



## **Minutes FSUG meeting of 5-6 November 2012**

### **Monday 5 November**

#### **European Commission proposals for a single supervisory mechanism (banking union) – presentation by Ms Raffaella Assetta (Internal Market and Services DG/02)**

Ms Assetta explained the reasons behind the Commission proposal for a single supervisory mechanism (SSM) – Banking Union, which is currently negotiated in the Council and the European Parliament and is planned to enter into force in early 2013. It aims to:

- break the negative feedback loop between sovereigns and banks.
- prevent bank runs and strengthen overall financial stability.
- preserve the single market.

Banking Union is also necessary for achieving a genuine EMU (European Monetary Union) and is the precondition for the introduction of potential direct recapitalisation of banks by ESM (European Stability Mechanism). There are three key elements of the Banking Union: single supervisory mechanism, single resolution mechanism and deposit guarantees which altogether form a Single Rulebook.

A new proposal would see the European Central Bank (ECB) gaining new powers to monitor the performance of the 6 000 or so banks in the Eurozone. The arrangement would be known as the single supervisory mechanism. The ECB would take over tasks such as:

- authorize banks;
- ensure compliance with minimum requirements on capital, leverage and liquidity;
- supervisory review of banks' risk profile ("Pillar 2");
- apply capital buffers and other macro-prudential measures;
- early intervention measures where a bank breach requirements (coordinating with resolution authorities).

All preparatory and executing activities under SSM will be carried out by the ECB bodies separated from those responsible for monetary policy. National financial supervisors will become an integral part of the SSM and will meanwhile continue to carry out day-to-day checks and other supervisory activities to prepare and implement the ECB acts. It is planned that the ECB would start the process in January 2013, monitoring some of the banks that have received or requested bailouts from the public sector. All banks would then be supervised by January 2014.

A single rulebook on capital requirements, standardised deposit protection schemes and new recovery and resolution provisions – all proposed earlier in the year – would complete the 'Banking Union'. All Euro-area Member States will participate in the SSM and non-Euro area countries may join by establishing a close cooperation between their competent authorities and the ECB.

#### **Adoption of the agenda and approval of the minutes of the last meeting (18-19 September 2012) – Tour de table**

The meeting agenda and the minutes of the last meeting were adopted. There was no tour de table due to insufficient time remaining for this agenda point.

**Consultation on a Possible Framework for the Regulation of the Production and Use of Indices serving as Benchmarks in Financial and other Contracts** – presentation by Mr Philip Tod (Internal Market and Services DG/G3)

Mr Tod informed the group about the Commission's ongoing reflection on the possibility of introducing a framework to regulate the use of indices serving as benchmarks in financial services and other contracts. DG-MARKT has recently published a public consultation on the subject and expects to put forward a proposal in the second quarter of 2013. This consultation follows the Libor rigging scandal, has a very broad scope and should help the Commission broaden its understanding of the current use of indices and their broad implications in financial markets.

The consultation will focus on the use of transaction-based benchmarks rather than estimate-based benchmarks, though it is possible that hybrids exist. Market indices are in scope, but mechanically-calculated indices may be left outside because the data used is publicly available and there is little discretion involved, so little space for manipulation. The issue of transparency is in scope. Some providers have lobbied to keep proprietary indices out of scope on the basis that they are a special case.

A member of the group suggested that the consultation document mistakenly conflates indices and benchmarks, despite there being strict differences between them. Mr Tod responded that indices are often used as benchmarks for financial products and derivatives.

**Judgement of the Court of Justice concerning Consumer Credit Directive** – presentation by Ms Maria Lissowska and Mr Detelin Ivanov (DG Health and Consumers/B4)

Ms Lissowska gave a presentation on the CJEU preliminary ruling in *SC Volksbank România SA v Autoritatea Națională pentru Protecția Consumatorilor — Comisariatul Județean pentru Protecți* (C-602/10).

The case concerned the transposition of the Consumer Credit Directive 2008/48/EC into Romanian law by the government pursuant to an emergency order made on 22 June 2010. The transposing order limited the charges that creditors could impose in credit contracts. Volksbank, in its consumer contracts, provided for a 'risk' charge. The Romanian national consumer protection authority, which took the view that levying the risk charge was not permissible, imposed a fine on the bank. Volksbank brought national proceedings and the national court – the *Judecătoria Călărași* – made a preliminary reference to the CJEU.

Ms Lissowska provided background information on the relevant EU and Romanian law, before setting out the ratio of the CJEU ruling. The Court found that the CCD must be interpreted as not precluding a national measure designed to transpose that directive into domestic law from including in its material scope those credit agreements at issue in the main proceedings, even though such agreements are expressly excluded from the material scope of the directive. Accordingly, the CCD does not preclude Member States from imposing obligations on credit institutions that are not provided for by the directive.

There was a discussion about the nature of the ruling, its rationale and its effect on competition. A member of the group provided some general background to the case. He stated that the Commission should make special efforts to support consumers at the current moment.

Ms Lissowska stated that the transposition check report will be published in the middle of next year; in the meantime, all the national transposing legislation has been published.

**Initiative on third-pillar retirement products and related questionnaire** – presentation by Mr Stefano Paci (DG Health and Consumers/B4) and discussion about the FSUG response to the questionnaire

Following up on the action 13 of the White Paper on Pensions published by the European Commission at the beginning of 2012, DG SANCO is preparing an initiative aimed at improving the quality of third-pillar pension products. In order to gather the necessary national data for this initiative, DG SANCO has recently launched a questionnaire to obtain information on the market situation and to identify the existing rules at national level on third-pillar retirement products affecting consumer information and protection standards, in particular marketing rules, inducements, selling practices and advice. In addition, DG SANCO is interested to learn about the effectiveness of voluntary codes or an EU certification scheme to improve the quality of third-pillar retirement products.

For the purpose of the questionnaire, DG SANCO has proposed an operational approach as regards the definition of the third-pillar retirement products; these have been defined as private retirement products to which consumers subscribe on an individual basis (as opposed to occupational), whether they are voluntary or mandatory. The deadline to respond is 30 November and the FSUG members are invited to participate in this consultation.

At the moment, third-pillar retirement products are not regulated as such at EU level. However, retirement products consisting of insurance contracts are subject to relevant EU provisions on insurance. The feedback from the questionnaire will contribute to the preparation of the above mentioned initiative. A political document is foreseen for mid-2013. It will identify what are the best ways to improve third-pillar pensions with regards to consumer protection.

#### **Update and discussion on the FSUG responses to the on-going consultations**

##### *Report of the High-level Expert Group on Reforming the structure of the EU banking sector (Liikannen Group) – deadline 13 November*

A member was designated to lead the FSUG response to the Final Report of the High-Level Expert Group on reforming the structure of the EU banking sector. The response will consist of: (a) comments on the five recommendations; (b) comments on other parts of the report; (c) suggestions.

The lead member suggested that the most important debate is on the first of the five recommended measures. He stated that the group should decide whether to ask for a complete separation or accept the measure proposed in the High-Level report, up to a threshold of trading. He advocated for complete separation on the basis that the business of the two institutions is very different. Interesting material has already been received from the group on the fifth measure – widening governance.

The members of the group were given an opportunity to provide their thoughts on the FSUG response.

The Vice-Chair considered that a complete separation of deposit and trading functions is necessary: it worked in the US for more than 60 years. Moreover, ring-fencing without a corresponding legal separation of entities does not eliminate conflicts of interest, due to the complex ownership of group structures.

Another member of the group did not express a strong opinion, but questioned whether legal separation could be very costly. Both the Chair and Vice-Chair considered that it is the internal (operational) separation that is most difficult, and so ring-fencing without legal separation of entities would be equally as expensive.

A representative thought that an argument against legal separation was that investment banking activities subsidise commercial banking. However he concluded that this argument is fallacious, since taxpayers have ended up having to bail out the banks. He drew attention

to the Scandinavian Handelsbanken model, whereby the local manager takes decisions and staff are not incentivised by bonus, but in different ways.

The Chair noted that there is no legal evidence in favour of ring-fencing being effective.

Another member believed that it was important to consider the impacts of regulation in this area: it could limit access to finance if done badly.

*Consultation on a Possible Framework for the Regulation of the Production and Use of Indices serving as Benchmarks in Financial and other Contracts – deadline 29 November*

The Chair is preparing this response. He will send a draft to the group by 19 November 2012, giving members time to comment upon it.

*Consultation on a possible framework for the recovery and resolution of nonbank financial institutions – deadline 28 December*

A member was designated to lead on this response. Other members volunteered to join the sub-group.

*Annual report*

The deadline for producing the annual report was end October.

Each member has a draft of the report. At present, discussions are taking place as to how to finalise it, and members are being selected to provide final contributions.

A member of the group was designated to write a paragraph on ADR in the absence of the lead member on this topic. Members should send the Chair and the secretariat a list of the events they have attended in their capacity as an FSUG member. Letters sent by the group can be incorporated into the report. A member of the group was designated to draft the foreword. An additional executive summary is not necessary. Another member offered to proof-read the report. The report will be placed on the FSUG website. The group will decide who to send the report to in due course.

**First discussion on the programme of the FSUG external meeting in Bucharest in 2013**

The FSUG external meeting in Bucharest is planned to take place in May / June 2013, and different possible dates are still being considered. The FSUG members will vote for the most suitable date for them and on this basis a precise date will be decided. The FSUG member from Romania responsible for the preparation of the meeting on behalf of FSUG collected topics from the FSUG members which they would like to discuss in Bucharest. Among others, the following proposals have been mentioned:

- Banking sector in Romania
- Discussions over personal bankruptcy law
- Consumer Credit Directive
- Situation on the pensions market
- Access to financial services
- Gaps in financial regulation
- Financial services user protection
- Whether the EU legislation in financial services is making a difference to Romanian citizens

It has been proposed to invite to the meeting representatives of the National Authority for Consumer Protection, financial supervisors as well as local consumer organisations. Based

on the proposed topics, the FSUG member from Romania will prepare draft agenda of the meeting which will be completed and endorsed by the European Commission.

## **Tuesday 6 November**

**Report of the High-level Expert Group on Reforming the structure of the EU banking sector (Liikanen Group)** – presentation by Ms Monique Goyens (Director General of BEUC)

The work of the Liikanen group focused on assessing whether there is a need to structurally separate the commercial banking and investment banking. The Liikanen group also looked into recent proposals to strengthen capital requirements and the recovery and resolution proposals brought forward by the Commission.

At present, work in this area is at a formative stage in the regulatory process; the Liikanen group's work has been completed within a tight timeframe, i.e. in 6 months. Ms Goyens noted that while the Liikanen group has sought to address all relevant issues, there is time to improve the quality of the recommendations made in the report.

The report makes five main recommendations. Beyond the recommendations, the report also analyses business models in the EU banking sector and the wave of regulatory reform that has been initiated following the financial crisis.

The first recommendation is the most notable: it suggests the mandatory separation of deposit banking activities and proprietary trading, where the activities to be separated amount to a significant share of a bank's business or they represent a threat to financial stability. This would ensure that the needs for future bail-out funds paid for by taxpayers but be avoided or mitigated and only directed to deposit taking activities where necessary.

Mandatory separation would also help to ensure that banks are more transparent; this would be beneficial to the banks themselves in terms of governance, and would also benefit the market, making supervision more straightforward and increasing competitiveness. This mandatory separation would only apply to a minority of banks, but it would be those who bear the most risks.

An extensive question and answer session on the substance of the report concluded the session.

A member of the group asked whether lending to small- and medium-sized enterprises would be outside the deposit banking ring-fence, since it is a risky activity. Ms Goyens confirmed that lending of this nature would fall within deposit taking activities.

The Greek representative noted that the proposed threshold for trading activities of 15-25% of total assets could still cause risks. Ms Goyens noted that 15-25% threshold is a trigger-point for examination, rather than separation. This figure is still being discussed: it could be 10-15%.

In response to a question from another member, Ms Goyens stated that while transparency is important – and to some extent Recommendation 5 looks at governance and control of banks – this was not the mandate of the group. She felt that the report hints to policymakers that these issues must also be addressed. In terms of consumer protection, rules should be applicable to the whole bank, and not just its deposit-taking functions.

A member of the group asked about accounting and valuation principles and whether efforts should be made to reform these, given that they have an impact on book values of assets and on the extent of allowable proprietary trading activities as a result. Ms Goyens recognised the difficulties of valuation in financial reporting of banks.

The Chair noted a lack of legal analysis in the report. He asked whether the group took legal advice on how effective separation would be in the event that a bank failed: if a trading arm failed, could you prevent its creditors having a claim on the assets of the deposit taking part. He added that two schools of thought existed on this issue: (1) that it is necessary to have full separation; and (2) that a hybrid model may be possible. The response was that the group did not seek any outside legal advice.

The Chair also asked about how differentiation between dividend payments and capital requirements for the respective parts of the bank could be made: there are plenty of opportunities to massage these figures. Ms Goyens suggested that this was for technical experts to resolve.

**State of play of the 2012 FSUG research studies** – presentation by Mr Jan Sebo and update by Mr Maciej Berestecki (Internal Market and Services DG/H3)

Mr Jan Sebo, who is in charge of the study on private pension products on behalf of the FSUG made an update on the progress of the study. He reminded that the draft final report of the study is due on 23 November and that two documents will be provided: a report and a database following which the FSUG will have only three weeks for comments. The FSUG members were requested to take a close look at both documents once they arrive and prepare their comments for the meeting with the contractor which is planned for December.

Mr Berestecki explained that the contractor for the 2012 FSUG study on remuneration structures of financial services intermediaries had already been selected and that the contract will be signed before the end of 2012. The procedure for the selection of the contractor for the 2012 study on ownership of the EU domiciled listed companies is still on-going but it is also planned to sign the contract with the selected tenderer still in 2012. Both projects would be launched at the beginning of 2013.

### **First discussion on the topic(s) of the 2013 research studies**

Several topics were suggested by the group members for the FSUG research study in 2013. A brief summary of each of them will be drafted by responsible FSUG members and circulated to the group to facilitate discussion and decision at the FSUG meeting in December. The following topics have been proposed:

- How to promote access and use of affordable saving products for all European financial services users, in particular low income people?
- Mystery shopping test on the implementation / enforcement of the legal requirements for “inducements” (commissions)
- Collective redress (class actions) in financial services
- Barriers to cross-border retail financial services
- EU asset management industry – analysis of costs and performance
- Empirical evidence on the function of credit bureaus and consumer data sharing
- Study on basic bank accounts (however due to the fact that the Commission may come up with a legal proposal on bank accounts shortly, it was decided that this topic will not be taken into consideration this year)

As every year, the FSUG will have EUR 150 000 available for research in 2013. It will have to decide whether this budget will be spent on one particular (and bigger) study or whether two or more smaller studies would be financed.

**Results of the consultation on shadow banking and the follow-up** – presentation by Mr Reinhard Biebel (Internal Market and Services DG/02)

The G20 is the leading actor in the area of shadow banking; it gave the Financial Stability Board (“FSB”) a mandate to look more closely at potential policy measures to strengthen the oversight and regulation of the shadow banking sector. The FSB has launched a public

consultation on this subject. Meanwhile DG Internal Market and Services has also launching a consultation in parallel. This presentation aimed to provide an overview of the Commission initiative and to give some insight into the work of the Financial Stability Board in this area.

Mr Biebel stated that several conclusions could be drawn from the crisis: that supervision was ineffective; products were overly complex; and that regulatory gaps existed. Insurers and money-market funds were not sufficiently regulated, creating systemic risks in the market. The interconnectedness between regulated and non-regulated activities led to high risks. The potential for regulatory arbitrage was most likely an incentive to transfer more activities into the shadow banking sector.

The objective of the Financial Stability Board initiative is, firstly, to map the shadow banking system, identifying the magnitude and nature of the shadow banking market. The Commission reported on this in October 2011. Second, it shall produce preparatory policy recommendations for limiting risks of activities, which should be adopted at the G20 in St Petersburg.

A main challenge in the Commission's own initiative is to identify the scope of shadow banking, and the nature of the entities that are involved in it. The Financial Services Board commenced with a broad definition, to capture a broad spectrum of entities undertaking activities such as credit intermediation, deposit-taking and lending. It has moved on to an economic activity-based definition, capturing a cluster of activities – primarily credit intermediation and maturity transformation, though this is not comprehensive. This definition forms the basis of the Commission's own work in this area.

The Commission wishes to preserve certain channels of activities that are useful to the economy and regulate those that present a systemic risk. Accordingly, the work is dominated by the key principles of: increasing transparency, reducing regulatory arbitrage; proportionality; maintaining existing useful channels; and contributing to European growth.

The Commission will publish analysis of the responses received to the consultation in the next few weeks. What is clear is that there is broad support for the view that stronger regulation is needed to harness systemic risks. Stakeholders believe that it is important to improve transparency while preserving those channels mentioned above. However, the Commission is lacking information to assess the sector and is working with Member States to develop better statistical tools and data.

Mr Biebel proceeded to outline the three potential methods for regulating shadow banking. The present question, however, is what form a policy response may take: a comprehensive Commission initiative on shadow banking, or an action plan setting out priorities (which the Commission currently prefers).

Various members noted that the consultation document did not appear to recognise the importance of the shadow banking sector: economies would struggle even more without it. The Chair commented that some aspects of shadow banking are evidently useful, but others do not appear to add value to the real economy; rather, they extract value and add risk, and the Financial Stability Board has not sought to evaluate which is which. Mr Biebel responded that it is difficult to differentiate between the "good" and "bad" activities, and in any event, work on shadow banking has to be seen in the context of the Commission's objective, such as facilitating access to finance and long-term investment.

### **State of play of the 2012 FSUG priorities reports**

The lead member will present the report on alternative providers of financial services at the December meeting. Members should provide him with further contributions on practices in their own Member State, including sources. He will draft the paper on the basis of the

contributions received. The annexes will have a mapping of every country with specific examples of what alternatives exist in each country, not just best and worst practices.

The Chair will send a draft of the report on financial supervision and sanctions by the 16 November. Comments are welcome, including those providing examples of effective sanctions in changing behaviour, since the purpose of the paper is to help regulators decide where and when to apply different kinds of sanction.

**Review of the Payment Services Directive** – update by Ms Birgit Weise-Montag (Internal Market and Services DG/H3)

The Commission is in the final stage of reviewing the impact of the Payment Services Directive (PSD). The Directive provides the legal foundation for the creation of an EU-wide single market for payments. It introduces information and transparency obligations for payment providers as well as certain rights and obligations for consumers. The review process is based on extensive consultations of a wide range of stakeholders and sources, including external studies, which provided the Commission with a comprehensive picture of the legal and economic consequences arising from the PSD. Work to date suggests that the PSD may need to be revisited both to adjust some of its provisions taking into account the return of experience gained since its entry into force, and to cater for latest market developments and innovation in retail payments as identified in the Green paper on card, internet and mobile payments. A revision of the Payment Services Directive therefore features as one of the main levers in the Single Market Act II, to be presented in spring 2013. The Commission report on the impact of the PSD, initially foreseen for November 2012, will be tabled at the same time.

Some of the key issues under consideration relate to:

- the Directive's scope and subject matter (including the exclusion of certain activities)
- the application of some provisions (for instance exceptions, passporting rules, certain rights and obligations); and
- licensing and supervisory practices.

As highlighted in the Single Market Act II, multilateral interchange fees (MIFs) shall also be addressed, however, most probably in a separate initiative. A decision has not yet been taken.

**Update on the OECD High-Level Principles on Financial Consumer Protection** – update by Mr Maciej Berestecki (Internal Market and Services DG/H3)

Mr Berestecki reported on the 6th meeting of the OECD Task Force on Financial Consumer Protection which was held on 26 October in Paris.

The Task Force aims to develop 'effective approaches' for the practical implementation of the G20 High Level Principles for Financial Consumer Protection (endorsed by the G20 leaders in November 2011) based on experiences of participating jurisdictions.

The objective of the meeting was to discuss the work plans for the development of 'effective approaches' for the implementation of earlier selected three priority principles:

- Disclosure and Transparency
- Responsible Business Conduct of Financial Services Providers and Authorised Agents
- Complaints Handling and Redress

For each of the principles a vice-chairing country has been selected who, together with the OECD Secretariat, will coordinate the development of effective approaches: Disclosure and



Transparency (Spain), Responsible Business Conducts (Mexico – temporarily), Complaints Handling and Redress (India).

Once the work plans are adopted, a first step for the vice-chairmen and the OECD secretariat will be to prepare detailed questionnaires seeking information and evidence on 'effective approaches' for each of the three principles in different jurisdictions. The EU will be requested to respond at the beginning of the process since it will provide a legislative framework for each principle to be then complemented / developed by EU Member States. Their task will be to demonstrate how the EU laws have been effectively implemented and the areas where further measures have been adopted at national level.

The Task Force will also make sure to consult all relevant stakeholders (standard setting bodies, consumer, trade and industry associations) at all stages of the process and in addition the work will be coordinated with FinCoNet in order to avoid overlaps.

Responses to the questionnaires are planned to be collected by January and based on them criteria for effective approaches will be proposed by March. Between March and May 2013 a draft report is supposed to be prepared by vice-chairmen, which following the endorsement by the Task Force in early summer, will be submitted to the G20 leaders meeting in September.

### **FSUG administrative issues**

The FSUG secretariat provided an update on administrative issues including the payment of members' fees, the timetable for 2013 meetings, the Commission's call for expressions of interest due in 2013, to form the group of members for the term end-2013/2014 – 2017.

A discussion ensued about the evaluation of the FSUG as well as the Commission's secretariat.