



## **Minutes FSUG meeting of 3-4 December 2012**

### **Monday 3 December**

#### **Adoption of the agenda and approval of the minutes of the last meeting (5-6 November 2012) – Tour de table**

A member of the group requested that contributions during discussions be anonymised in future minutes. This was agreed by the group.

The Office of Fair Trading in the UK has looked at price comparison websites and has noted that there is a major data protection issue concerning how these sites use data. They do not make their data protection policy clear and do not inform consumers how their data will be sold on. Some practices are not permitted under the Data Protection Act. This is particularly concerning as consumers have to provide a lot of personal data to use comparison websites.

Which? has looked at payday lenders in the UK; they have very poor practices.

A meeting in Cyprus on 15/16 November focused on three main areas: access to finance requirements; demand in economies entering into recession; and the concept of smart regulation, lowering the regulatory burden for SMEs. While participants concluded that the Commission is trying to help SMEs, during this difficult time, enterprises are under mounting pressure.

Financial education events/projects are taking place in the Czech Republic, often financed by industry in cooperation with state institutions. The Ministry of Finance wants to avoid that these amount to advertising, and are trying to introduce a framework setting out the limits of independent education.

A member of the group attended a conference on collective redress and group actions in Madrid, in their capacity as a member of FSUG.

In Spain there are two major issues at present: the conditions the EU has put on the Spanish banking sector bailout, which will cause some consumers to lose at least 50% of their savings, and also the Spanish government's new royal decree on mortgages.

In Ireland 1.8 million (of 4 million in total) households have less than EUR 100/week disposable income. 46% of consumers have to borrow to meet payments. Citizens are now using their savings to pay down debts. Ireland's total debt, when calculated per person, is EUR 380,000.

In Italy, the constitutional court held that a provision that made ADR compulsory for consumers in the financial sector is illegal: consumers have a right to go directly to court.

The Dutch Financial Services Authority launched a consultation on transparency and the realistic valuation of property. It has two medium term goals: to create a central register of transactions/valuations and a voluntary code for conduct for valuers/assessors. A member of the group pointed out that there are similar issues in Poland.

In Germany, the Ministry of Finance is consulting on the role and job title for 'fee-based advisers'.

In Romania, the Chairman of the Insurance Supervisory Authority has been dismissed. This has been perceived as an attack on its independence. The decision was taken by Parliament and was problematic.

A new regulation in Romania will allow consumer protection organisations to pursue legal action against abusive contractual clauses from March 2013. The forthcoming Romanian general election will be interesting from a consumer protection perspective.

The membership of the Banking Stakeholder Group of the European Banking Authority (EBA) is expected to change shortly. The EBA consumer working group is very slow in producing work. Its recent consumer day was not very successful. FSUG should seek to become more closely involved in the work of the organisation.

Marcin Kawinski has resigned from the EBA's Banking Stakeholder Group.

A member of the group will be giving a presentation at the ESMA consumer day on 13 December 2012 in Paris.

The Centre for European Policy Studies (CEPS) launched a taskforce on 29 October focusing on long-term investment and savings products. Consumers and retail investors are not represented. One member of the group raised personal concerns about how independent this organisation is.

#### **Update on the negotiations of the Insurance Mediation Directive 2 in the European Parliament and the EU Council – presentation by Ms Anna Kadar (Internal Market and Services DG/H2)**

Ms Anna Kadar presented the state of play of the negotiations of the IMD2 proposal in the European Parliament and in the Council. She informed the FSUG about the meetings held in both institutions and about the progress made on the file. In the European Parliament, Mr. Werner Langen (DE, EPP) from the ECON Committee has been appointed the rapporteur.

In terms of the scope of the IMD2 proposal, the same level of consumer protection will apply, regardless of the channel through which consumers purchase an insurance product. Whether a consumer purchases a product directly from an insurance undertaking or indirectly from an intermediary (e.g. an agent or a broker), the same level of consumer protection will be ensured. In addition, consumers will be provided in advance with clear information about the professional status of the person selling the insurance product. Rules will be introduced to address more effectively the risks of conflict of interest, including disclosure of the remuneration received by sellers of insurance products. Also, insurance product sales will have to be accompanied by honest, professional advice. Finally, it will be easier for intermediaries to operate cross-border, thus promoting the emergence of a real internal market in insurance services.

Ms Kadar informed that the Council met for a third exchange of views on the IMD2 proposal on 28 November 2012. Overall, there was a high level of support for the Commission's proposal but nevertheless Member States had substantive comments on the file. The next meeting will only take place in March 2013 and remuneration disclosure, conflict of interest rules, delegated acts as well as PRIPS and sanctions are likely to be the most debated topics in the next meetings. In the European Parliament, ECON is supposed to issue its draft report on the IMD2 on 18 December and will discuss it on 21 January 2013. IMCO will also provide its opinion on IMD2 and will discuss it at the beginning of 2013. It is still not clear

whether ECON or IMCO is the lead committee. JURI is also preparing an opinion. Both ECON and IMCO committees will adopt their opinions in March 2013.

FSUG decided to draft a brief position paper on the IMD2 proposal and send it to the rapporteur and to other MPs in the European Parliament involved in the negotiations.

**Study on the position of savers in private pension products (draft final report) – presentation by Oxera**

Oxera delivered a presentation of the draft final report of the study on the position of savers in private pension products. It explained all the consecutive stages of the research from the set-up of the methodology to the study delivery and reporting. Oxera contacted the regulators in all the Member States where the study was carried out and only in few cases it was not possible to conduct an interview (in Austria, Italy and Poland). Other primary sources of information were also checked for the need of the study, e.g. specialized organisations' reports (OECD, EIOPA, European Commission), insurance associations, pension associations, academic literature, industry surveys, etc. In this context, the contractor presented several areas of the research with differences in terms of availability of the data per Member State. For instance, Greece was one of the countries where the collection of data proved to be a challenge. It also listed all the most prominent products from pillar 2 (if any) and 3 analysed in the research in all the 14 concerned Member States. Finally, Oxera presented preliminary findings of the research in terms of reduction in pension returns and pension risk analysis in several selected Member States.

The contractor outlined the next steps necessary to finalize the study: all regulators and trade associations would be contacted shortly for validation of the collected data and the FSUG would be invited to provide last comments and corrections. The FSUG committed to send its comments by 17 December and Oxera to submit the final report and the database by 25 January 2013. Final discussion on the study will be held at the FSUG meeting in February 2013.

**FSUG Communication strategy – feedback from the Commission on the paper submitted by the FSUG**

A member of the group has drafted a document on the FSUG communication strategy. He has incorporated comments of the group where possible. It focuses on how FSUG can communicate its work to stakeholders, identifying three areas of communication: web based; 'information dissemination' and institutional. He has sent suggestions to the Commission and is waiting for feedback.

The secretariat stated that while it agrees with much of the document, other items require a discussion in FSUG, since it is unclear how they could be implemented.

One suggestion was that all FSUG's papers and opinions should be on its website. The secretariat confirmed that this should be the case already, but could be done faster. It will check whether it is possible to gather information produced by other consumer groups. If the materials produced by the Consumer Consultative Group can be located, they will be made available on the website. A link to the FIN-USE and FSCG websites could be provided.

A member of the group asked whether it was possible to suggest a different structure for the website, since it is unclear for people trying to find information. The secretariat stated that it would be possible to work with the group to improve structure of website. It will be possible to explain that FSUG is a continuation of previous groups on the website.

One member suggested having a communications budget to be used, for example, for search engine optimisation. This is important to reach academics, policymakers, and students, will raise awareness of what FSUG is and does, and will help improve the transparency and accountability of the Commission.

If FSUG wants to target a wider audience, it should write in plain language. A member of the group suggested having a five line précis to summarise articles, but this is time consuming.

### **Credit reporting in the EU: present and proposed legal framework – presentation by Mr Mario Guglielmetti (DG Justice/C3)**

The Principles of Directive 95/46/EC create a data protection framework. Some provisions are sufficiently specified to have direct effect. This is complemented by a broad range of sectoral national legislation.

The framework sets out the rights of data subjects (eg rights of information; rights of access to the information; right to rectify or erase inaccurate or unlawfully processed data; and redress). It places obligations upon data controllers (data quality obligations, such as fair and lawful processing of data; legitimate and specific purposes; data must be accurate, relevant and not excessive, and up to date; and not stored for longer than necessary). It also creates rules for the supervision of data processing by independent public authorities and rules for international data transfers.

Yet a new framework is necessary to respond to an internal market need (free movement of goods/ services) and a consumer need (improving trust between citizens and providers). It is vital to protect rights properly in this context; this can be best achieved by having one data protection regime rather than 27, and can help facilitate the development of international data protection rules.

A data protection Regulation will replace the data protection Directive. It will introduce better information requirements around data processing, require consent to be given explicitly where data is processed, introduce a right to be forgotten, and create rights of access and data portability. It will improve data protection governance by strengthening national independent data protection authorities. The Commission aims to have the package adopted next year.

There was a question about fragmentation of the regulatory framework across the EU and distinguishing between 'good' and 'bad' use of data. Mr Guglielmetti stated that the Regulation will try to narrow this fragmentation and that it will introduce tools to ensure dialogue between actors. An EU code of conduct is also a possibility under the Regulation.

A question was asked about the need to distinguish between data protection and privacy: data protection is not a panacea to the problem of still incomplete harmonisation in certain areas of EU law. A lively discussion on the necessity for consent for storage of data followed, and on the distinction between positive and negative data.

A member of the group asked whether the Commission has studied breaches of privacy during data processing, for example, with regard to sensitive information on credit. Moreover, is the Commission aware of data breach by data controllers? Mr Guglielmetti replied that in the telecoms sector the relevant legislation has only been in force for a few months, and there is not much statistical evidence of breach. Additionally, enforcement is at national level in this sector, though the records of Working Group 29 sets out some details of this.

### **FSUG Administrative points**

It has been confirmed that the FSUG meeting in Bucharest will take place on 10-11 June 2013. Draft agenda of the meeting have been briefly discussed again and approved by the group. It will now be presented to the European Commission for approval so that the FSUG member from Romania together with the Commission can proceed with the organisation of the meeting. It has been decided to provisionally reserve a room for the meeting in the Representation of the European Commission in Bucharest. The FSUG member from Romania asked whether on the occasion of the meeting the FSUG could give an interview to

an economic press in the country. The Commission will check whether this would be possible.

In preparation to the meeting of the Chair and Vice-Chair of the FSUG with the heads of units responsible for the FSUG Secretariat to evaluate the FSUG activity in 2012 which will be held in February 2013, the FSUG members were requested to reflect on what worked and didn't work well in 2012, what can be improved and what the Commission could do to make the FSUG more efficient.

It has been also decided to exchange the special feature article in the 2012 FSUG annual report and then send the link to the report to the list of the FSUG external contacts.

**Consultation on a possible framework for the recovery and resolution of nonbank financial institutions** (deadline 28 December) – state of play of the FSUG response

The FSUG member in lead of the FSUG contribution to this consultation presented briefly draft response and invited the FSUG members to submit their last comments by 12 December. He will put the final version together and circulate it to the FSUG members on 14 December for approval. Final response of the FSUG will be submitted to the European Commission on 19 December. It has been decided that the technical issues from the consultation which are not within the scope of remit of the FSUG will not be addressed by the group's answer.

**Tuesday 4 December**

**Status of inter-institutional negotiations on the Alternative Dispute Resolution and Online Dispute Resolution legislative proposals** – presentation by Ms Maria-Cristina Russo (DG Health and Consumers/B4)

FSUG was updated on the progress of the legislative work on the ADR/ODR proposals by Ms Russo. In particular, she mentioned that a technical meeting with the Council and Parliament took place the same day and that an agreement should be finalised at "Trilogue" the day afterwards. She gave the elements of the possible agreement and highlighted that there had been intensive debate between the Parliament and Council with the Commission playing an active role. She indicated that, overall, the Commission is satisfied with the likely outcome.

A member of the group asked a clarification about the case of a 'serial ebay seller', who is considered a micro-trader. Ms Russo confirmed that there is no exemption for online micro-traders, but this specific instance was something to think about.

In replying to a question on collective redress, she indicated that work is progressing on the basis of the engagements taken by the Commission in its 2012 Work programme.

In response to a question from a member of the group, Ms Russo confirmed that a letter from FSUG to the President of the Commission and relevant Commissioner on the benefit of collective redress would be beneficial in moving forward on this file.

**OECD High-Level Principles on Financial Consumer Protection** – discussion and feedback from the FSUG on the issues to be covered by the three priority principles: *Disclosure and Transparency; Responsible Business Conduct of Financial Services Providers and Authorised Agents; and Complaints Handling and Redress.*

The FSUG commented on the issues which had been proposed by the OECD Task Force under each of the three principles. Selected comments have been presented below:

*Principle 4. Disclosure and Transparency*

- Consumers should not be profiled because this leads to exclusion of certain groups of consumers. Financial products should be offered based on consumers' particular needs and not profiles. In general more 'inclusionary' language should be used by providers.
- The principles of pre-contractual information (e.g. developed in the PRIPS Initiative) should not only be applied to packaged products, but to every savings and investment product. Complexity of all kinds of products was frequently raised (even simple savings deposits already refer to underlying indices or include complex interest rate clauses).
- At the same time financial services industry should be incentivised to provide bank and investment products that are drawn up in a clear, simple and comprehensible manner (simple products). One of the conclusions from the financial crisis was that a number of products including objectively existing risks were too complicated for small investors.
- Both written and oral information should be available to consumers and they should be complementary. Written information should be provided "in good time" before a contract is signed so that consumer has enough time to read and understand all the conditions.
- Stop pushing for more financial education – it's irresponsible to shift the responsibility to consumers, especially regarding crucial financial decisions. Huge amounts of money spent by the financial industry and public authorities to promote financial education could be more rationally used to develop independent advice service.
- A pre-contractual information sheet should exist for all types of retail financial services.

*Principle 6. Responsible Business Conduct of Financial Services Providers and Authorised Agents*

- Information on conflicts of interest is insufficient to ensure that providers and intermediaries always act in the best interest of consumers. Information asymmetry will always exist between providers and users. A more proactive approach by regulators and supervisors is needed. They should ban commissions for investment products and take the measures to ensure that remuneration of providers and intermediaries is always product neutral.
- Remuneration schemes of sales staff should not be based on the volume of sales but on their quality. This should be imposed by regulatory measures and adequately supervised.
- In the context of responsible business conduct of providers it is necessary to look into the issues such as corporate governance in financial services.
- Also a board of directors in a bank should be held directly responsible for misconduct of the staff.
- For the rules to be respected by providers, it is also necessary to ensure adequate enforcement and supervision by authorities.

*Principle 9. Complaints Handling and Redress*

- We have to speak about 'independent' redress mechanisms, so that consumers are not pushed towards biased schemes.

- It is however more important that the right agency or ADR scheme exist, as at the moment there are still gaps and a number of areas where no appropriate body exists that could investigate consumer's complaint.
- ADR should preferably be free of charge for consumers.
- It is insufficient for an appropriate ADR scheme to be merely available - if businesses do not subscribe to the procedure or disregard ADR outcomes, then consumers remain empty-handed. Voluntary approach may not be appropriate in the financial services area, where the powers of consumers and businesses are very unbalanced.
- The decisions should not be binding on consumers, unless consumer explicitly agrees with it. The binding effect should not preclude consumer's access to courts.

**Securities Law Legislation** – presentation by Mr Chris Redmond and Mr Martin Mitov (Internal Market and Services DG/G2)

Mr Redmond informed the group that the Commission is in the final stage of preparation of the proposal for the Securities Law Legislation which is planned for adoption in the first quarter of 2013. He explained that it is a long-term and very complex initiative which will cover all the securities in the market (e.g. bonds, equities) and its objective is to examine how they are transferred across financial markets.

Securities can be issued by different entities, such as governments and private companies, but it is not clear what then happens with them and who invests in these assets. The intermediary chain which they go through after they are placed on the market is completely intransparent and neither consumers nor regulators know how long it is, nor where in reality do the assets go. The Securities Law Legislation will have a horizontal approach and will target all market participants in order to make the transfer of securities more transparent, safer and to make it better work for the economy. It will allow the investors to clearly see the intermediary chain and the regulators to track it.

### **Update on the 2012 FSUG priorities reports**

Mr Bayot has received comments on the introduction and summary, which he will take into account. There remains a lack of information about some topics in Chapter 1; Mr Bayot would be grateful if members could send a contribution on these. For Chapter 2, he has drafted an outline, and would like comments on this. Mr Bayot will try to finish the paper as soon as possible, though while he has numerous examples of good practice, he only has one example of bad practice. If there are more examples, members of the group should send this to him.

### **FSUG research studies**

The final report of the FSUG study on the means to protect consumers in financial difficulty: personal bankruptcy, *datio in solutum* of mortgages and restrictions on debt collections abusive practices has been approved by the group. The FSUG has also decided to draft its position paper on the results of the study which would be published together with the final report on the European Commission and the FSUG websites. The position paper will be drafted by the FSUG member in charge of the study and consulted with the group before it is finalized in the second part of January 2013.

It has been also proposed to invite to one of the upcoming FSUG meetings Professor Iain Ramsay who is a member of the expert group preparing the World Bank report on personal bankruptcy solutions. It will be an opportunity to look at the two studies together to compare approaches and to see to what extent they could be complementary in terms of the information and analysis they provide.

It was also decided that the FSUG would discuss at the meeting in February what are the best ways to publicize and disseminate the final report of the FSUG study on the means to protect consumers in financial difficulty: personal bankruptcy, *datio in solutum* of mortgages and restrictions on debt collections abusive practices.

**Results of the UCITS 6 consultation** – presentation by Mr Rostislav Rozsypal and Ms Olfa Ben Jamaa (Internal Market and Services DG/G4)

The Commission received approximately 120 replies to the public consultation and the Commission's analysis of replies is on-going. The majority of replies came from representatives of the industry sector. Ten replies came from public authorities and two replies were from individuals. Most responses represented the views of institutional investors rather than those of retail investors.

Both the public consultation and the Commission's broader approach to the work focus on three areas: money market funds; long term investments; UCITS product rules.

While the Commission expects to present proposals on money market funds during the first quarter of 2013 the timing of proposals in the other two areas is uncertain.

Replies to the public consultation reflect two main views on the issue of eligible assets. On the one hand, some respondents considered that the current set of rules is sufficient; other respondents considered that eligible assets should include direct investments in commodities, loans and other financial instruments.

The Commission should consider the risks associated with securities lending, whether they are suitable and have any benefit to the investors. However it must also take account of the possible implications of a ban on these techniques in the operation of markets.

The Commission conceded that there may currently be a lack of clarity in the rules, leading to regulatory arbitrage. Retail investors seemed to agree that it was necessary to simplify product rules, such as for example by not allowing indirect exposures to non-exchange traded assets.

Regarding long term investments, the replies to the public consultation highlight their relationship with UCITS, indicating that the approach to UCITS may not be appropriate to the longer-term nature of investments. This may point towards a stand-alone initiative on long term investments and long terms investment schemes. Many responses supported the definition of eligible assets provided in the consultation document.