



Brussels, 4 August 2011
FSUG / MARKT/H3 D(2011)

Mr José Manuel Barroso
President of the European
Commission
Rue de la Loi 200
1049 Brussels

Subject: Financial user representation and effective consumer protection

Dear President,

The Financial Services User Group (FSUG) was established by the Commission to enhance the way the interests of ordinary financial users are represented at the heart of the policymaking process¹. As Chairman, I am writing to you on behalf of FSUG to express our concerns about the operation of the new European Supervisory Authorities (ESAs).

In particular, we are concerned about:

- Financial user representation – specifically, the current composition of the EBA and EIOPA² stakeholder groups; and
- The apparent diminution of consumer protection within the priorities and activities of the EBA and EIOPA.

Composition of ESA stakeholder groups

Following work undertaken by its predecessor organisation, FIN-USE, on the poor level of user representation at EU level³, FSUG has adopted user representation as one of its main priorities.

¹ For full terms of reference and more detail of FSUG, please see our website: http://ec.europa.eu/internal_market/fin-services-retail/fsug/fsug_en.htm.

² FSUG did not have the time to review the more recent ESMA stakeholder group members decision.

³ See *Position Paper on Consumer Voice in Financial Services*: http://ec.europa.eu/internal_market/fin-use_forum/docs/consumer_voice_en.pdf.

Suitable, well resourced user representation at the highest level of the policymaking process is critical for a number of reasons:

- it enhances regulatory governance and accountability by balancing the influence of powerful industry interests
- it significantly improves the capacity of user representatives to represent the interests of users at EU level and provides users with more direct involvement in the policymaking process
- it ensures policymakers abide by the principles of good consultation thereby improving the consultation process and
- most importantly, it improves the policymaking process by enabling policymakers to better understand the needs of users and avoid 'group-think'.

However, following our analysis of the constituents of the stakeholder groups, we must raise our concerns about the serious over-representation of industry interests on the groups (we have attached copies of the letters sent to the ESAs with analysis of group composition). For example:

- 15 members of the 30 member EBA stakeholder group are senior-level professionals employed and paid directly or indirectly by the banking industry. Ten are senior professionals from leading European banks. Five are from influential organizations that provide services to banks. The description of these paid service providers to the banking industry as 'users' in our view is misleading;
- Similarly, at least 15 members of both the EIOPA stakeholder groups are senior-level professionals employed and paid directly or indirectly by the financial industry.

In our view, the composition of the stakeholder groups falls well short of the intentions expressed in many public statements made by European Authorities since the financial crisis, committing to make the voice of financial services users "much more strongly heard on all financial issues", and to restore balance between the representation of financial services providers and that of users⁴. Specifically, this goes against both the spirit and the wording of new financial supervision regulations which require a balanced proportion between the representatives of financial services providers and financial services users (see Annex I, The regulations regarding the composition of the European Financial Stakeholder Groups).

Importantly, this must run the risk of the ESAs failing to properly understand the needs and interests of ordinary financial users and could undermine effective policymaking.

Consumer protection

The lack of financial user representation is compounded by what appears to be a serious diminution of consumer protection in the remits of the ESAs.

We fully appreciate that given the instability in the EU financial markets, the ESAs (and indeed the Commission and other EU authorities) are currently focused on financial stability and prudential regulation. However, the lack of emphasis given to consumer protection in the ESAs' objectives, priorities and activities is quite striking.

For example, only one of the EBA's and EIOPA's objectives refers explicitly to customer protection – consumer protection is last on the list of objectives. Of course, we appreciate that other objectives may be used to support consumer protection by

⁴ See for example *Driving EU recovery* communication from the European Commission, 4.3.2009: "The interests of European investors, consumers and SMEs, must be at the centre of the reform..." "The Commission will ... ensure that the voice of European investors is much more strongly heard on all financial issues."

promoting market efficiency and transparency and so on. However, consumer protection is a specialist field requiring focus and substantial and dedicated resources.

Looking at the EIOPA work programme for 2011⁵, it appears that only a very small minority of the EIOPA's activities relate to consumer protection. For example, only 11 out of the 105 EIOPA 'deliverables' and only two of the 29 activities of the Joint Committee listed relate to specific consumer issues.

We do not have access to the EBA work programme for 2011/12 so we cannot comment on the share of regulatory activities attributed to consumer protection. However, looking at the EBA website, it appears that 24 staff work on various EBA policy areas⁶. But, just one staff member appears to have responsibility for consumer protection and conduct of business rules (as well as other policy areas within her brief).

To summarise, we have serious concerns that this lack of user representation and apparent diminution of consumer protection activities risks undermining the ability of the ESAs to understand the interests of ordinary financial users and effectively undertake this critical consumer protection role. It also risks creating the impression that consumer protection is not actually being given sufficient regard despite the very positive statements made by senior European policymakers and regulatory authorities about putting users at the heart of financial market reforms

I have written to the chairmen of the EBA and EIOPA to express our concerns and to ask what can be done to address the deficiencies in the structure and operations of their respective institutions. However, we thought it important to also write to you ask you to use your authority to ensure these issues are properly addressed.

On behalf of FSUG, I would welcome the opportunity to discuss:

- (i) What immediate measures can be taken to remedy the composition of the group to ensure a balanced representation of stakeholders on the stakeholder groups, or at the very least offset the overrepresentation of industry interests? This should be done anyway as a matter of principle and in the interest of fairness. However, as explained above, we strongly believe that this provides significant benefits for the ESAs by maintaining confidence in and enhancing the ESA's policymaking process.
- (ii) How FSUG can help to ensure that consumer protection is effective and is given equal status in the ESA's priorities and activities? You may be interested to know that FSUG is developing new 'principles of consumer protection' which will be set out in a paper to be published before the end of the year. These principles are intended to help policymakers to effectively regulate financial markets for the ultimate benefit of financial users and covers issues such as consumer detriment analysis, prioritisation, effective interventions, and impact assessments. We would very much welcome the opportunity to share our thinking on this.

Yours sincerely,



Mick McAteer
Chairman
Financial Services User Group

⁵ <https://eiopa.europa.eu/activities/annual-work-programme/index.html>

⁶ <http://www.eba.europa.eu/Aboutus/Contacts/Eba-staff.aspx>

Annex 1

The regulations regarding the composition of the European Financial Stakeholder Groups

EIOPA, Article 37

2. The Insurance and Reinsurance Stakeholder Group shall be composed of 30 members, representing **in balanced proportions** insurance and reinsurance undertakings and insurance intermediaries operating in the Union, and their employees' representatives, as well as consumers, users of insurance and reinsurance services, representatives of SMEs and representatives of relevant professional associations.

At least five of its members shall be independent top-ranking academics. Ten of its members shall represent insurance undertakings, reinsurance undertakings or insurance intermediaries, three of whom shall represent cooperative and mutual insurers or reinsurers.

3. The Occupational Pensions Stakeholder Group shall be composed of 30 members, representing **in balanced proportions** institutions for occupational retirement provision operating in the Union, representatives of employees, representatives of beneficiaries, representatives of SMEs and representatives of relevant professional associations.

At least five of its members shall be independent top-ranking academics. Ten of its members shall represent institutions for occupational retirement provision.

ESMA, Article 37

2. The Securities and Markets Stakeholder Group shall be composed of 30 members, representing **in balanced proportions** financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs.

At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial market participants.

EBA, Article 37

2. The Banking Stakeholder Group shall be composed of 30 members, representing **in balanced proportions** credit and investment institutions operating in the Union, their employees' representatives as well as consumers, users of banking services and representatives of SMEs.

At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial institutions, three of whom shall represent cooperative and savings banks.