



Minutes of the FSUG meeting 19-20 March 2013

Tuesday, 19 March

Adoption of the agenda and approval of the minutes of the last meeting (12-13 February 2013) – Tour de table

The group agreed to prepare an email to Commissioner Barnier criticising proposals in the EU-IMF bailout plans for Cyprus that foresaw a special tax on bank deposits as a means for Cyprus to raise additional tax revenues as part of its own contribution to bailout Cypriot banks.

The group's discussion centred around the risk of a potential breach of consumer protection and the dent to the credibility of the deposit guarantee scheme. The thresholds to be applied when determining individuals who would be liable to the tax as well as the amount of tax to be levied were not known.

A member of the group volunteered to prepare the FSUG response to MEP Giegold's initiative to collect nominations for Europe's most dangerous financial product.

Following this point a member informed the group about a ruling of the European Court of Justice which found that the foreclosure procedures adopted in Spain were contrary to EU legislation. The Chair asked the member to circulate the ruling to the group.

A member of the group quoted research carried out in the UK that concluded that the 'gender directive' has had an adverse impact on the price of insurance products: for example for premiums for female drivers. However it is difficult to isolate the impact of this directive from the impact of other regulation that may have had an impact on prices. Another member mentioned that other sources of research do not appear to support these conclusions.

A member informed the group about an action in Austria to assess Key Investor Information Documents (KIID) provided by investment funds. The exercise aims to check compliance of the KIIDs with the UCITs directive as well as its effectiveness. A report that will be available also in English is expected in mid-2013.

The Chair informed the group about a number of activities in the UK, including a study carried out by the Office of Fair Trading on payday lenders. He also reported on research in savings and insurance markets that indicates significant price discrimination against long-standing (loyal) consumers, who are charged higher prices than new consumers. In relation to Ireland he referred to recent concerns on the pricing of tracker mortgages by credit institutions, raised by the Bank of Ireland.

The Deputy Chair referred to a position paper issued by EuroFinuse on the European Parliament's ECON committee vote to revise the UCITS directive earlier in March.

Both the Chair and Deputy Chair debriefed the group about their participation in events outside the Commission, where they represented the FSUG.

Opening remarks by Mr Erik Nooteboom – new Head of Unit in charge of retail financial services and consumer policy (Internal Market and Services DG/H3)

Mr Nooteboom welcomed the group at its second meeting in 2013 and introduced himself as the new head of retail financial services and consumer policy unit in DG MARKT, in charge of the FSUG Secretariat (jointly with DG SANCO). He expressed his appreciation for the efforts and contributions of the group to the Commission initiatives and stressed the importance of the views of users for the policymaking in the area of financial services. He said he would like to continue efficient and smooth cooperation with the group and would be happy to assist and facilitate the group's operation where necessary. Mr Nooteboom reminded that based on the recent evaluation as well as on the overall assessment of the FSUG work since 2010, he would coordinate a new call, to be launched before summer, to select new members of the FSUG by the end of October 2013. Finally, he briefly commented on the three major projects with the strong consumer protection angle which are run by his unit: Bank Accounts Package (jointly with DG SANCO), Mortgage Credit Directive and Payment Services Directive, and he stressed that Commission would like to continue counting on valuable users' input in the course of implementation of these initiatives.

Meeting with Ms Paola Testori Coggi, Director-General of DG Health and Consumers

Ms Testori Coggi introduced her speech by highlighting SANCO's commitment to consumer issues in the area of financial services. This was a good occasion to provide detailed feedback to the group about the actions carried out over the past year. Much effort had been put into a broad range of actions, since her visit to the FSUG a year earlier.

Action 13 in the White Paper - An Agenda for Adequate, Safe and Sustainable Pensions regarding third-pillar retirement products: Ms Testori Coggi recalled the positive feedback obtained from the questionnaire addressed to public authorities and stakeholders in October 2012 and anticipated that the Commission will produce a working document (planned by April) that will be of a consultative nature. The Commission looks forward to receiving the FSUG's response to this consultation.

Consumer Credit Directive (CCD): The analysis of the implementation of the CCD is ongoing. Meanwhile the Commission will launch an information campaign for consumers in 4 EU countries (MT, CY, ES, IE), which aims to better inform consumers about their rights in the CCD.

The joint MARKT-SANCO legislative initiative on payment accounts: Ms Testori Coggi provided background information on the inception of this initiative grouping previously separate actions on switching, transparency of bank fees and access to a basic payment account. She stressed the important of this initiative to take a coherent approach in the three areas to the benefit of consumers.

Enforcement and information: Regarding enforcement Ms Testori Coggi recalled the Commission's information "sweeps"; in particular the successful sweep on websites providing information on consumer credit (75% of websites found in breach and then reported to the correct practices). In the area of financial education a pilot project on financial advice is ongoing. In addition, SANCO finances research to support consumer policy, including in the area of behavioural economics.

Ms Testori Coggi expressed her appreciation of the FSUG's commitment to advise the Commission and contribute to policy making with a focus on users of financial services. A question/remarks session followed the speech.

Consultation on a Possible Framework for the Regulation of the Production and Use of Indices serving as Benchmarks in Financial and other Contracts – presentation of the results by Mr Philip Tod (Internal Market and Services DG/G3)

Consultation on a Possible Framework for the Regulation of the Production and Use of Indices serving as Benchmarks in Financial and other Contracts – presentation of the results by Mr Philip Tod (Internal Market and Services DG/G3) .

Mr Tod informed FSUG members that the Commission received 84 contributions to the consultation, out of which 75 (non-confidential) have been published on DG website.

He recalled alleged manipulations of LIBOR and other benchmarks and their impact on pricing of commercial instruments as the reason why the Commission is considering regulating the production and use of indices.

He briefly recalled the topics covered by the consultation and presented main topics covered by responses:

- Need to restore confidence in benchmarks
- Form of regulation and to whom it should apply
- Governance and transparency
- Conflicts of interest
- Data and methodologies
- Transition and continuity
- Regulatory arbitrage & consistent international approach.

Mr Tod informed that the Commission proposal on benchmarks is foreseen for Q2 201.

Answering questions from members, Mr Tod explained that the Commission aims at improving the way in which benchmarks are produced or calculated rather than replace existing ones with new ones. He stressed that the Commission wants to restore the confidence in benchmarks but not to decide which benchmarks should discontinue. FSUG members referred also to users' problems with access to benchmarks.

Mr Tod will come back to the group once the proposal is adopted.

Implementation of the Consumer Credit Directive: an example from Poland – presentation by Mr Marcin Kawinski (FSUG member) and Ms Maria Lissowska (Health and Consumers DG/B4)

Mr Kawinski presented a report by the Polish Authority of Competition and Consumer Protection on compliance by credit institutions with recently adopted consumer credit legislation in Poland transposing the Consumer Credit Directive. The exercise was carried out between March and November 2012 and covered 20 institutions.

The report is split into two sections. The first part reviews compliance with specific requirements coming from the Directive. The second section focusses on abusive contractual clauses and infringement of provisions contained in relevant legal acts, including the civil code, banking laws and anti-fraud legislation.

Many issues identified in the report are attributable to faulty practices by credit institutions. The use of unclear advertising and contractual terms was also found to be common as well as recourse to abusive contractual clauses.

Ms Lissowska welcomed the initiative to carry out this control exercise by Polish authorities. She noted that some of the problems identified in the report appear to be present in several Member States, not only in Poland. In this context she mentioned the use of small print contractual clauses, unfair selling practices and instances of non-compliance with consumer credit legislation.

A question and answer session followed the presentation. A member of the group asked how the findings in this report would be followed up by the local authorities. Another member commented on the role of the courts in ensuring compliance with the legal obligations of the institutions where non-compliance was reported.

Meeting with Mr Jonathan Faull, Director-General of DG Internal Market and Services

The meeting was postponed to the May meeting of the FSUG due to another urgent commitment of Mr Faull.

Election of the Chair and Vice-chair of the FSUG

Mr Mick McAteer and Mr Guillaume Prache were elected respectively the Chair and Vice-chair of the FSUG until the end of the present term of the office of the group (October 2013).

2012 FSUG priorities – state of play.

The FSUG members in charge of the ‘Financial supervision and sanctions’ explained that the draft report should be ready in two weeks but before that, he asked the FSUG members for examples of ‘social impact assessments’ in their countries. They would be included in the paper.

The FSUG member in charge of the ‘Alternative providers of financial services’ priority provided a feedback on the state of play of the report. He explained that the report has been almost finalized and invited the FSUG members for the last round of comments by the end of March. Following this, the report will be completed and made public on the FSUG website.

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Project of the European Network and Information Security Agency (ENISA) on current practices on user identification and authentication in ePayment services – discussion on draft questionnaire

Maciej Berestecki presented a first draft of the survey and explained the background of the project. The survey will be launched by ENISA (European Network and Information Security Agency) with the objective to collect information on eIDAS (electronic Identity and Authentication Systems) used in e-Finance and e-Payment systems, analyse the risks associated with each eIDAS mechanism and produce guidelines report with best practices for involved actors: financial institutions, merchants and payment service providers.

The ENISA's role is to provide stakeholders with guidelines on topics that are related to Network and Information Security (NIS) and especially on the ones associated with the correct identification of users.

The goals of the project are as follows:

- Identify authentication mechanisms used in financial and payment services, and the associated risks in collaboration with key stakeholders in the sector;
- Summarise the result of this analysis;
- Produce guidelines about the best identification and authentication mechanisms to be used to prevent identity theft or spoofing, based on identified risks;
- Address some key messages to the sector indicating the areas where improvement is needed.
- Disseminate the results.

The FSUG members provided the following oral comments on the project:

- it is necessary to clearly define what is meant by e-payments in the project (which of them are covered, e.g. cards, transfers, e-invoicing);

- in the context of the project it can also be interesting to have a closer look at what the Commission has been doing in the area of e-invoicing, and in this respect include in the study SMEs as users of electronic means of payment;
- m-payments which are developing very dynamically across the EU could also be covered; consumers are in particular unconfident about the level of security in m-payments and therefore some of them are reluctant to use them;
- elderly users are reluctant to use electronic means of payment and therefore they should not entirely substitute the traditional means of payment
- there is a need to find a balance between an adequate level of security of electronic means of payment and the convenience for consumers to use them, in other words, the necessary security requirements should not be too burdensome for users because otherwise they will be reluctant to use them. At the same time these means have to be sufficiently safe.

European Commission proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax – presentation by Ms Denada Prifti (Internal Market and Services DG/G1)

Ms Prifti is part of a group of economists and statisticians in DG MARKT created in response to the financial crisis in 2009. It is co-ordinating the work in DG MARKT on the financial transaction tax, a proposal shared with DG TAXUD. The group is also involved in the banking union proposal, in addition to real economy issues concerning growth, extending credit and supporting SMEs.

Around EUR 1.6tn of state aid has been given to the banking sector since the crisis for asset relief, recapitalisation, and for guarantees and other liquidity measures. In Ireland and Denmark, state aid to the banking sector has exceeded 50% of GDP. The rationale for the financial transaction tax is that the banking sector should share the cost of responding to the crisis, and should contribute to revenues that are used to bail out banks. This is especially true given that banks do not pay VAT on certain transactions.

An impact assessment from TAXUD set out two possible policy responses: a financial activity tax or financial transaction tax. Ms Prifti explained why a financial transaction tax was chosen.

The initial proposal was for the EU27. It was estimated that it would raise EUR 56bn/yr. UK, CZ and NL opposed this in September 2011, but unanimity was required for the decision. The policy – in this particular form – was abandoned. During 2012 there were many discussions about how the policy could be implemented. Eventually 11 states agreed to go ahead with the tax and a new proposal has been created for a tax in these 11 states. This still has to be agreed by all 27 Member States.

The scope of the tax is broad in terms of instruments, markets and institutions. It captures transactions on regulated/organised markets and over the counter transactions. Financial institutions from the EU that are party to a transaction acting either for their own account, or for the account of another person, or are acting in the name of a party to the transaction, are within scope. The purchase and sale of a financial instrument will be taxed (transferable securities, money-market instruments, unit and shares in collective investment undertakings, and structured products before netting and settlement).

The tax base and rate is different for securities and derivatives: for securities, the base is the market price, and the rate is 0.1% for each party to the agreement. For derivatives, the tax base is the notional amount of the derivatives agreement and the rate is 0.01% for each party to the agreement. These are minimum rates, but Member States can have higher ones; for example, in France the tax rate may be double for credit default swaps.

Ms Prifti explained the justification for this method of taxation and explained the manner in which the residence of a party is to be decided. It is expected that total revenues will be EUR 36bn/year. The policy aims to come into effect on 1 January 2014, and a full review will take place after 5 years.

A lively question and answer session followed. Members of the group asked why the policy does not prevent the transfer of costs to products, why it does not ring-fence individual investors and whether this would give an unfair competitive advantage to other Member States that will not participate in FTT.

Ms Prifti explained that transferring the cost of the tax to products could not be avoided, and that the question of ring-fencing individual investors should be referred to the TAXUD Commissioner, though since individuals make profit from the secondary market, the justification for taxing this is strong. She added that the policy is likely to give a competitive advantage to Member States not applying the tax.

Decision on the topic(s) for the 2013 FSUG research studie(s) and planning of the preparatory work

Following the voting by the FSUG members and the discussion, it has been decided to contract the following research studies in 2013:

- Welfare loss caused by high charges and inefficiencies in the EU asset management sector
- How to promote access and use of affordable saving products for all European financial services users, in particular low income people

The next step for the two studies is to prepare draft terms of reference by the two responsible FSUG members which will be reviewed by the Commission. Both studies must be contracted before the end of 2013.

European Commission proposals for a single supervisory mechanism (banking union) – update on the state of play of the negotiations in the Council and Parliament by Ms Raffaella Assetta (Internal Market and Services DG/02)

Having attended the previous FSUG, Ms Assetta provided an update on the inter-institutional negotiations in the last month. The main development is that political agreement on the package has been achieved in the European Parliament and Council. This was not straightforward, since the Parliament wanted to negotiate on the EBA Regulation, where it is the co-legislator, but also on the ECB Regulation, where it is not.

The Parliament's position is broadly consistent with the Council compromise. The ECB will be responsible for the functioning of the mechanism. Big banks will be directly supervised by ECB and other banks by national competent authorities within a centralised framework, though the ECB will be able to step in. The same safeguards will be in place for non-Eurozone Member States. Consumer protection will be a task for national supervisors; this may be an issue because some national supervisors do not have consumer protection in their mandate.

The Parliament is concerned about 'reverse discrimination' in favour of non-euro states, but this may not prove to be a significant obstacle. The main disagreements concern the governance and accountability of the ECB.

Following the Parliament's amendments to the text, the Parliament will now have an important role in the appointment of the candidate ECB Chair and Vice-Chair proposed by the ECB; this will then be approved by the Council. Either the Parliament or the Council can propose the removal of a candidate they are unhappy with. There were also small adjustments in the composition of the ECB's steering committee. The ECB will be fully accountable for and transparent in conducting its supervisory tasks, providing information to the Parliament. Appropriate safeguards will be built in: there is provision for *in camera*

hearings. The role of the EBA will be strengthened by having a role in conducting EU-wide stress tests and by developing a supervisory handbook directed at ensuring the consistency of supervisory practices across the EU.

The final text is not yet ready, but the three parties are working hard to finalise it. COREPER is ongoing. Final adoption should be by June. There has to be parallel approval by the German parliament.

A question and answer session followed. Questions focused on the banks to be regulated at EU level and consumer information regarding the package. Ms Assetta explained that approximately 150 banks will be regulated at EU level; these will be decided by the application of quantitative criteria, yet to be fully specified. In terms of consumer information, Ms Assetta recognised that it may be possible to prepare some materials targeted at consumers, setting out the main advantages of banking union in simple and clear language.

Revision of the FSUG rules of procedure

In view of the call for expressions of interest to establish a new Financial Services User Group, following the expiry of the term of office of the present group in October 2013, the FSUG reviewed its rules of procedure. The following rules have been either introduced or reviewed:

- The secretariat shall send the meeting invitations two weeks and the meeting agendas one week in advance to the meetings.
- The Commission shall provide feedback to the group on the results of the consultation where the group submitted its opinion.
- Each calendar year, the chairman, based on the consultation with the FSUG members, shall suggest topic(s) for research to be undertaken during the following calendar year.
- Summary minutes of the discussion on each point on the agenda and the opinions delivered by the group will be drafted by the secretariat in advance of the next meeting.
- Failure to attend over 30% of the meetings per year, where the absence has not been duly justified, shall be deemed a failure to perform the member's contractual obligations. In such a case, the Commission may reduce or recover payment of the annual fee.

European Commission proposals for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and for a Regulation on information accompanying transfers of funds – presentation by Mr Tobias Mackie (Internal Market and Services DG/02)

Mr Mackie explained that the objective of the proposed framework is to prevent money laundering and terrorist financing and it also obliges MS to establish financial intelligence units. It was necessary to update the EU measures on money laundering to adapt them to the quickly changing market reality and to tackle the innovative methods used by criminals. In order to prepare the new rules, the Commission conducted several studies and carried out a number of consultations with the private sector and civil society organisations.

Both the Directive and the Regulation take fully into account the latest Recommendations of the Financial Action Task Force (FATF) which is the international anti-money laundering body, and go further in a number of areas to promote the highest standards for anti-money laundering and counter terrorism financing.

In particular, the new Directive improves clarity and consistency of the rules across the Member States:

- by providing a clear mechanism for identification of beneficial owners: the Directive will oblige *companies* to maintain records as to the identity of those who stand behind the company in reality.
- by improving the rules on customer due diligence in order to have in place risk-based controls and procedures, which ensure a better knowledge of customers and a better understanding of the nature of their business.
- and by expanding the provisions dealing with politically exposed persons, (i.e. people who may represent higher risk by virtue of the political positions they hold) to now also include “domestic” (those residing in EU Member States) and those in international organisations, in addition to 'foreign' politically exposed persons. This includes among others head of states, members of government, members of parliaments, judges of supreme courts.

The Directive also extends the scope of earlier rules to address new threats and vulnerabilities. For instance it will cover gambling sector (the former directive covered only casinos) and will include an explicit reference to tax crimes.

The two proposals will reinforce the sanctioning powers of the competent authorities and will strengthen cooperation between the different national Financial Intelligence Units (FIUs) whose tasks are to receive, analyse and disseminate to competent authorities reports about suspicions of money laundering or terrorist financing.

The framework proposal was adopted by the Commission on 5 February 2013 and the first Council meeting is planned for the end of April. The Commission believes that it would be feasible to have the new measures agreed and adopted by the Council and the Parliament by the end of 2013 – although beginning of 2014 is a more likely scenario.

Discussion on the inception report form the study on the remuneration structures of financial services intermediaries and update on recently completed FSUG research studies

The lead member on the study on remuneration structures of financial services intermediaries reminded the group about the contractual deadline for the Commission to provide comments to the contractor on the inception report, which fell early in April.

He requested the FSUG members to provide contributions and to encourage the national contact persons they indicated to contractors to also contribute any relevant country-specific comments. He then provided an oral brief of his preliminary assessment of the report. He also recalled the main objectives of the study that are: to identify remuneration models currently in use, collect information about existing national regulation on remuneration practices, make recommendations to improve practices/regulation. Among the potential problems with the study, the risk that the contractor would not be able to access commercially sensitive information was highlighted.

Administrative points and on-going consultations:

- Update on the organization of the FSUG external meeting in Bucharest
- Draft Implementing Technical Standards on reporting of national provisions of prudential nature relevant to the field of occupational pension schemes by EIOPA

The Commission and the FSUG member from Romania informed the group about the state of play of the preparation of the FSUG external meeting in Bucharest. One of the FSUG members proposed to invite to the meeting the representative of the Romanian Investors Association. He would be invited to speak about the impact of the European capital markets regulation on private investors and the gaps in the implementation and enforcement in Romania. It was agreed that if the time allows and if there is a slot in the already drafted agenda, the Commission will invite the Romanian Investors Association to the meeting. All

the details of the FSUG meeting in Bucharest which will be held on 10-11 June, including the agenda, will be presented at the FSUG meeting in May.

Following the collected comments, it was agreed that the FSUG will respond to the on-going consultation by the set deadlines.