



FSUG Annual Report 2017-2018

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FOREWORD

Following a call for interests launched in April 2017, the Financial Services Users' Group (FSUG) was officially relaunched by the European Commission end of June 2017 for a period of four years and with new Rules of Procedure. As in previous mandates of the FSUG, the group is composed of a mix of representatives of consumers' organisations working at EU level and individual experts working at national level.

The renewed FSUG started to work in a fast-moving context at EU level, with turbulent financial markets at global level which require strong vigilance and monitoring to avoid consumers' detriment.

This report provides a summary of the FSUG activities in the second half of 2017 and throughout 2018. More detailed information can be found on the [FSUG website](#).

FSUG main activities

At its first meeting in July 2017, the "new" FSUG started to build its work programme for the coming years. Since the members of the FSUG no longer receive fees for their work, the scope of the work programme is focussing on the priorities identified by the group. FSUG updates the work programme on a regular basis, with upcoming new topics. The work programme serves as a compass that guides the FSUG work while allowing for emerging topics/dossiers to be tackled as well.

The group met three times in 2017 and five times in 2018. With work organised in various subgroups, the FSUG produced eight position papers, sent three open letters addressed to key EU institutions, responded to five consultations and outsourced two small scale research studies to inform their work.

Wider engagement

FSUG meetings are usually held in Brussels. However, as part of our wider engagement, we usually hold one of our meetings each year in a Member State, to listen directly to public interest representatives from the host country. In 2018, we held our meeting in Porto (Portugal).

Special feature

At the end of 2018, the FSUG addressed recommendations to the next European Commission highlighting areas where it could take action to foster consumers' interest and improve consumer protection.

We would like to thank the European Commission for the opportunity we are given to do some joint work and raise awareness of issues of concern for retail financial services users and SMEs, and we hope that you will enjoy reading what we have been able to achieve in the past eighteen months.

Anne-Sophie Parent
Chair

Christiane Hölz
Vice-Chair

Farid Aliyev
Vice-Chair

ABOUT THE FSUG

In its White Paper on Financial Services Policy 2005–2010, the European Commission stated that it attached great importance to ensuring proportionate user representation in policy making. In the Communication for the European Council “Driving European Recovery” the Commission puts the interests of European investors, consumers and SMEs at the centre of the financial market reforms.

As a measure to achieve this objective, the Commission set up a Financial Services User Group (FSUG). The FSUG’s task is to:

- advise the Commission in the preparation of legislation and policy initiatives which affect the users of financial services;
- provide insight, opinion and advice concerning the practical implementation of such policies;
- proactively seek to identify key financial services issues which affect users of financial services;
- liaise with, and provide information to, financial services user representatives and representative bodies at the European Union and national level.

The FSUG has up to 20 members, who are individuals appointed to represent the interests of consumers, retail investors or micro enterprises, and individual experts with expertise in financial services from the perspective of the financial services user.

The FSUG meets five times a year (usually four times in Brussels and once a year in another Member State) and its Chair and two Vice Chairs are elected from amongst the group members. The Commission (jointly DG FISMA and DG JUST) provides secretarial services for the Group.

The Group works on a consensus basis and tries to ensure that it arrives at a collective opinion on issues it considers. However, from time to time, individual members may register a minority opinion.

As well as working on its agreed work programme, the FSUG:

- responds to consultations from the European Commission and other policymakers
- proactively seeks to identify key financial services issues which affect users of financial services and
- liaises with, and provides information to, financial services user representatives and representative bodies at the European Union and national level.

FSUG RESPONSES TO CONSULTATIONS

From September 2017 to the end of December 2018, the FSUG produced five responses to requests for opinions from the Commission and other authorities.

European Commission Inception Impact Assessment on the Revision of the Injunctions Directive

The FSUG welcomed the opportunity to comment on the Inception Impact Assessment on the revision of the Injunctions Directive and strongly supported option 4, i.e. a targeted revision of the Injunction Directive which would introduce procedural efficiencies and redress opportunities in widespread misbehaviours and mass harm situations. FSUG reminded about numerous cases of mis-selling often arising from misleading information and/or conflicts of interests in the distribution of financial products, instruments and services. In many of these cases lack of collective redress mechanisms prevented victims to seek reimbursement and compensation for losses and damages suffered¹.

Therefore, FSUG called for extending the scope of the Directive to all financial services, including investment products/services as well as for experienced and well-established organisations representing interests of consumers, savers and individual investors to be considered as a 'safety net' in the system. FSUG pleaded for an EU binding legislative act that would ensure a coherent collective redress mechanism modelled on best practices in Europe.

[The full FSUG reply can be downloaded here.](#)

European Commission consultation on Building a proportionate regulatory environment to support SME listing

The FSUG welcomed the initiative of the European Commission to ease capital-raising of SMEs on public markets and to deliver a more proportionate regulatory environment to support SME listing on public markets. In its response it outlined the main reasons for the weak pipeline of SMEs seeking a listing on EU public markets and the reasons that inhibit investors from investing in SMEs. Last but not least the FSUG outlined what it considers to be needed to encourage SME-dedicated MTFs to seek a registration as an 'SME Growth Market' and what safeguards need to be introduced to protect investors from SMEs seeking to delist from the public markets.

[The full FSUG reply can be downloaded here.](#)

European Commission consultation on the Draft Implementing Regulation on minimum requirements in the transmission of information for the exercise of shareholders rights

The FSUG appreciated the opportunity to comment on the draft Implementing Regulation laying down minimum requirements implementing the Shareholders Rights Directive II as regards shareholders identification, the transmission of information between issuers and shareholders and the facilitation of the exercise of shareholders' rights. The Regulation takes important steps towards facilitating cross-border voting and ensures a harmonised application of its requirements which

reduces the risk of fragmentation across Member States. In addition to the improved flow of information around the general meeting between issuers and investors, the regulation will also help to open the currently closed intermediary market, to enhance competition and to reduce costs for investors who want to vote their shares across borders.

[The full FSUG reply can be downloaded here.](#)

European Commission proposal for a Directive on representative actions for the protection of the collective interests of consumers

FSUG welcomed the fact that the European Commission decided to include in the scope of the proposal for a Directive on representative actions many financial services, but regretted that overall the “New deal for Consumers” lacked ambition. Therefore, the FUSG drew co-legislators’ attention to the issues that it considered indispensable for making the new tool truly beneficial for financial services users.

First, the proposed framework for collective redress mechanisms offers protection to many financial services users, such as savers, retail investors, life insurance policy holders, pension fund participants, but excludes the protection for small and individual shareholders. Since an EU collective redress system covering also individual shareholders is a must if the EU truly wants to restore individual and public confidence in the financial services market and to enforce legislation in the area of investor protection, FSUG pleaded for extending the protection to small and individual shareholders.

Second, the FSUG advised against the procedure requiring claimants to first obtain a final injunction order from a court before the judge’s decision whether to allow for some form of collective compensation. FSUG considered that this requirement may severely prolong the procedure and increase its cost to the detriment of consumers.

Moreover, the FSUG underlined that the new Directive should allow EU countries to have higher standards and maintain or introduce other national procedures.

[The full FSUG reply can be downloaded here.](#)

European Commission Fitness Check on Corporate Reporting

In its response to the broad Fitness Check consultation on Corporate Reporting, the FSUG supported the overall effectiveness of the EU public reporting framework, while making recommendations for improvement in specific areas. The framework helps investors and other citizens better understand the non-financial impact of companies. The Commission should consider enlarging the scope of the rules; consider extending the information that is being reported; and consider and further harmonising data reporting including through digital company registers. A legislative initiative to review the framework would allow for integration of new corporate risks such as those related to climate change and other ESG factors, and would increase comparability of equity investment opportunities for retail investors.

[The full FSUG reply can be downloaded here.](#)

LETTERS FROM THE FSUG

In addition to replying to public consultations, the FSUG sent three letters to EU officials on topics we considered of importance for financial services users.

Non-performing loans (NPLs)

In its February 2018 letter to Director General Tiina Astola (DG JUST) and Director General Olivier Guersent (DG FISMA), the FSUG expressed its concerns about the position of borrowers whose loans have been categorised as non-performing and sold on to third party debt buyers, and the Commission's current initiative to promote further sales of non-performing loans (NPLs). The FSUG was especially concerned that:

- the Commission did not appear to have considered, in any real depth, alternatives to this market-based solution for clearing bank's balance sheets of NPLs;
- the Commission did not appear to be doing enough to reduce the risk of NPLs arising in the first place by ensuring that lenders support borrowers who are showing signs of financial difficulty.

FSUG was also concerned that the Commission seemed to try to promote greater volumes of sales of NPLs without first ensuring there was a fair, robust, comprehensive, and consistently enforced consumer/social protection regime in place.

The FSUG consequently recommended six areas for improvement: improvements to regulatory standards, enhancement of borrowers' rights, consistent supervision and enforcement, consistent application of regulatory coverage also for SMEs, enhanced governance and reporting requirements relating to the selling of NPLs and collection practices, as well as widening the alternatives for over-indebted borrowers.

[The complete FSUG letter can be downloaded here.](#)

A New Deal for Consumers - revision of the Injunctions Directive

In a letter to Commissioner Věra Jourová (DG JUST) and Commissioner Valdis Dombrovskis (DG FISMA), the FSUG pleaded for an EU binding legislative act that would ensure a coherent collective redress mechanism, modelled on best practices in Europe and a relevant extension of the scope of the Injunctions Directive to all financial services and all financial services users, including direct investors. Furthermore, the FSUG pointed to the need to establish a collective redress mechanism open for both national and cross-border cases that fulfils certain minimum requirements and to the need to ensure that conditions for eligibility to bring representative actions are not used to the detriment of consumers, savers and individual investors organisations.

[The complete FSUG letter can be downloaded here.](#)

Proposal for the EU financial supervisory reform

In an open letter to the Members of the European Parliament and the Presidency of the Council of the EU, FSUG called for using the review as an opportunity to propose

a reform that will truly deliver the protection that EU financial services users need. FSUG underlined that in terms of public enforcement, especially in the context of ubiquitous cases of mis-selling of financial products, there is room for improvement as far as the European Supervisory Authorities' (ESAs) scope, their governance and an effective supervision and enforcement is concerned.

FSUG strongly supported the Commission proposal to bring a pan-EU vision to the ESAs and pleaded to use the ongoing reform to at least ring-fence the investor and consumer protection objective from the prudential one within the existing ESAs, without changing the architecture as such. The FSUG pointed out that in light of the supervisory failures at the national level, ESAs need an effective mechanism for holding national supervisory authorities accountable as well as an explicit mandate to work on convergence of conduct of business supervision practices across the EU to ensure that all consumers and other users of financial services are treated fairly by financial institutions. This could be fostered by developing a 'Single Rulebook for Conduct of Business'. Moreover, the FSUG called for a balanced composition of the ESAs Stakeholder Groups and an adequate compensation of their members representing consumers and individual investors.

[The complete FSUG letter can be downloaded here.](#)

FSUG EXTERNAL MEETING 2018 IN PORTO

In 2018, one FSUG meeting took place in Porto – Portugal, at *Instituto Superior de Contabilidade e Administração do Porto* (ISCAP – www.iscpa.ipp.pt), the Porto Accounting and Business School, which belongs to the largest and most prestigious public Polytechnic Institute in Portugal. ISCAP together with CEOS.PP Research Center were the two main coordinators and sponsors of this meeting, that was also supported by ATM – *Associação de Investidores e Analistas Técnicos* (www.associacaodeinvestidores.com) and CFA – *Society of Portugal*.

This meeting was divided in a Scientific Conference and a FSUG internal meeting. Information on the internal meeting of the FSUG can be found in the minutes on page 37 of this report.

THE SCIENTIFIC CONFERENCE

The Scientific Conference, with the title **CONSUMER PROTECTION AND SUPERVISION IN THE FINANCIAL SERVICES**, started with an Opening Ceremony chaired by the dean of ISCAP, Fernando Magalhães, the dean of the ATM and FSUG member Octávio Viana, and the member of CEOS.PP directive board, Ana Azevedo.

The first session – **FINTECH** – started with a presentation by FSUG member Martin Schmalzried of the topic “**Cryptoassets**” who portrayed the consumer perspective.



He informed the audience about recent developments in the areas of blockchain, virtual currencies, and crypto-assets. He also talked about ICOs and the dangers related to fraud and scam and finished with a request for more regulation of crypto-assets.

Then followed a presentation of “**Taxation in Cryptocurrencies**” from João Ferreira (ISCAP – P.PORTO) with contributions by José Amorim & José Azevedo ISCAP (P.PORTO and CEOS.PP). Mr. Ferreira gave an overview about cryptocurrencies. Among others, he informed the audience about the number of values in transactions by some exchanges, and showed the taxation regulations in this field around the EU. He finished with suggestions about taxation of capital gains.

In her presentation on “**Robo-Advice: A Look Under The Hood**”, FSUG member Aleksandra Mączyńska, started with considerations about user-friendly, transparent and competitive fee investment services that provide suitable robo advice. She compared platforms used in the EU and the US and informed about the different selection criteria. She also presented some characteristics of certain robo-advisers and finished with policy recommendations.

The next presentation from Paulo Duarte, Vice President of the Porto Regional Council of the Bar Association, dealt with the topic “**Smart contracts**”. Mr. Duarte presented his research in this field and informed the audience about current developments in Portugal regarding smart contracts. He presented the legal regime for this type of contracts and discussed some of the problems that the current law presents, the difficulties in its application, and the problems many of the agents face in adapting themselves to these new realities.

The second session – **FINANCIAL CONSUMER PROTECTION** – started with a presentation on “**The reform of the Supervision Model of the Financial Sector in Portugal and in the EU, considering the new developments in the EU financial sector (Brexit, financial conglomerates, mis-selling, etc.)**”. The presentation was delivered by António Júlio de Almeida, former president of the Portuguese Association of Consumers and User of Financial Products and Services (SEFIN) and economic adviser of Mário Soares, as prime minister and Portuguese President of the Republic. The speaker presented problems faced by the supervisory authority in Portugal. In particular, he presented the fundamental goals of the financial sector, the perversity of its operation, the financial regulation and the modalities and purposes of financial supervision.

In “**FSUG risk outlook: focus on Brexit**” FSUG member Mick McAteer presented the “FSUG Risk Outlook” where he explained its background. He described the risks included in the outlook and how they could be mitigated. The second part of his presentation then focused on a current major risk for both EU and UK financial services users, the Brexit.

FSUG member Rym Ayadi then presented “**Non-Performing-Loans and the prudential supervision at the cost of the consumer**”, both by providing a systematic historical policy and an economic perspective. She showed the risk and performance assessment using the example of state-aided banks. She concluded by offering several solutions to solve the problems that arise.

In “**Non-performing loans in Portugal: an overview**”, Carmina Pina (lawyer in the dispute resolution department at Linklaters’ Lisbon office) presented the evolution of NPLs in Portugal and the current state of play. She described some examples of strategies adopted to reduce NPLs in Portugal, like legislative measures, supervisory measures and NPL Management. In conclusion and going further, further measures to address NPLs were suggested by the Ms. Pina.

In “**Switching and cross-border purchase of financial products and services**”, FSUG member Vinay Pranjivan presented results of a survey about switching of financial services. After that he introduced the cross-border provisions of financial services in the EU and other countries, like Portugal. He finished with recommendations including actions for the EU Parliament to work on.

The last presentation of the conference was provided by European Commission representative Malgorzata Feluch who informed the audience about recent developments in the area of “**Provisions on switching of the payment account directive**”. She presented various aspects of Directive 2014/92/EU and pointed out the three main chapters in this Directive. Furthermore, she mentioned the deadlines for switching of current accounts and what countries have to do, or not, for the transposition of this directive. She highlighted the next steps to follow between Q4 2018 and Q2 2020, and finished with informing the audience about behavioural

insights into switching and the assessment of the switching mechanism in certain countries.

All presentations were followed by a Q&A session.

The closing ceremony of the Scientific Conference was held by the Vice Dean of P. Porto, Cristina Pinto da Silva.

This Scientific Conference was very important to present the reality of Portugal by Portuguese researchers. The new realities and themes that were approached in this conference have implications for the future of all of us.

The conference linked research with the themes of the conference. The other speakers complemented the relevance of the research with up-to-date themes, contributing to a very fruitful discussion and exchange of ideas. Also, for ISCAP/CEOS.PP this was a very good contribution for future research in this area. Moreover, it allowed to make contacts with some associations connected to these themes. For teachers and students, the conference was an opportunity to present valuable contributions to experts from all over Europe. For FSUG members it was a new approach to some themes and research that could be a good contribution to their work.

FSUG RESEARCH PROJECTS AND POLICY PAPERS

The FSUG has its own research budget which it can use to outsource research on issues considered to be important to users. After a prioritisation process, we selected research studies on risks and opportunities of digitalisation for financial inclusion and irresponsible consumer credit lending across the EU.

Risks and Opportunities of Digitalisation for Financial Inclusion

With the rapid digitalisation of financial and retail services and fintech development, increasing concerns are expressed by groups of consumers who face difficulties to access information, buy and pay for the goods and services they wish to get: older persons who for various reasons do not or cannot use ICTs, persons with disabilities, persons experiencing poverty and financial exclusion.

The causes for these difficulties/barriers are diverse and range from a lack of digital literacy or lack of accessibility of the digital devices supporting the financial services (ATMs, websites for online banking and e-commerce, retail payments terminals, ticketing machines, mobile phones, etc.) to lack of trust in digitalised services (consumer's fear around fraudulent use of e-ID, difficulty for the consumer to identify misuse and claim redress, etc.).

Upon request from the FSUG, the European Commission outsourced research to develop a concept paper identifying barriers and concerns raised by vulnerable retail financial services' users around the digitalisation of retail financial services. The study focussed on users with special needs like persons with disability, older people and persons at risk of poverty and social exclusion who are the target group of the upcoming European Accessibility Act.

In 2019, a subgroup of FSUG members will develop a position paper around accessibility of digital retail financial services, building on the outcome the small-scale research study that was finalised end of 2018.

[The full study can be downloaded here.](#)

Irresponsible Consumer Credit Lending across the EU in the Post-Crisis Era

The FSUG commissioned an external study on "Irresponsible Consumer Credit Lending across the EU in the Post-Crisis Era" which had the following aims: (a) to explore the meaning of the concept of 'responsible lending' in the context of consumer credit; (b) to identify the most imminent irresponsible lending practices in consumer credit markets across the EU and tentatively analyse their key drivers; (c) to assess to what extent the 2008 Consumer Credit Directive, which had been adopted before the crisis, adequately addresses the problem of irresponsible lending, identifies areas for further research, and provides tentative recommendations for improvement. The report was finalised in May 2018. As a follow up, the FSUG will develop a position paper in 2019, which will contribute to the ongoing evaluation of the Consumer Credit Directive by the European Commission. The full study will be published on the FSUG website.

FSUG response to the study “Distribution systems of retail investment products across the EU”

In addition to the above, the FSUG published a Position Paper on the European Commission’s Study on the distribution systems of retail investment products (https://ec.europa.eu/info/publications/180425-retail-investment-products-distribution-systems_en).

Contrary to what was planned in the CMU Action Plan, in the opinion of the FSUG the study does not really identify ways to improve the policy framework and intermediation channels so that retail investors can access suitable products on cost-effective and fair terms. Nor has the study provided an assessment of how the policy framework need to evolve to benefit from the new possibilities offered by online based services and fintech.

The FSUG considers that not more but rather a better regulation and better enforcement is needed to effectively protect consumers, investors and all other financial services users and to work towards a true single market that works for EU citizens. In order to achieve this, the FSUG has identified a number of key areas of activity for policymakers, notably an enhanced enforcement of existing regulation, an ending of the silo approach and the necessity to address the redress deficit.

[The full FSUG position paper can be downloaded here.](#)

SPECIAL FEATURE: 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 home were in fact collateral damage from the reckless banking behaviour. No synchronised 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 harmonised approach, taking into account the achievements of the best

developed personal insolvency legislations and all modern banking phenomena such as asset bubbles, loan securitisation etc.

Possible measures could 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 loose 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.

MINUTES OF FSUG MEETINGS FROM JULY 2017 TO NOVEMBER 2018

[Meeting on 12 July 2017](#)

[Meeting on 25-26 September 2017](#)

[Meeting on 4-5 December 2017](#)

[Meeting on 5-6 February 2018](#)

[Meeting on 19-20 April 2018](#)

[Meeting on 18-19 June \(Porto, Portugal\)](#)

[Meeting on 24-25 September 2018](#)

[Meeting on 5-6 November 2018](#)

FSUG MEMBERS

In 2017 and 2018 FSUG had up to 20 members, who are individuals appointed to represent the interests of consumers, retail investors or micro-enterprises, and individual experts with expertise in financial services from the perspective of the financial services user.

Members as of 31 December 2018:

Name	Title
Anne-Sophie PARENT (Chair)	AGE platform Europe
Christiane HÖLZ (Vice Chair)	DSW - Deutsche Schutzvereinigung für Wertpapierbesitz e.V.
Farid ALIYEV (Vice Chair)	BEUC – Bureau Européen des Unions de Consommateurs
Rym AYADI	Academic, HEC Montreal, CASS Business School in London
Morten BRUUN PEDERSEN	Danish Consumer Council
Alexandre CAGET	UDEA - Union Défense des Experts d'Assuré
Desislav DANOV	Bulgarian financial forum
Federico FERRETTI	Senior Lecturer in law at Brunel University
Robin JARVIS	Professor of accounting, Brunel University
Olivier JERUSALMY	Finance Watch
Aleksandra MACZYNSKA	Better Finance
Mick MCATEER	Financial Inclusion Centre
Simone MEZZACAPO	Legal counsel
Joost MULDER	FairFin
Vinay PRANJIVAN	DECO - Associação Portuguesa para a Defesa do Consumidor
Martin SCHMALZRIED	COFACE – Confederation of Family Organisations in the EU
Jan SEBO	Academic, Matej Bel University
Octávio VIANA	Portuguese Investors' Association ATM



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