

BIPAR Update

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bipar

European Federation of Insurance Intermediaries

Commission

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1. SME Definition – European Commission concludes there is no need for revision

On 28 September 2021, the European Commission published an [evaluation of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises \(2003/361/EC\)](#). According to the evaluation conclusions, *“the SME definition remains relevant, fit for its purpose, and has been effective in reaching its objectives. Within the overall context of SME policy, the evaluation has not found evidence that points to a need for a revision.”*

The two-year transition period - the period during which an enterprise can keep its SME status when it has exceeded the thresholds - is also considered to remain unchanged.

The Commission found that the SME definition works well for most enterprises and is easy to apply in the bulk of cases. Difficulties arise in the assessment of companies with complicated and/or foreign ownership structures. Better guidance, enhanced use of existing digital tools and easier access to data are seen as means to improve the efficient application of the SME definition, while bearing in mind that the only binding interpretation of the SME definition can be provided by the Union Courts. It must also be ensured that the SME definition is not circumvented by purely formal means.

Most issues identified during the evaluation are not specifically attributable to the definition and would not necessarily be addressed by a revision. **Matters of such a specific nature could be better examined within their particular policy context, while recognising the need to ensure consistency and equal treatment in view of the horizontal nature of the SME definition.**

Perceived lock-in effects that were identified cannot be assigned to the Definition specifically, but rather to national policies such as labour law or taxation. Identified challenges and barriers for start-ups and scale-ups are proactively addressed by the Commission, inter alia through the recent SME Strategy.

There is a distinct call for a tailor-made definition fitting companies that have outgrown the SME definition ceilings. It could be useful to look into the challenges that companies meet once they have ‘outgrown’ the SME-phase and analyse whether any policy gaps could be addressed.



Background

The EU SME Definition is the structural tool to identify enterprises that are confronted with market failure and particular challenges due to their size and are therefore allowed to receive preferential treatment in public support. It has become a key instrument in the EU SME policy and is referenced in a large number of legal acts.

The main factors determining whether an enterprise is an SME are:

1. *staff headcount*
2. *either turnover or balance sheet total*

Company category	Staff headcount	Turnover	or	Balance sheet total
Medium-sized	< 250	≤ € 50 m		≤ € 43 m
Small	< 50	≤ € 10 m		≤ € 10 m
Micro	< 10	≤ € 2 m		≤ € 2 m

In 2018, the European Commission launched a public consultation to evaluate whether the existing EU SME definition is fit for purpose and, if necessary, to assess options for possible changes thereto. BIPAR’s position was that there was no need for changes to the SME definition or to the thresholds as set in the current regime.

2. BIPAR represented at ESAs consumer protection day

On 7 and 8 October 2021, the three European Supervisory Authorities EIOPA, ESMA and EBA are jointly organising their 8th Consumer Protection Day. The theme of the event is “Consumers in a digital world, what have we learnt?” and it will be discussed around the following three areas:

- Disclosures to consumers buying financial services in the digital age - *Is there a need for a paradigm shift in the current approach?*
- Getting bang for your buck - *How can we ensure retail investment products offer value for money?*
- Accelerated digitalisation of financial services - *risks and opportunities for consumers*

BIPAR will be represented at the panel on value for money on 8th October through Lorraine Cooke, Member of BIPAR’s Irish member Brokers Ireland. Lorraine will sit on this panel together with representatives from Better Finance, the Dutch Authority for the Financial Markets and Insurance Sweden. The panel will be moderated by Fausto Parente, Executive Director of EIOPA.

The event is **invitation only** and will take place in a virtual format. BIPAR has been invited to attend and will prepare a summary of key points.

Full programme [here](#).



3. Digitalisation – EIOPA event on AI Governance principles in insurance

EIOPA, the European Insurance and Occupational Pensions Authority, organised a series of events on 20, 22 and 24 September to present the content and context of the Report published by the EIOPA Consultative Expert Group on Digital Ethics titled “[Artificial Intelligence \(AI\) governance principles: towards an ethical and trustworthy Artificial Intelligence in the European insurance sector](#)”, which was published in June 2021. For more details with regards to the AI Governance Principles Report, please see also our mail sent on 22 June.

The three days of panel discussions were divided by thematic: 1) AI fairness and ethics, 2) AI transparency and explainability and 3) AI Governance (focus on human oversight, data management and record keeping, and robustness and performance). Moderator of the panel discussion was Tim Shakesby, Conduct of Business Oversight Unit, EIOPA.

The panellists (all members of the Consultative Expert group) explained that in their report, the proposed guidance acknowledges the freedom of insurance firms, including insurance intermediaries, to select the combination of governance measures that better adapts to their respective business models, and more particularly to the concrete AI use cases that they aim to implement. At the same time, they highlighted in their report those areas requiring special consideration so as to promote trust in the use of AI by insurance firms.



From the discussion, the social aspect of insurance and the notions of **responsibility and ethics** arose.

AI and Big Data Analytics (BDA) improve accuracy and can increase the analysis of risk profile and capacity of sophisticated products. However, AI’s ability to process data can increase bias and financial exclusion (for high-risk customers due to higher personalisation) and it raises transparency issues. According to the panellists, mutualisation is a key challenge; a decision should be made by the society as a whole (not by an insurer alone) to secure the substance of insurance. This is why appropriate governance is needed. It was mentioned that the Report includes an extensive list of profiles of people who are at risk such as people with low income, elderly people, people with lower education, young people, students. Motor and mobility insurance, third-party liability, complementary health insurance, life insurance and pension provision as well as workers compensation insurance were stated as necessary products (also referred to in the report as “essential” insurance).

To the question “*in which area of the insurance value chain will AI have a negative impact*”, 47% of the audience indicated pricing and underwriting and 24% of the audience indicated claims management. Sales and distribution represented only 9% of the audience. EIOPA representative mentioned that EIOPA sees the impact on all parts of the value chain.

Furthermore, as AI systems can be very complex, **explainability** might be difficult to provide to consumers so that they understand what role AI systems play in the final decision (“blackbox”). AI systems may not need to be completely explained, but the explanation should be meaningful for the consumers. For instance, it could be a simple explanation of the function of AI and of what type of data and rating factors are considered regarding the insurance products. Also, the simpler the models are, the easier it will be to track back the chain of the decision.

In relation to **transparency**, data protection issues also arise. According to the panellists, transparency is necessary to establish trust. This way, it will be easier for consumers to challenge the decision taken about them and to exercise their right to redress for financial consequences due to abuse of AI.

Finally, the **human oversight principle** is important as it means that a number of people check the AI system and ensure that it complies with all requirements and has the right outcomes. Proportionality should be taken into account when assessing how to implement the human oversight principle. The management body should be able to monitor the AI system and bear the responsibility. A special person may be also appointed who will be responsible for AI, but proportionality should be always considered. In addition, data quality processes should be put in place as well as data monitoring and record keeping to control the purpose for which the data is used.

To the question “*what role do BigTech firms play in the adoption of AI systems by insurance undertakings*”, 78% of the audience replied that insurance undertaking increasingly outsource from Big Tech firms cloud computing services and AI applications. EIOPA representative confirmed this outcome and explained that outsourcing goes beyond cloud and that BigTech firms come into play which adds another dimension from a supervisory perspective. The panellists also mentioned that controlling the algorithm on a server of BigTech firm is more complicated than controlling the in-house AI system.



Background

Following the publication of EIOPA's thematic review on the use of Big Data Analytics in motor and health insurance on May 2019, EIOPA created a Consultative Expert Group on Digital Ethics in insurance aiming at enabling a wide debate amongst stakeholders on the opportunities and challenges arising from technological innovations such Artificial Intelligence that go beyond purely regulatory or supervisory considerations. BIPAR was represented by two experts in this Expert Group.

4. ESMA 2022 work programme: focus on CMU, digitalization, sustainability, supervisory convergence

On 28 September, ESMA (European Securities and Markets Authority) published its 2022 [work programme](#) setting out the priority work areas to deliver on its mission “to enhance investor protection and promote stable and orderly financial markets”.

The key areas of focus for 2022 include:

- ESMA contribution to the **EU priorities** on the development of the Capital Markets Union (**CMU** - ESMA technical advice regarding the Retail Investment Strategy, support targeted financial education and financial literacy initiatives, ...), **sustainable finance** (support building the relevant rules related to ESG disclosures, ...) and **innovation/digitalization** (ESMA technical advice on digital finance, ...);
- the **convergence of supervisory and regulatory practices** across the EU. ESMA will follow the progress made by NCAs in undertaking supervisory actions, on the two Union Strategic Supervisory Priorities, the **costs and performance for retail investment products** and **market data quality**, and by delivering **peer reviews**. Equally, ESMA will continue to foster convergence in the area of the provision of **cross-border services**, enhance the **disclosure and transparency of information** provided to investors and market participants, as well as promote convergence of national supervisory practices on **ESG products**
- continue to monitor the impact of **Brexit** on the evolution of EU and global capital markets.
- continue to focus on the impact of the **COVID-19 pandemic** on financial markets and financial market participants.
- the exercise of **new and existing supervisory powers** for benchmarks and data service providers as well as central counterparties (CCPs).

Natasha Cazenave, ESMA Executive Director, said: “*ESMA faces another year of change and challenge in 2022, with new supervisory powers for benchmarks and data service providers, significant contributions expected to support the EU's priorities through single rulebook and supervisory convergence work and further enhancements to our role as an EU capital markets data hub.*” “*This is an ambitious work schedule that aims to respond to the challenges faced by the EU, its capital markets, and its citizens. This includes developing the retail investor base to support the Capital Markets Union, promoting sustainable finance and long-term oriented markets, and dealing with the opportunities and risks posed by digitalisation and innovation in the financial sector.*”

5. Council and EP ECON committee agree on Verena Ross as ESMA Chair - EP Plenary to confirm nomination

On 22 September, the Council of the EU reported that the Committee of the Permanent Representatives of the Governments of the Member States to the EU (COREPER) agreed on Verena Ross (German) as candidate for the position of ESMA chair.



Verena Ross

On 30 September, the members of the European Parliament's Economic and Monetary Affairs (ECON) committee organised a hearing with Mrs. Ross and approved Council's proposal for her to be the new ESMA Chair with 46 votes in favour, 6 against and 5 abstentions. During the hearing, MEPs addressed issues such as rule enforcement and better use of proportionality in rule-making; digital finance; consolidation of EU capital markets; how to tackle economic nationalism, ...

The nomination still has to be confirmed by the European Parliament's Plenary and this is likely to happen next week (Plenary session of 4-7 October).

Mrs Ross previously was ESMA's Executive Director (a post now held by Natasha Cazenave -see previous articles on this topic, in particular BIPAR Update of 19 May 2021).

As a reminder, the ESMA Board of Supervisors had shortlisted 3 candidates: Maria-Luis Albuquerque, Carmine Di Noia and Verena Ross.
