuals' behaviour and rule of their daily life.

Q13) No institution is immune from cyber attacks, irrespective of firewalls, since the Pentagon and other super-secure organizations have been hacked. Beyond making sure that all precautions are taken, as there is no fool-proof solution, it is important to ensure that clients are informed fully and rapidly when such breaches occur.

Q14) Competition is the essence of trade. Internet banking has its advantages, but no system replaces face to face contact. In this respect, FECIF believes that IFAs will retain a unique value. We will insist on a level playing field, so that opaque, black-box approaches are not given more leeway than face-to-face advisors.

Q15) It is obvious that standardisation of offers available will not increase diversity. Once in a category with one institution, similar algorithms will induce similar offers. And this might have unwanted side-effects in reducing the variety of investment approaches, or impairing the ability of consumers to compare and choose the solutions that are right for them, and in the long run make financial markets less effective.

Q16) A computer is always the result of a standardisation of the idea of a human being. It therefore has his/her flaws and genius. This is why all computers and Robo advisers are constantly upgraded. Therefore, poor advice can simply result from a late upgrade of the system. Direct contact with a real IFA remains invaluable, especially if supported by the analytical tools made available by Big Data, rather than seen to be competing with it.

Q17) Since today there are 12 Directives to implement at once, only computers can solve this amount of data treatment. Therefore, the editing of governance reports will benefit from the collection of data on a large scale to meet the requirements. No single individual adviser could possibly perform that task. We believe this is a breach of the level playing field of financial advice.

Q18) The KYC should remain the core of any relationship. Big Data enlarges the vision, but will therefore forcibly influence the conclusions. It will either reject such or such hypothesis or build a standardised answer. Neither are giving justice to the real person behind the client relationship. However, Big Data might be the symptom rather than the cause of the issue, in the present case.

Q19) Success in Big Data is providing answers in big numbers. FECIF is concerned that pure data-driven approaches without the client intelligence provided by face-to-face advisors might result in delivering a solution that is not adapted to the needs of the customer, with potentially severe long-term consequences when applied to important financial matters. Consumers must be provided with a choice of options, and the means to select the option that is right for them, as they see it, not necessarily as a computer model sees it.

Q20) The main challenge is that if all data must be coded to ensure security, no human being will be able to read it without the aid of a computer dedicated to un-coding. This means that the financial sphere, at least, will surrender to machines. Security may be at this cost, but this will not leave the next generation with the basic tools to start again if all goes wrong, and memory of the coding is lost.

Q21) Compliance should always wonder if the next move is in favour of the private sphere of the customer, or detrimental to his/her privacy. This does not preclude the fight against fraud, corruption etc. but the emergence of Big Data creates a risk that consumers are manipulated and that the next wave of mis-selling scandals is being built under our nose. Regulators and legislators should not minimise this issue.

Q22) N/A.

Q23) FECIF are very satisfied with the overall perspective of this ESA paper, which addresses the most important questions raised by the emergence of Big Data in financial services. However, we insist that any future regulation should aim to maintain the diversity of models on offer and ensure a level playing field, so that consumers can choose the solution and approach that is right for them.

About FECIF

The **European Federation of Financial Advisers and Financial Intermediaries** (FECIF) was chartered in June 1999 for the defence and promotion of the role of financial advisers and intermediaries in Europe.

FECIF is an independent and non-profit-making organisation exclusively at the service of its financial adviser and intermediary members, who are from the 28 European Union member states, plus Switzerland; it is the only European body representing European financial advisers and intermediaries. FECIF is based in Brussels, at the heart of Europe.

The European financial adviser and intermediary community is made up of approximately 500,000 private individuals exercising this profession as a main occupation (representing approximately 26,000 legal entities including 45 networks), about 280,000 are members of national professional associations (51 at today's count).