



FSUG RECOMMENDATIONS TO THE COMMISSION 2019 - 2024

A need for a real CMU that delivers for financial services users across the EU

Ten years after the financial crisis, financial services users are still living with its consequences. The progress in regulatory reform is far from complete, initial hopes that the crisis would lead to a rethink of financial markets appear naïve: Little progress has been made on creating a real Capital Markets Union and on making financial markets work for EU citizens and the real economy. The case for promoting a real European CMU therefore continues to be as valid as it was back in 2015 when the CMU Action Plan was launched and will become all the more important after Brexit. It is the essential component for the development of a competitive and attractive EU capital market and one of the most important catalysts for growth and employment. A strong CMU, however, requires confidence of financial services users and private investors. For this we need to increase the attractiveness of the EU capital markets for all market participants.

I. Capital Market Union issues

1. Make European capital markets more attractive and safer for retail private investors and foster household investment

Possible measures could include:

- Tackling the obvious lack of transparency at existing market places such as systematic internalisers (SI), dark pools etc. and thereby increasing the liquidity of the regulated markets.
- Introducing cost-free cross-border voting for retail investors reflecting the increasingly international portfolios of individual investors to ensure a stronger governance of companies. This will help regaining trust of investors in the EU capital markets.
- Eliminate factual tax discrimination for individual investors in the EU such as double taxation of dividends through barriers to refund/exempt procedures resulting from intermediation which continue to be the most prominent impediment to cross-border integration.
- Increasing the responsibility of institutional investors, e.g. by establishing a fiduciary duty to exercise all voting rights deriving from funds (comparable to ERISA law in the US) and strengthen their internal governance.
- Capping the costs of investment funds: Fees and costs can have a substantial impact on the final investment return of an investment fund, and the impact fees can have on return is frequently underestimated by the average retail investors. Studies have shown that the costs of investment funds can vary substantially across EU Member States, and that fees can be excessively high. The Commission should propose legislation to enhance effective price competition in the investment

fund market, including considering potential charge caps to limit prohibitively high cost charges associated with certain investment funds.

- The investment fund market has also witnessed problems with closet index funds, or funds which charge high fees for picking stocks, when in reality they track a market index. The Commission should consider implementing potential remedies against closet indexing, such as tighter disclosure requirements for fund managers.
- Supporting citizens to save more for their retirement. Initiatives such as the PEPP would help, if well designed.
- The EU Consumer Market Scoreboard provides a very useful tool for consumer representatives to compare how well a range of sectors (across the EU and within Member States) are performing according to metrics such as satisfaction and trust. The EU should produce a similar Environmental, social and governance (ESG) Scoreboard ranking industrial sectors (across the EU and within Member States) on ESG metrics. This would help investors allocate resources more effectively across the EU.

2. Make European capital markets more attractive for SMEs

Possible measures could include:

- Strengthening the Initial Public Offering (IPO) market in E27 Europe. European SMEs continue to overly rely on bank lending. Currently, only 14 % of all companies in the EU are financed based on capital market instruments. The major portion today is still based on bank financing. We strongly need to reduce this dependency on bank financing and to enhance the appetite of SMEs to make use of the already existing variety of financing instruments available on the capital markets in order to help EU companies to access capital market-based funding more easily.
- Increasing attractiveness of EU stock exchanges for EU companies in general and creating a liquid and resilient secondary market that facilitates capital raising for SMEs.

3. Increase consumer and investor protection rules to ensure a level playing field

Creating a more favorable environment for companies to list on EU public markets needs to go in line with a strong protection of EU citizens investing in listed companies – not only during the listing but also when companies seek to exit the public markets via a delisting.

Possible measures could include:

- Introducing common delisting rules for all EU-Member States: Up until today we do not have a level playing field in the EU with respect to squeeze out and delisting of publicly quoted companies in Europe. This however is needed to ensure a comparable level of investor protection as a standard all over the EU.
- Introducing common rules for collective redress for all EU investors: The scope of Directive on Representative Actions needs to be extended to make sure that direct investors are included in any collective redress scheme. FSUG furthermore favors the introduction of compulsory redress schemes comparable to the Dutch system across all Member States.

- Improving the insolvency frameworks. The increasingly interconnected financial markets result in less and less companies remaining purely national when aspects such as client base, supply chain, investor and capital base are considered. The best CMU will not function without a well-functioning insolvency regime on which financial services users (will be sure that they) can rely also across-borders.
- Improving consumer protection in payment services: Currently, EU consumer protection varies depending on the means of payment they use. For example, when it comes to direct debit payments, PSD2 grants consumers an unconditional refund right for both authorised and unauthorised payments. This gives consumers an effective tool to control their direct debits and to get redress when something goes wrong. On the opposite side, consumers are poorly protected when making credit transfers. In the past few years, many consumers have been tricked into transferring money to fraudulent accounts. No redress is provided to consumers in that case. The EU payments legislation should be upgraded to provide consumers with the same protection irrespective of the payment instruments used. This is particularly important in the light of recent innovations in the field of payments such as instant payments or the use of QR code through mobile. Also, better preventive measures are needed to reduce payment fraud, e.g. with regard to credit transfers, 'IBAN+name check' should be put in place, as is already the case in the Netherlands.

II. Retail investors issues

1. Simplify, standardise and streamline the range of retail investment product offerings

Over the past years financial products have become more complex. This trend does not reflect the effective demand of a majority of consumers. Most of the time, for retail investors product complexity and value-for-money are negatively correlated. Product complexity is one of the reasons why competition is not working in the financial sector. Standardised and simplified products would not only improve financial inclusion by providing a standard fall-back option, but also serve as a benchmark for other products, challenging the sector to deliver a better deal.

Possible measures could include:

- The Commission should propose an EU framework on simple, portable, easy to understand and safe retail investment products as well as set default options. This exercise should build on good EU and national precedents and best practices, such as basic payment account, PEPP.
- To improve the funding of the EU economy and to offer better returns to long-term individual investors and pension savers, the EU needs to foster productive retail investments.
- Enabling better access to simple investment products such as equities, bonds and ETFs. Here, also the PEPP could be an important step forward.
- Correcting the negative side effects that have become obvious after the introduction of MiFID II and PRIIPs, such as the exclusion of sale of/ advice in certain investment products, like equities, bonds, or ETFs as well as an information overload.

- Enforcing the creation of an independent and EU-wide web-based comparison tool, to enable an objective comparison of all investment products.
- Creating more transparency on performance and fees both of savings and of investment products

2. Ensure easy access to trustworthy financial advice

Many life-changing decisions in a consumers' life, from saving for retirement to getting the right mortgage or insurance product, rely on financial advice. Consumers should be able to rely on trustworthy recommendations provided by finance professionals. Unfortunately, financial advice today is, in most cases, nothing more than a commission-driven sales talk aimed at extracting maximal profit from consumers.

Possible measures could include:

- Introducing a ban on sales commissions for all investment products and complex financial products in order to push financial firms to act in the consumer's best interest which does not reduce access to good quality affordable advice. For all other types of financial services (e.g. for mortgage credit and consumer credit), sellers' remuneration should be made product-neutral.
- Ending tying in financial products: One horizontal issue in the area of retail finance relates to cross-selling practices, particularly tying, which is widespread across EU Member States. With tying, consumers are required to purchase one product as a mandatory addition to the purchase of a different product. These practices limit competition and consumer choice and can be harmful for consumers. Several legislative texts contain provisions related to tying and bundling (MiFID II, MCD, PAD, and IDD), though none of them include a full ban on that practice. In general, firms are only required to inform the consumer about whether the service can be purchased separately and provide the price of individual items included in the package. The European Commission should introduce cross-sectoral legislation to ban the practice of tying in all financial services products.

3. Improve consistency of EU regulations

The various new regulations, e.g. MiFID II, PRIIPs, IDD, led to inconsistent standards of disclosure which creates confusion among retail investors, savers and other retail financial services users and unnecessarily enhance the workload for distributors and manufacturers and by that the costs for retail investors.

Possible measures could include:

- Reviewing existing regulations from the investor's point of view at the point of sale
- Eliminating inconsistencies between existing investor protection rules (e.g. between MiFID 2 and PRIIPs) as well as between various conduct of business rules.
- Aligning conflicts of interest rules (with the IDD framework)

- Harmonizing the pre-contractual key information documents (e.g. the PRIIPs KID should be aligned with IDD KID)
- Ensuring state-of-the-art disclosure of financial and non-financial information, so that retail investors really know what kind of risks they are taking and how their money is being used.
- Improving and harmonising disclosure of ESG and sustainability risks and impacts, for all retail products and not only for a subset of sustainability-friendly products, in line with expectations from younger generations of investors. An example of lack of harmonisation is the limited scope of the Eco-label framework, which only applies to PRIIPs. If an Eco-label for financial products is introduced, it should avoid stimulating financially complex packaged products over straightforward investment funds and equity, for the sake of greening the financial system.
- Strengthening supervisory convergence without undermining market ecosystems.

III. Better regulation and supervision issues

1. Create harmonised legislative regime at EU level for personal insolvency

After the crisis 2008 special attention was paid to the health and stability of the banking industry. Nothing similar happened either at EU or national level in respect of the bank debtors, many of whom were in fact collateral damage from the reckless banking behaviour. No synchronized effort was made to alleviate the burden of the ruined credit market from the shoulders of the average person. That in turn had devastating effect on families and communities, bringing people below the poverty threshold, leaving people on the street and pushing them into emigration. Considering the existing patchwork of personal insolvency legislation throughout EU, this unfortunate situation may only be remedied through a harmonised approach, taking into account the achievements of the best developed personal insolvency legislations and all modern banking phenomena such as asset bubbles, loan securitization etc.

Possible measures include:

- Heal the wounds of the crisis, but not only with the banks.
- The creation of EU wide market for NPL should be opposed by all means. This incoherent attempt to cleanse the banking balance sheets by means of transferring NPL to non-banking institutions is in fact removing one of the last barriers in front of reckless banking behaviour. Banks bear hardly any risk now since from the origination onwards the loans are being packaged, repackaged and transferred to financial markets instead of staying with the banks. Now, with the NPL initiative, the banks lose the last stimuli avoiding a new credit boom.
- If on the other hand the NPL initiative cannot be stopped now it should at least bear these utmost important features:
 - First, all personal loans should be excluded
 - As an alternative, all personal loans should be offered first to the debtors at the same discounted price used for commercial NPL transfer

- The future legislative solution at EU level should apply also to all NPL transferred before that period since huge volumes of NPLs are already changing hands and will be by the time the EU initiative on NPLs will be adopted and implemented.
- All NPL transfers should be within a framework, benefiting the natural persons and not the collectors.

2. Better enforcement of EU existing rules

Since 2008, the ESAs have prioritized the prudential supervision, while consumer protection and conduct of business have remained on the sidelines. The traditional "3L3" function of coordinating supervision and enforcement has suffered from a lack of political attention and resources, and this should be corrected. Comparable jurisdictions such as the U.S. have authorities that are better staffed and resourced than the three ESAs together (although we are aware the U.S. CFPB is under pressure);

Possible measures could include:

- Ensuring enough funding for the ESAs to be devoted to supervision and convergence as well as consumer and investor protection in order to improve enforcement of existing EU rules and foster consumer and investor protection
- Given the size of the EU market, a consolidated European retail Financial Markets Authority would be justified.

3. Increase the efficiency of EU institutions' procedures

The whole process around the introduction of PRIIPs has shown the difficulties EU regulations face nowadays. The Lamfalussy process has recently proven to be slow and burdensome: minor amendments need a full review and late adoption of regulatory measures (e.g. RTS) create a high degree of uncertainty among market participants and reduces the credibility of the work of the EU Commission towards its citizens.

Possible measures could include:

- Introducing the possibility to give certain EU institutions such as ESMA the right to ask for minor corrections of a directive once it becomes clear that there are practical obstacles coming up once a directive came into force. For minor corrections or clarifications, a full review by the EU-Commission seems to be superfluous.
- Reconsidering whether the Lamfalussy procedure still supports the work of truly efficiently acting EU institutions: The discussions regarding MIFID I and MiFID II on level 1 or level 2 or level 3 have shown that this process does not increase the credibility of the work of the EU-Commission towards its citizens. Fundamental and structural problems which arose during the Level 1 procedure at MIFID were not solved but instead postponed to the Level 2 and Level 3 discussions.
- Providing reasonable transition periods for each EU legislative measure such as a directive. This would help avoiding problems due to the recently experienced very late approval of directives by the EU-Commission that created a high degree of insecurity on the part of all market participants, including the ESAs.

4. EU driving license instead of EU passport

Currently, financial firms can obtain a license in any Member States and then passport their products and services into other EU countries through a branch or online distribution (passporting). In that case, the supervisory authority of the firm's home country is competent to oversee its activities, while the host authority (country where the firm effectively operates) has limited power over those firms. The EU passporting model does not take the consumer perspective into account and leaves room for regulatory and supervisory arbitrage, endangering market integrity and financial stability. Financial firms have an incentive to get their EU passport in a country with lax supervision and slip under the supervisory radar across Europe. We have witnessed examples of resulting consumer detriment (e.g. the Icelandic bank crisis).

Possible measures could include:

- The Commission should initiate an overhaul of the passporting concept and replace it with the 'EU driving license' concept (consumer-centric approach): financial firms would still get their licence in one country but would be supervised by host authorities (just as car driving license), at least regarding firms' conduct and consumer protection in the host country.
- The same goes for our-of-court redress bodies: host country's ADR should be competent to address cross-border cases.

IV. Digitalisation issues

1. EU legislation on open Banking

One of the latest revolutions in retail finance is 'open banking', where third-party firms (FinTechs and others) access consumers' bank account data and offer various services, such as payment initiation, money management and investment advice, credit and insurance products, or cheaper energy offers. This development has been enabled by the revised Payment Services Directive (PSD2). But several crucial consumer-related aspects of open banking are still unclear. For open banking to take off and gain consumer trust, it is important to ensure that consumers remain in full control of their bank account. This issue should not be left at the discretion of market actors.

Possible measures could include:

- The Commission should propose a legislation on consumer protection in an open banking environment: consent, limiting access to the account, right of withdrawal, compensation in case of incidents, covering cross-border cases, etc.

2. Financial inclusion for all

Financial inclusion is positioned prominently as an enabler of other development goals in the 2030 Sustainable Development Goals. Financial services are playing a crucial role in EU citizens' life. In this respect, being able to access and appropriately use basic, low costs and transparent financial services EU citizens need for their social inclusion is a policy priority. Financial services which are suitable for vulnerable consumers might also be attractive to more people.

Private profit making by the financial industry is welcome as long as it does not result in society harm such as exclusion, bad indebtedness or over-indebtedness due to dangerous or exploitative products, or irresponsible practices. Indeed, these negative societal consequences originate social costs, impact public budget due to increased social allowances and health care on the one hand and restrict tax collection on work or consumption on the other hand.

“Financial inclusion means that formal financial services—such as deposit and savings accounts, payment services, loans, and insurance—are readily available to consumers and that they are actively and effectively using these services to meet their specific needs” (CGAP 2011).

Possible measures could include:

- FinTech and innovation impacts on financial inclusion should be closely monitored as well as client segmentation and the resulting potential risk of discrimination.
- Promoting a sober consumer-centric market approach, where the financial industry is responsible for serving the needs of the citizens in an inclusive way. The financial inclusion goals should be monitored based on objective indicators and market data measuring access and appropriate use by vulnerable groups of the financial services they need.

3. Understanding and mitigating the risks associated with digitalisation/ fintech/ Open Banking/ big data

Digitalisation/ fintech/ Open Banking/ big data is becoming a huge issue for EU consumers and the financial services industry as it affects all parts of the supply chain, and business models and practices. But, it will affect different groups of consumers in different ways and will affect different sectors of the financial services industry in very different ways. User groups, policymakers, and regulators will face significant challenges responding to these developments. There will be some benefits for some consumers. But, there are also significant risks for consumers including greater cyber risks and frequency of scams; it will be more difficult for consumers to identify who is liable when things go wrong and exercise rights to redress, and for supervisors to monitor and enforce; greater risk of providers and intermediaries exploiting behavioural biases – a particular problem for those with mental health issues; a greater risk of financial exclusion and discrimination as a result of more precise profiling and segmentation of consumer populations; risks of data manipulation and selling of data without meaningful consent/ consumers understanding what is being done with their data; and governance and culture risks (boards and senior management may not understand the outcomes produced by algorithms). The growth in the use of fintech/ big data puts more power in the hands of providers and intermediaries (including intermediaries such as credit reference agencies). And if BigTech moves into the market this will create a whole new set of risks. The current analogue regulatory and supervisory system is not fit-for-purpose for a modern digital finance/ big data world.

Possible measures could include:

- A comprehensive risk assessment by the Commission to:
 - Identify the types of potential harm/ detriment which might arise
 - Identify which sectors of the market are a priority
 - Identify which part of the financial services supply chain is the harm/ detriment likely to be greatest, or which practices are most likely to cause harm/ detriment
 - Identify which actors in the supply chain we should be most worried about
 - Identify which groups of consumers are most at risk
 - Examine the behaviours of intermediaries who collect and may manipulate data
 - Examine the governance and controls within financial institutions and intermediaries, and between the various actors in the supply chain
 - Examine current legislation and regulation to provide assurance that it protects consumers in the new environment

- The development by the Commission of common user-centric interoperable accessibility requirements in the implementing acts of the European Accessibility Act to ensure easy access for persons with functional limitations to both their domestic retail financial services and cross-border.

V. Horizontal issues

1. Making sustainable finance the best option for retail investors in the EU

With its action plan on Sustainable Finance, the EC seeks to “reorient capital flows towards sustainable investment, in order to achieve sustainable and inclusive growth; manage financial risks stemming from climate change, environmental degradation and social issues and foster transparency and long-termism in financial and economic activity.” While it is crucial to ensure that sustainable projects/initiatives have access to affordable capital, it is equally important to attract retail investors. The focus should not be exclusively on the expected environmental/social benefits of the funded initiatives but also on ensuring that sustainable finance products become the most attractive option for retail investors in terms of financial and societal returns.

Possible measures could include:

- The EC should ensure that the measures which will be put in place in the framework of its Sustainable Finance action plan will create a more sustainable financial system which will not only support its environmental, social and governance objectives while at the same time improving the offer of simple, safe and transparent retail investment products and loans for SMEs.

2. Increase support of retail financial user involvement in EU policy making

Representatives of financial services users are increasingly contacted by large consultancy firms and asked to contribute significant input to studies funded by the EU through calls for tenders. While these opportunities to contribute to key EU studies are welcome by the users' representatives, the expectations and related volume of work are not compensated in any way.

There still is a significant imbalance between retail financial services users' and the financial industry's involvement in EU policy making in terms of resources and capacity to lobby: Financial services user representatives have considerably less resources that can be dedicated for work in an expert advisory group. Unlike representatives from the financial industry, financial services user representatives additionally cannot count as much on support of staff, colleagues and related networks. Adequate reimbursement and compensation of not for profit non-industry experts is therefore nowadays still a key measure for ensuring that the interests of retail financial users are properly represented in EU policy making. The decision of the EU Commission to stop financial support for all expert groups, including the FSUG, has led to a reduced capacity of FSUG members to provide financial services users' input compared to the previous groups (FSUG and FIN-USE).

Possible measures could include:

- DG FISMA and DG JUST could reinforce the voice of retail financial services' users in the studies they outsource by including a requirement to the contractors to demonstrate how consumers will be consulted/involved in the study and how their contribution to the study will be supported including financially by the contractor.
- Ensuring that financial services users will be supported to participate in all relevant EU groups, bodies dealing with financial services. To this end, financial services users should be adequately compensated and represented in all EU relevant advisory bodies.
- The EC should reconsider its decision regarding funding of financial services users' experts participating in EC expert groups.