Minutes of the FSUG meeting 22-23 October 2013

__Tuesday, 22 October__

Adoption of the agenda and approval of the minutes of the last FSUG meeting (10-11 September 2013) – Tour de table

The agenda and the minutes from the last meeting were adopted. Members intervened in the tour de table. Two members informed that they had been appointed to join EBA stakeholder group, which will balance its composition and will contribute to a more consumer-oriented approach. Another member was invited to participate in the European Pensions and Property Asset Release Group from the industry. It was also pointed out by one of the members that he was disappointed with some aspects of the Single Market Month initiative. Regarding the Payment Accounts Directive, a member showed concerns on the approach by the EP and the Council regarding the 'link' with the MS to open an account, as it could set a precedent for other consumer legislations. In addition, a member informed the group that in Italy a new law that affects financial services had been adopted. This law substantially increases the taxes on savings and establishes that some pensions will be adjusted below the inflation rate for 3 years. Another law keeps the deduction of loses by the banks for another 5 more years. The group was also informed that in Ireland credit unions are under restructuring and under difficult regulatory requirements. He also added that, in the periphery 6, savings are very highly taxed (almost as income) and the continued austerity measures in these countries are causing high suffering to the population. Other member reported to the group that in Spain the National Court of Justice had just accepted criminal complaints through popular accusations against former saving banks and there were also legislative initiatives on abusive clauses in mortgage contracts. Another member informed of the situation in the Czech Republic, where the government had resigned and parliament had to dissolve. He was also nominated to represent Czech Republic at the European Consumer Consultative Group (ECCG), organized by DG SANCO for the next 3 years. The group was also informed that in the Netherlands there is currently monitoring on the bans of commissions and cost-price model. Also, it was added by another member that there are some changes in the UK legislation in order to make information available to the FCA while an investigation is taking place. Another member pointed out that, after attending a conference on private pension funds and schemes, it seemed that there was pressure into private funds. He highlighted that it is important to bring attention about the political risk of such situation and that the EU should protect savings. The Greek member informed the group that they were evaluating the assets of Greek banks. The percentage of unpaid loans amounts to 30% and there is a ban for auction of first houses. Also, a member informed that there is a new ADR scheme in Austria which is in testing phase for evaluation and will start in the beginning of 2014. Finally, it was also presented by another member a proposal published by the FCA to regulate consumer credit. The objective is to impose restrictions on lending, set preapproval of consumer credit and impose some caps on the charges. He also informed the group that unfortunately a cooperative bank in the UK has lost control over the entity and now the major share belongs to hedge funds. Finally, he alerted that another housing bubble in London is happening due to the guarantee by the State to the banks on 50% of the drop in value of the property, which affects borrowers as they have to give back more than 100% of the value of the mortgage. In his personal opinion, this new scheme is refuelling the Real estate once again and leading to mistakes already committed in the past.

Opening remarks by Ms Despina Spanou – Director in charge of consumer protection policy (Directorate D, DG Health and Consumers), and by **Mr Mario Nava** – Director in charge of Financial Institutions (Directorate H, DG Internal Market and Services)

Ms Despina SPANOU introduced herself to the members: she took over the position of Director at Consumer Directorate in DG SANCO in February 2013. Her vision for the consumer portfolio, which exists since 9 years, is to turn it into reality, by looking at consumer markets to restore confidence and to help increasing economic recovery. At this regard Ms Spanou reiterated that the work of the FSUG is very much in synergy with Commission initiatives. The appointment of Commissioner Mimica, who took up duties on 1st July, has been revealing crucial to enhance consumer representation in EU policies.

After recalling that the 2014 Commission work program was debated in Strasbourg, Ms Spanou updated at political and technical level on the actions of the Single Market Act 2: the development on the Payment Account Proposal, the guidelines to implement the alternative Dispute Resolution and Online Dispute Resolution, the ongoing work on vulnerable consumers, aimed at mapping out the situation across EU Member States (MS) and lastly the current feedback statement following the public consultation on third pillar pensions.

After the presentation of DG SANCO consumer portfolio, Mr Mario Nava recalled that the work of FSUG has been touched upon on the missions of different Services of the Commission and as such, it has been rewarded by several Commissioners over the last years (Commissioners Barnier, Comm Mimica, Comm Borg and former Comm Dalli). Mr Nava recapped some of the files where the FSUG has contributed to and updated on Commission progresses: the proposal on Multilateral Interchange Fees, the Single Market Month and the concluding conference in Strasbourg, and the Bank Account Package.

In relation to inter-service cooperation, a member wondered whether DG Justice and Home Affairs (JUST) and DG Communications Networks, Content & Technology (CNECT) and DG Employment (EMPL) could be further involved in presenting their activity to the FSUG. Both Directors reported that inter-service exchange of views and professionalism is almost at daily basis. One member show interest how DG SANCO intends to promote consumer spending for economic recovery: Ms Spanou explained that the consumer market scoreboard analyses the consumers' expenditure in MS and offers a concrete overview of the national markets: the recent qualitative improvement and consolidation of data allows the Commission to give specific recommendations to MS.

On the subject of pensions, one member called on to ensure a coherent approach on the three pillars. Both directors informed that liaising with DG EMPL is crucial to ensure a consistent approach on the different types of private pensions and recalled also the potential of the new instrument at the service of the EU and the MS: at this regard the European Semester was reported to be an important tool to foster economic policies coordination.

On member asked what package of ideas are currently discussed for consumer protection. Both directors agreed that the first criticality is to enhance consumer confidence while, at the same time, ensuring a level playing field for industry: the proposal for Payment Account Directive intends to move in this direction.

One member recalled the end to support the civil society also at technical level, and the directors stated that the voice of the society and non-governmental organizations is not replaceable and therefore called the FSUG to channel their voices to the commission.

Report on Gender Gap in Pensions in the EU – presentation by Ms Lucie Davoine and Ms Nuria Diez Guardia (Just DG/D2) and Professor Platon Tinios

Professor Platon Tinios presented the report on the "Gender Gap in Pensions in the EU: Tracking women's financial independence at old age". The gender gap in pensions is the percentage by which women's average pension is lower than men's, i.e. how much women are lagging behind men.

Professor Tinios explained that we know a lot about pay gaps and gender imbalances in working life, but little is known about gender gap in pensions. In fact, gender gap in pensions is analogue to gender gap in pay. Pensions are paid to individuals and they are an important determinant of capacity to lead life independently. They replace income and reproduce lifetime inequality, and may even increase it. Therefore, a policy intervention is required to provide for necessary corrections in the system. However, the issue of gender imbalance in pensions is rarely addressed by policymakers in EU Member States.

Overall, the gender gap is very wide and dispersed across the EU, with an average of 39%. It is much wider than the pay or earnings gaps. It is the lowest in Estonia (4%) and the highest in Luxembourg (47%).

In some countries gaps in pension coverage remain and are a key driver of changes, however, new gender gaps in coverage may be generated by 2nd pillar pensions. Trends over time and across cohorts in Member States are hard to generalise and they are subject to wide national variation, both due to history and to institutions. The data presented by Professor Tinios did not cover the effect of the crisis and retrenchment.

Communication on shadow banking – presentation by Mr Reinhard Biebel and Mr Cedric Jacquat (Internal Market and Services DG/02)

Mr Biebel presented the Commission Communication on shadow banking (SB) presented in September 2013. The interest of the international community in SB is increasing: the point ranks high in the ministerial agenda, being it also discussed by the G20 in St Petersburg, where it was issued a roadmap on strengthened oversight and regulation of shadow banking.

The Commission communication lists the systemic risks and offers a detailed explanation is some areas where follow up is required, notably: a regulatory framework for money market funds, the need to increase transparency by making more accessible granular data to identify the countries where financial transactions are made, and the need to report on lending securities, with the purpose to better identify the ownerships of funds. The workstream is currently under finalization and the intention is to bring the EU legislation in line with the international principles and standards. In terms of timing, the new rules for Money Market Funds were proposed in September; the Commission is pushing forward for the other subjects but the next European Parliament elections could change the timing of the inter-institutional negotiations.

A member asked whether the communication covers also the need to extend the access to finance also outside the bank sector, and in particular if crowd-funders are someway included. Mr Jacquat replied that the crowd-funding phenomenon is pretty limited in terms of volume of funds, and that the communication on SB in mainly addressing systemic risk. Mr Biebel concluded by confirming that the unit 02 "Financial services policy, Relations with the Council" is responsible for the coordination of the file.

Public consultation on crowdfunding – exploring the added value of potential EU action – presentation by Ms Barbara Gabor (Internal Market and Services DG/G3)

BG explained that the Commission welcomes a user perspective and new ideas from the group on the issue of crowdfunding. A public consultation is currently underway to gather more information on what is happening in this area across Europe. This consultation also considers consumer expectations of crowdfunding. This is a new area. There is no established definition. The Commission wants to consider if it is necessary to have any compulsory elements for crowdfunding entities. There is a lack of available data at a European level.

BG outlined the current crowndfunding models:

- Profit sharing
- Lending (peer to peer)
- Equity based

The EC is discussing with IOSCO and monitoring developments in member states. Portugal and Italy have introduced law. The UK plans to regulate soon, as does France. This provides the Commission with the opportunity to observe national policy interventions and identify what is the most effective approach.

BG raised the issue of advertising with the group and posed the question "what is the effect of targeting people through the internet" e.g. through social media. Often the first round of supporters to a crowdfunding initiative is friends and family. If this is advertised on social media it can provide validation to other supporters that the project is genuine and worthy of investment. The EC is not clear whether this increases or decreases the potential for fraud.

Investor protection issues were outlined:

- How are investors protected? E.g. from spamming and the pressure of community and peers
- What are consumers told? E.g. the language used is unfamiliar and may not feel like traditional financial services products
- How are the risks and profitability presented?

At this point the Commission has many questions and points to consider, including whether standardised information is required and if crowdfunding requires intervention at a national or EU level. A study will be launched next year (2014) to consider this point and IOSCO has a working group which is considering the impact on consumer behaviour. ESMA has also launched a questionnaire to map the current regulatory interventions in member states.

BG thanked the members for their contributions.

Study on the legal choices and manner of the transposition of the Consumer Credit Directive by Member States – presentation by Ms Maria Lissowska (Health and Consumers DG/B4)

After recalling that one of the main objectives of the Consumer Credit Directive (CCD) is to foster the single market in consumer credit, Ms Maria Lissowska presented the two main objectives of the study. The first is to identify the legal choices of Members States (MS) and the elements that they could clarify; the second objective is to assess the impact of their legal choices on the internal Market and consumer protection. The study includes research based on literature, a survey of stakeholders and a set of interviews with some of them (in national language).

The presentation covered the scope of legal choices and the additional aspects giving leeway to MS. Particular attention was given to the fact that for consumers it is essential to understand the essence of the annual Percentage Rate (APR) and not how it is calculated (Art. 4(1)), that there is not a common understanding about the meaning of "insignificant charges" (Art 2(2)(f)) because only some MS have regulated it, and that the use of SECCI (Art. 6(1)) for overdrafts and some particular credits , have been made obligatory only by a minority of MS.

For what it concerns the enforcement, it was remarked that at that it was difficult to assess the impact; being it a new directive that started to be implemented by some MS in 2011, few data are available. Moreover the assessment depends also both on the national regulatory framework in place before the entry into force of the CCD directive, both on the type of stakeholder in charge to assess it. The main criticality for assessors was to capture the cross-border effects, as for most of them the internal market is mostly perceived as domestic market.

2012 and 2013 FSUG research studies – update on the state of implementation

The FSUG approved the study on remuneration structures of financial services intermediaries and decided that once the FSUG position paper on the study is ready, both the study and the paper will be published on the FSUG website. One of the FSUG members will draft the study and will circulate it to the rest of the members for comments. In the same way, an FSUG position paper will be prepared for the study on the ownership of the EU economy and once it is ready it will be made public together with the study on the FSUG website.

Commission informed the FSUG that the procedure to select contractors for the 2013 studies (on simple financial products and on the efficiency of the asset management industry) was already very advanced and that relevant contract would be signed before the end of 2013.

Administrative issues

The FSUG was requested to submit the 2013 Annual Report as soon as possible given the ending of the group's term of the office at the end of October 2013. The group was informed that it would be informed about the results of the call for the new FSUG members very shortly.

Wednesday, 23 October

Which problems of financial users should be tackled by the policy of the European Commission in close future? – FSUG views and discussion with Mr Erik Nooteboom (Internal Market and Services DG/H3)

EN introduced the item and explained that he would like the group to help generate ideas for next Commission.

Members stressed the need to focus on user protection. Ideas suggested included:

- Pensions – integrated EU coverage of all schemes, improve transparency and access
- Level 2 regulation in supervision
- Enforcement – improve public enforcement and encourage member states to set up a national consumer protection body
- Over indebtedness – fight predatory lending practices and payday lending
- Product simplification
- Access to independent financial advice
- Cross border access to financial products
- Use of complex algorithms for lending decisions - lack of transparency for consumers
- Equity release – large number of citizens own property in another member state meaning this is now an EU wide concern
- Diversification of long term investments
- Regulatory arbitrage

FSUG members agreed to submit these ideas in writing to the chair and the Commission. The ideas will be grouped together, prioritised and then considered by the Commission. EN thanked the members for their contributions and a very thought-provoking discussion.

(Hidden) fees for card payments: Would transparency change consumer behaviour? – presentation by Mr Emanuele Ciriolo (Health and Consumers DG/B1)

Mr Ciriolo recalled that the commission organized a conference on behavioural economic on 30 September 2013. After presenting the growing importance of behavioural economics to understand consumers choices, Mr Ciriolo focussed on the objective of the study, which looks at how consumers are able to make optimal choices by observing their behaviour, and in particular, if consumers' aptitude change if they know that retailers pay fees to the bank for the payment transaction. The general framework of this study span from the policy objectives of the European Commission: increase transparency of payment charges, changing behaviour of consumers, increase competition in prices to obtain lower charges for consumers. Mr Ciriolo remarked that the scope of the study is not extended to see if the actual competition on MIFs will result from the predicted changes in consumers' behaviour, and neither to see if greater transparency will result in higher or lower prices for consumers. A specific case was examined, related to Multilateral Interchange Fees (MIF) for credit cards. In the situation where consumers buy with credit card, the merchant pays fees to the acquiring bank for the use of the payment machine; the acquiring bank pays MIF to the (issuing) bank which issues the card to the consumer and which also receives the fees from the consumer for the use of the card. Here the problem identified is related to consumer policy and it is about the cross-subsidisation between groups of consumers (from the arguably wealthier ones using cards to the arguably less wealthy using cash).

Mr Ciriolo stressed that the research objectives of the study aim at Exploring consumers´ decision-making process by identifying the main individual biases and external barriers and identifying the most effective policy options that could prevent or drive cost-conscious payment choices from a consumer perspective. Two policy options were proposed: measures based on information to consumers and direct regulatory measures.

The policy implication for option 1 show that: simple information does not change consumer behaviour; further evidence is required before stating that the impact is visible in real life; and that consumers change behaviour only if cost differences are made relevant to them directly in form of rebates or surcharges.

The policy implication for option 2 show that a rebate would provide a positive framing and it would be more accepted by consumers, while the surcharge (to be applied to those consumers who accept paying with the card) would be more effective in driving cost-conscious choices. The surcharge was considered in the study as the most effective policy option.

One FSUG member stated that form the consumer perspective, transactions should be neutral and therefore the member expressed support to Commission proposal to regulate the MIF.

Feedback Statement following Commission public consultation on consumer protection in third pillar retirement products – presentation by Mr Alessandro Gianini (Health and Consumers DG/B4)

Mr Alessandro Gianini recalled the context of the initiative as a follow up from the White Paper on Pensions: the Commission launched a questionnaire to Member States (MS) in October 2012 to acquire knowledge on the national regulatory framework for third-pillar pensions. Building on this qualitative research, the Commission developed a staff working document (SWD), under public consultation, to which the FSUG contributed. The SWD addressed the risk for consumers and their needs, and then questioned the effectiveness of two non-legislative policy options: industry self-regulatory codes and a possible EU certification scheme.

The preliminary findings indicate that some MS and part of the industry suggested waiting the outcome of inter-institutional negotiations on proposed and revised EU legislation (notably PRIPS for transparency, and IMD 2 and MiFID 2 for safe requirements in sales practices), with the argument to increase consistency among financial products and enhance market integration via extending to third pillar pensions the existing transparency requirements applicable to investment products, bank deposits, securities, life insurances, and occupation pensions. Almost all respondents agree on the need to reduce information asymmetry: consumers' organizations favour binding rules and more ethical standards to offer more independent advice. Industry suggested to standardize and make information comparable and to align transparency requirements to the key (investor) information document of UCITS and PRIPs.

The main risks in the pre-contractual phase are the difficulty of consumers to understand what product suit their needs, the lack of sufficient information about the expected revenue from statutory and occupational pensions, the impossibility to compare fees and charges in a standardized way, and the lack of information on expected yields in real terms (after taxes and inflation). In the post contractual phase, the main risk span from the volatility of personal contributions, the inflexibility to switch provider and to adapt to unemployment or changes in pattern life, the penalties to leave the scheme. In the pay-out phase the risk are related on the uncertainty on tax treatments on annuities, the impact of charges on the yields, the irreversibility of decision to convert the capital into lump sum or the purchase of annuities.

In relation to the two policy options outlined by the SWD, national authorities and consumers warned against their non-binding nature of these policy tools. The main advantages of self-regulatory codes, is the ability to offer a wide variety of innovative products: industry stressed that voluntary codes better adapt to the specificities of domestic markets and also to the different risk-profiles of consumers. In terms of cost-efficiency, codes pose fewer burdens and could also enhance business standards of conduct. On the other side, the main limit of self-regulatory codes could be related to their effective implementation.

For what it concern the second policy option, industry generally considers the EU certification scheme as a chance to foster the comparability of products. At the same time, the industry warns against the risk to standardise too much, thus reducing the variety of products. On the other side, although consumers showed preference for binding rules, they also expressed some kind of openness in relation to this EU scheme which could result in a passport for those financial products that meet safety requirements based on binding legislation.

Member were informed that this initiative was run in parallel to the EIOPA public consultation, which focused on product requirement and some aspects of prudential regulation. Therefore these findings complemented from the consumer protection angle the EIOPA consultation and will be at the disposal of DG MARKT for possible future initiatives.

The Transatlantic Trade and Investment Partnership (TTIP) negotiation – presentation by Ms Agnete Philips on (Internal Market and Services DG/B4) and Mr Petr Wagner (Internal Market and Services DG/B4)

The Transatlantic Trade and Investment Partnership, once concluded, is supposed to bring tangible benefits to all EU households. Ms Philips explained that the EU and the US provide for the largest bilateral and the most integrated trade relationship which accounts for 7% of the global trade in financial services.

The negotiations started in summer 2013 and both sides from the beginning recognised a great potential of a possible agreement. All the areas of the single market are covered by the negotiations with a principal objective of regulatory convergence. However, it must be underlined that the EU will not compromise on the standards of consumers' and users' protection.

Given the G20 regulatory efforts, the framework of financial services is more coherent than in other areas, even though there are different approaches at national level. There is also a lot of pressure from different stakeholders in the course of negotiations and therefore the Commission would like to seek a greater involvement of users.

The FSUG expressed its concerns with regards to the negotiations, and in particular with respect to the fact that consumers are not sufficiently informed and consulted in the process.

Note on the potential impact on users of a likely increase in interest rates – discussion with Mr Elemér Tertak (Principal advisor, Internal Market and Services DG)

Mr Elemér Tertak presented a possible scenario of the potential impact on users of a likely increase in interest rates: his analysis is a personal reflection on the issue. Mr Tertak started his presentation by recalling an article from the Financial Times (20 October 2013) saying that interest rates could rise significantly before UK homeowners found it difficult to meet mortgage repayments, nonetheless an upswing in the UK housing market has already sparked fears that the government's Help to Buy scheme may induce inflation on prices and burden people with debt they might later struggle to repay..

The variability of the interest rate should not be considered as harmful in itself, as long as it is related also to house prices and national wages. It was remarked that, in the current situation, when the interest rate is unprecedentedly low, the situation is stable: however in the case it starts rapidly increase, policymakers will face the need to present valid policy options to offset a possible increase in mortgages (mainly linked to Euribor increase) having social consequences on consumers.

Based on the current interest conditions, it was described the scenario of the purchase of a property with EU average price (4.400 Eur), average size (60 sqm) and a low-to-value ratio of 80%, with the objective to calculate the loan amount (EUR 211,200) and the trend of the monthly instalments. It was observed that at the interest rate of 3% and a tenure of 40 years, the monthly amortisation rate (762 Eur) would correspond to the 26.2% of the average net monthly income of two persons. In case the interest rate climbs to 4%, the monthly amortisation rate would arise to 30.7% of the average net monthly income of two persons, the difference being around 4.5% of the net wage.

In his conclusions, Mr Tertak draw the attention that interest rates are currently at their historic low level and therefore an increase is quite likely to happen in the medium term. Analysts perceive currently on certain housing markets (e.g. UK, Nordic countries) slight overheating, thus some precaution is already advisable. Although there is no immediate need to act, policy makers shall envisage options to overcome the impact of substantial the interest rate increase in the medium term.

FSUG Members raised the issue of small investors that could be exposed to over-indebtedness and they also raised the issue if sufficient knowledge is currently available to fuel proper policy options. Members also referred to how policies should tackle the issue of non-performing loans and wondered what could be the impact of the banking union on households in the scenario of interest rate increase.

Commission proposal on Money Market Funds – presentation by Ms Franck Conrad (Internal Market and Services DG/G4)

After a brief presentation by Mr Conrad on the European Commission's proposal, its objectives and the main rules it introduces, a number of issues were raised. First, it was pointed out that the main factor to invest in MMF was the diversification of investment. However, one member pointed out that this new regulation will push investors to bank accounts, as it is the only alternative, and this will only increase the systemic risk. Also, it was asked whether there are any restrictions on redemptions according to the proposal, as there is an ongoing debate in the US. Mr Conrad replied that in Europe it is allowed to use redemption. Furthermore, a question regarding the decision on the amount of the buffer was asked. Mr Conrad replied that 3% has been the maximum used during the crisis and that is the reason why it was chosen as a maximum buffer. Finally, another member also asked whether any impact study had been carried out about imposing stricter rules than the US. Mr Conrad replied that the US has several options and it is not clear what they may entail. In the end, it depends on the market and both the US and the European markets are different.

New Belgian Law to enhance consumer protection in financial services – presentation by Mr Bernard Bayot (FSUG member)

Mr Bayot presented the Belgian law to enhance consumer protection in financial services. It consists of a double enforcement, from the National Bank and from the FSMA. The FSMA reinforcement mainly tackles the complexity of products and the lack of transparency. The measures adopted regarding the FSMA include repressive measures, which were very limited before, a new competence to carry out mystery shopping (FSMA can access website pages dedicated to clients of financial services), the possibility of restraint or prohibition of certain financial products, the increase of market transparency, the extension of the MiFID specific rules to brokers and insurance companies, the requirement of knowledge of the product by the person in contact with the public and a code of conduct for saving accounts in order to increase transparency and comparability. During the Q&A, several issues were raised and the members showed high interest on the Belgian law. Regarding mystery shopping, Mr Bayot stated that the approach taken was due to the fact that identity does not have to be declared in these cases. However, it was pointed out that there is a current discussion about the legality of this enforcement exercise. The group also asked for further clarification of what "access to website pages of clients" exactly means. Furthermore, it was also asked whether the non-compliance with the requirement of knowledge will bring sanctions upon the employer or the employee, to which Mr Bayot replied it is still not determined. Another member asked whether the Belgian authorities were subject to hard lobbying regarding the rules for saving accounts. Mr Bayot replied that they were not.