



## Minutes of the FSUG meeting 22-23 May 2013

### Wednesday, 22 May

#### **Adoption of the agenda and approval of the minutes of the last meeting (19-20 March 2013) – Tour de table**

The first day session of the meeting was opened by the Deputy Chair, given that the Chair was excused on the first day of the meeting. There were no comments to the minutes of the previous meeting. A summary of comments made by the members during the 'tour de table' session is provided below.

A member informed the group that a study on compliance with the Key Investor Information Document (KIID) is due to be published shortly in Austria. The study analysed 40 KIIDs assessing their degree of compliance and their readability. The Member offered to provide an abstract of the study in English. The Member also made reference to an IFF conference in Hamburg, which discussed the Insurance Mediation Directive regarding remuneration practices, disclosure requirements and prohibition of commissions regimes.

The parliament in Slovakia enacted a law banning fees related to contracting a loan. This approach mirrors action taken previously in Germany and the Czech Republic. There have also been two major regulatory changes in the area of occupational pensions, related to the payout phase, which establish a minimum guaranteed pension and another setting a cap on management fees and inheritance fees for voluntary individual savings accounts.

A study is being conducted by the Polish government on pension funds within the basic pension system (funded pensions). Action is expected to cut parts of the funded pension system and to correspondingly increase financing of pay as you go system.

A member expressed the view that the FSUG should be represented in the EU pensions forum that is being organised by DG EMPL. A member volunteered to represent the FSUG in this forum. The Commission ensured that it would contact the relevant service to attempt to make arrangements for the FSUG to be present at the meeting.

There are diverging views in Romania between consumer groups and authorities regarding the regulation of abusive clauses by credit institutions. Further details will be provided during the upcoming FSUG meeting in Romania about a newly established supervisory authority in charge of capital, insurance and private pensions markets.

Germany has adopted regulation to separate investment banking from commercial banking. The rules will only apply to the three major banks in Germany as a result of thresholds established by the regulation. These regulatory provisions will come into force in 2015.

In France there is a new legislative proposal that covers collective redress and the possibility for a consumer to move insurance providers at any time during the course of a contract.

A member referred to a meeting held with Commissioner Barnier where her organisation raised a number of issues relating to on-going trade discussions with the United States about the regulation of financial services as well as about indications of weak governance structures within national consumer protection authorities in a number of Member States.

The member also referred to the recently adopted Commission proposal for a Directive on payment accounts, asking for a thorough impact assessment on bank account portability.

In Italy, increased recourse to pawn brokers by consumers has been reported as well as a strong correlation between over-indebtedness and poverty. There is a lack of transparency in gold trading through pawn shops. In relation to the legal obligation to have bank account, a recent mystery shopping study has shown that Italian banks are making it difficult for consumers to access basic banking services, often offering more expensive packages to consumers.

Mortgage indebtedness continues to be a problem in Ireland, which the Bank of Ireland is trying to address. In addition a recent review of a sample of 500 mortgage contracts indicated many instances of overcharging of interest.

In Spain an on-going credit crunch is effecting the retail consumption very heavily. In addition a member referred to a meeting held with the Chairman of the European Securities and Markets Authority where the preferred shares scandal was discussed.

In the United Kingdom, consumer interest groups are waiting to assess how the recent regulatory changes establishing the Financial Conduct Authority may impact consumer protection. Reports on interest-only mortgages, which are the most popular form of mortgage in the UK show that a significant proportion of people will face a shortage (10% of debtors have no repayment strategy).

A member informed the group about a conference organised by DG EMPL on micro-credit due to take place in June.

**Impact assessment for the Commission legislative proposals** – presentation by Mr Claudio Collova and Ms Lenka Cervenkova (Internal Market and Services DG/B2)

Mr Collova presented the rules of the Commission impact assessment which is based on the 'smart regulation' approach under which the Commission policymaking must be evidence-based, cannot impose unnecessary costs on stakeholders, has to address identified problems, be proportionate to achieve the set goals, and finally has to follow the subsidiary principle. Impact assessment supports the Commission decision making process and it includes the following stages:

- Identification of the problem
- Assessment of the need for EU-level intervention
- Definition of objectives
- Development of policy options
- Analysis of the options impacts
- Comparison of the options
- Outline of the policy monitoring and evaluation

Impact assessment is a transparent process, including extensive consultation of stakeholders, which takes into account all possible costs and benefits as well as social, economic and environmental impacts. There is also an independent quality control of the impact assessment carried out by the Impact Assessment Board. The result of the impact assessment is presented in the form of a brief report (30 pages), which is simple to read and non-technical. There is also an executive summary of the report provided (up to 10 pages) which is translated to all EU languages and aims to give a fair and complete overview of the made analysis. Since 2007, when the impact assessment requirement was introduced for the Commission legislative initiatives, more than 600 impact assessments have been carried out and the Impact Assessment Board have issued over 500 opinions. In addition, the audit conducted in 2010 by the European Court of Auditors concluded that the Commission IA system is effective in supporting EU decision making, that no other system has a similar

comprehensive approach, that consultations with stakeholders are widely used and that Impact Assessment Board is contributing to quality of proposals.

**Project of the European Network and Information Security Agency (ENISA) on current practices on user identification and authentication in ePayment services** – brief discussion on the final questionnaire

Maciej Berestecki (Internal Market and Services DG/H3) presented briefly the final questionnaire prepared by ENISA under the project on practices of user identification and authentication in ePayment services. He requested the FSUG members to fill it in and to ask their respective organisations and their members to do it as well. He explained that it should not take more than 10 minutes and reminded that the objective of the project is to collect information on eIDAS (electronic Identity and Authentication Systems) used in e-Finance and e-Payment systems, analyse the risks associated with each eIDAS mechanism and produce guidelines report with best practices for involved actors: financial institutions, merchants and payment service providers.

The specific goals of the project are as follows:

- Identify authentication mechanisms used in financial and payment services, and the associated risks in collaboration with key stakeholders in the sector;
- Summarise the result of this analysis;
- Produce guidelines about the best identification and authentication mechanisms to be used to prevent identity theft or spoofing, based on identified risks;
- Address some key messages to the sector indicating the areas where improvement is needed.
- Disseminate the results.

**Staff Working Document on 3rd pillar pensions** – presentation by Mr Francesco Gaetano (Health and Consumers DG/B4)

Francesco Gaetano gave a brief overview of the Commission staff working document on 3rd pillar pensions, which is currently under public consultation. The document addresses two broad areas being; product information requirements and selling practices. This initiative is contained in the Commission White Paper on Pensions and is considered very important due to the long-term risks associated with pension products as opposed to short-term investment products.

The document includes within its scope all personal private pension products. This definition focusses on the onus that is placed on the individual retail investor when selecting a product. Mr Gaetano went on to explain that the document promotes a tailored discussion concerning some aspects of 3rd pillar pensions for which effective rules could be necessary or desirable, given their specificity. The information collected by the Commission currently indicates a high degree of regulatory fragmentation between different Member States. Therefore there may be a scope for action to address issues now faced by various jobholders, in particular mobile workers, who have many difficulties to build appropriate pension cover. However action may also benefit all types of (mobile and non-mobile) consumers.

The documents seeks to collect the views of stakeholders on the type of risks faced by individuals when purchasing a pension product out of the statutory or occupational context; how information asymmetries can be dealt with; how good selling practices would improve the market for private pension products; and what may be the most appropriate regulatory tools (voluntary codes of conduct and certification schemes) to regulate the information provided and the selling practices carried out by pension providers.

Finally Mr Gaetano encouraged the group to provide their contribution to the public consultation, which will run until 19 July 2013.

**Information campaign on the Consumer Credit Directive** – presentation by Mr Bert van Maele (Health and Consumers DG/B4)

Bert van Maele gave a presentation about an information campaign that was launched by the Commission in four European Countries being; Cyprus, Ireland, Malta and Spain. Based on the success of the campaign in these countries, it may be extended to other Member States.

The campaign lasts for one year and targets 18 to 35 year-olds, thus making use of social media as well printed information to approach its target audience. The information is provided to consumers in their own language and has been tailored to mirror local market conditions. The campaign will focus on five rights to consumers being: transparent advertising, pre-contractual information, clear contractual information, the right to withdraw from the contract with 14 days from signing a contract, and the right to repay before the term of a loan.

### **On-going consultations**

The below on-going consultations for which the FSUG is preparing a response were briefly discussed to confirm the names of the FSUG members who had volunteered to lead them. The deadlines for the FSUG to respond have been reminded and in addition it was requested to circulate the FSUG draft responses to all the group members for possible comments well in advance of the deadlines.

- Summary Report on Effective Approaches for the G20/OECD High Level Principles on Financial Consumer Protection (deadline 30.05)
- Green paper on the long-term financing of the European economy (deadline 25.06)
- Structural Reform of the Banking Sector (deadline 03.07)
- Consultation on the Green Paper on the Insurance of Natural and Man-made Disasters (deadline 15.07)
- Review of the European System of Financial Supervision (deadline 19.07)
- Commission Staff Working Document: Consumer protection in third-pillar retirement products (deadline 19.07)
- EIOPA: Discussion Paper on a possible EU-single market for personal pension products (deadline 16.08)

In addition, the group discussed briefly the issue of 'crowdfunding' in view of the participation of one of the members in a workshop organised by the European Commission on that matter. The FSUG members considered that more transparency should be ensured for these innovative financial 'products' and that there might be the need to better regulate them. The FSUG concluded by stating that more data and a proper economic analysis to measure risk-reward of crowdfunding are necessary.

### **Thursday, 23 May**

**Directive on credit agreements for consumers relating to residential immovable property** – presentation by Ms Emilie Truchet and Mr Francesco Tuzi (Internal Market and Services DG/H3)

Ms Emilie Truchet and Mr Francesco Tuzi presented the Directive on credit agreements for consumers relating to residential immovable property which had been recently agreed by the Council and the European Parliament. The European Parliament's plenary vote on the Directive is expected in September. Once the Council confirms the result, the Directive will be published in the Official Journal and Member States will then have two years to implement the rules into national law.

The Directive aims at creating a single market for mortgage credit with a high level of consumer protection while at the same time promoting financial stability by ensuring responsible lending to consumers. It covers two main aspects: (1) conduct of business rules and protection of consumers in relation to advertising and marketing materials; pre-contractual information; creditworthiness assessments, and early repayment; (2) a legal framework to ensure that all actors involved in the origination and distribution of mortgage

credit are appropriately regulated (e.g. credit intermediaries, non-banks) and introducing a passport for credit intermediaries.

Consumers will be better informed, so they can choose the mortgage product which best meets their needs. Lenders will have to provide them with a standardised information sheet (ESIS) which will allow them to shop around to identify the right credit. Borrowers will benefit from a guaranteed period of time before being bound by an agreement for a mortgage (through a period of reflection, a right of withdrawal, or both). The MCD also introduces Europe-wide standards for assessing the credit-worthiness of mortgage applicants.

In addition, lenders and credit intermediaries will be obliged to respect high-level principles in their direct contacts with clients. This means ensuring that the way they are paid does not prevent them from taking account of the consumer's best interests or disclosing any links between the credit intermediary and the creditor. Also, performance quality standards will apply for staff. That means staff will have to have appropriate knowledge and competence in fields identified, and be obliged to provide adequate explanation at the pre-contractual stage. There will be also standards for advisory services.

Moreover, the Directive will grant consumers a general right to repay their loans early, thereby benefiting from a reduction in the total remaining cost of the credit. However, Member States may decide that in such cases, creditors are entitled to fair compensation for costs directly and exclusively linked to early repayment. Creditors will be also encouraged to apply reasonable forbearance when being confronted with consumers in serious payment difficulties.

Finally, the Directive establishes principles for the authorisation and registration of credit intermediaries and establishes a passport regime for those intermediaries. This means that once authorised in a Member State, a credit intermediary will be allowed to provide services throughout the Single Market. This process is based on a number of conditions: credit intermediaries have to possess and keep updating to maintain an appropriate level of knowledge and skills, to hold professional indemnity insurance and to be of good repute.

**Commission proposal for a Directive on Payment Accounts** – presentation by Ms Zertasha Malik (Health and Consumers DG/B4), Mr Paolo Fucile and Mr Maciej Berestecki (Internal Market and Services DG/H3)

Zertasha Malik opened the session by introducing the Commission proposal on payment accounts. She listed the main provisions in the proposal relating to fee transparency and comparability and gave a brief description of each of the measures in the proposal. These measures comprise the requirement for payment services providers to provide a fee information document and a summary of fees incurred. In addition they need to make available a glossary of terms. The proposal also establishes the requirement to set out quality criteria for comparison websites in order to ensure independence, accuracy and timeliness of information. Where no comparison tool is able to meet these criteria, Member States shall be required to establish a publicly managed website. Packaged accounts are also included in the scope of the initiative, which establishes tailored information requirements for tied and bundled payment accounts.

Paolo Fucile went on to outline the proposals on switching procedures. The Commission's starting point in determining its policy action in this area was EBIC's Common principles for bank accounts switching. The Commission's assessment of the Principles indicated that their main shortcoming lay in an inherent difficulty to enforce the code rather than in the substance of the provisions as such. However the proposal goes beyond the scope of the Principles as it includes cross-border switching in its scope. The Commission approach aimed to bring harmonisation of practices within the Union, while it does not hinder Member States who have gone ahead with regulating switching in their domestic market. The proposal includes provisions to safeguard payment account holders in the event of losses incurred as a result of misdirected payments. These provisions are mainly intended to target third parties such as utility companies, with whom the payment account holder may have direct debit arrangements at the time of a switch.

Finally Maciej Berestecki addressed the provisions regarding access to a basic payment account. He initially gave some background information on the Commission's need to act in this area referring to the 2011 Recommendation on access to a basic payment account, which was not appropriately implemented in most Member States. He then went to the provisions in the proposal, which comprise a general non-discrimination clause, (that is not limited in scope to basic payment accounts) and the right to access a basic payment account across the Union. The proposal foresees that Member States shall require at least one payment service provider to provide basic payment accounts. The Commission wanted to avoid that basic bank accounts would be distributed only online, so as to avoid excluding disadvantaged sections of society that are most likely to benefit from access to basic payment services.

A question and answer session followed the oral presentations. The FSUG decided to draft a statement supporting the proposals and establishing best practices that would be addressed to the co-legislators.

#### **Capital Requirements Directive IV** – presentation by Mr Erik Van der Plaats (Internal Market and Services DG/H1)

Mr Van der Plaats presented the Capital Requirements Directive IV which had been recently adopted by the European Parliament and the Council. Following the financial crisis, the Basel Committee on Banking Supervision has reviewed its capital adequacy standards and the EU has actively contributed to developing the new capital, liquidity and leverage standards in the Basel Committee, while making sure that major European banking specificities and issues are appropriately addressed.

The overarching goal of the new rules is to strengthen the resilience of the EU banking sector so it would be better placed to absorb economic shocks while ensuring that banks continue to finance economic activity and growth. The proposal divides the current CRD (Capital Requirements Directive) into two legislative instruments: a directive governing the access to deposit-taking activities and a regulation establishing the prudential requirements institutions need to respect. Mr Van der Plaats presented the timeline for the adoption of the Directive:

- Commission proposal – 20 July 2011
- Council general approach – 15 May 2012
- European Parliament ECON report – 14 May 2012
- COREPER agreement – 21 March 2013
- EP plenary vote – 16 April 2013
- Lawyer linguist process on-going:
  - ✓ Most likely publication before 1 July 2013 then date of application will be 1 January 2014.
  - ✓ If publication after 1 July 2013 then date of application will be July 2014.

In addition to Basel III implementation, the proposal introduces a number of important changes to the banking regulatory framework.

#### For instance in the Directive:

**Remuneration:** In order to tackle excessive risk taking the remuneration framework has been further strengthened with regard to the requirements for the relationship between the variable (or bonus) component of remuneration and the fixed component (or salary).

**Enhanced governance:** CRD IV strengthens the requirements with regard to corporate governance arrangements and processes, and introduces new rules aimed at increasing the effectiveness of risk oversight by Boards, improving the status of the risk management function and ensuring effective monitoring by supervisors of risk governance.

**Diversity:** Diversity in board composition should contribute to effective risk oversight by boards, providing for a broader range of views and opinion and therefore avoiding the

phenomenon of group think. CRD IV therefore introduces a number of requirements, in particular as regards gender balance.

**Enhanced transparency:** CRD IV improves transparency regarding the activities of banks and investment funds in different countries, in particular as regards profits, taxes and subsidies in different jurisdictions. This is considered essential for regaining the trust of EU citizens in the financial sector.

In addition, the new rules seek to reduce to the extent possible reliance by credit institutions on external credit ratings by: a) requiring that all banks' investment decisions are based not only on ratings but also on their own internal credit opinion, and b) that banks with a material number of exposures in a given portfolio develop internal ratings for that portfolio instead of relying on external ratings for the calculation of their capital requirements.

And in the Regulation:

**A “single rule book”:** For the first time a single set of harmonised prudential rules is created which banks throughout the EU must respect. This will ensure uniform application of Basel III in all Member States, it will close regulatory loopholes and will thus contribute to a more effective functioning of the Internal Market. The new rules remove a large number of national options and discretions from the CRD, and allows Member States to apply stricter requirements only where these are justified by national circumstances (e.g. real estate), needed on financial stability grounds or because of a bank's specific risk profile.

In conclusion, Mr Van der Plaats presented the role of the European Banking Authority under the CRD IV. He explained that the new rules strengthen banking supervision further by requiring the annual preparation of a supervisory programme for each supervised institution on the basis of a risk assessment; greater and more systematic use of on-site supervisory examinations; more robust standards and more intrusive and forward-looking supervisory assessments.

#### **Interim report for the study on the remuneration structures of financial services intermediaries – meeting and discussion with IFF**

Institut Für Finanzdienstleistungen (IFF) was represented by Prof. Dr. Udo Reifner and Sebastien Clerc-Renaud. The purpose of the presentation was to review the interim report of the above mentioned study and address the FSUG's comments made both prior to and during the meeting.

IFF opened the session by recalling the project's phases, its main tasks and the scope of Member States to be covered by the study. Then IFF went through the conceptual framework used to develop the study's research questions and the assumptions made. The greater part of the presentation focussed on the approach taken by the contractor to tailor questionnaires used in the interview process with stakeholders. The contractor expressed the view that it favoured collecting detailed and substantiated information from a lower number of respondents than to focus on collecting a greater number of less detailed responses, which in their view would only represent opinion-based assessments that would then not be easily interpretable for the purposes of the study.

IFF also summarised some of the interim findings in the study regarding data collected within the sample of countries about total commission earnings, distribution channels and industry size indicators based on data on premia. As could be expected the study has presented some difficulties in comparing country data due to different market structures and regulatory differences concerning categories of intermediaries, their classification and different terminology in use.

A question and answer session followed the presentation. The FSUG agreed to provide further written comments to IFF in order to steer the study up to completion. The lead member on this assignment offered to perform a limited-scope mystery shopping study in

order to feed into the study with actual market feedback on compliance with remuneration disclosure regulation in Austria.

### **Update on the preparation to the FSUG external meeting (Bucharest, 10-11 June 2013)**

The Commission, together with the FSUG member from Romania updated the group on the state of play of the preparation of the FSUG meeting in Bucharest which will be held on 10-11 June 2013. The FSUG members were informed that the agenda of the meeting had been almost finalized and that it would be circulated to the members shortly. The hotel for the meeting, together with the meeting room had also been booked and the FSUG members were requested to make a pre-payment for the hotel by 24 May. The travel arrangements have also been briefly discussed and the Commission was requested to ask the responsible travel agency, contracted by the Commission, to start booking the flights for the FSUG members who confirmed their attendance.

### **Meeting with Mr Jonathan Faull, Director-General of DG Internal Market and Services**

Mr Faull thanked and congratulated the FSUG on the completion of its second year of operation, and on the renewal of contracts of all FSUG members. He added that the Commission highly appreciated the efforts and work carried out by the FSUG in 2012, and that the FSUG inputs were of essential importance and had an impact on developed policies and legislations. He also appreciated the FSUG for the involvement in the external research studies which provide the Commission with useful insights into the problems of financial users across the EU.

Mr Faull underlined that the Commission attaches utmost importance to the participation of all stakeholders, and in particular of users, in policymaking and that users' input is indispensable to counterbalance the lobbying power of the financial industry.

He reminded that the new call for expressions of interest to renew the FSUG had just been launched with a deadline for applications 21 June and that in line with the Decision setting up the FSUG, it is open to experts representing users of financial services, including present members of the group.

Regarding the initiatives adopted by the Commission since 2011 focusing on consumer protection, he explained that the Commission intended to ensure that the financial industry is at the service of the society and the real economy, and therefore, our initiatives aim for real growth but at the same time to guarantee a high level of consumer protection. To this last end, the Commission proposed a number of legal initiatives since 2011, e.g. MiFID, IMD, PRIPs, MCD, and it is very thankful for the FSUG substantial input to this work. In addition, the Commission had also very recently adopted the long-awaited proposal for a Directive on Payment Accounts.

Mr Faull also informed that the Commission continues aiming for strengthened EU regulatory and supervisory framework, driven by the G20 agenda, to address the shortcomings exposed by the financial crisis. In this respect, the European Parliament and the Council not so long time ago reached an agreement on the banking union proposal with the objective to reinforce the stability of the EU financial sector and to consolidate the single market by centralising supervisory powers in the ECB. Furthermore, the Commission is currently looking into the policy options to follow up on the Liikanen report which recommended structural separation of the commercial and investment banking.

He also pointed out that the Commission will very soon propose another initiative with a very strong consumer protection angle, namely the proposal for a revised Payment Services Directive, which among others would provide for more consistent rules on liability of consumers for unauthorised transactions and on surcharges for the use of particular payment instruments.



Mr Faull concluded by stressing that the Commission strongly appreciates the FSUG opinions and believes that the FSUG is best placed to continue providing the views of users of financial services in respect of present and future projects of the Commission.

#### **State of play of the FSUG external studies**

- Who owns the EU Economy: evolution of the ownership of EU-listed companies between 1970 and 2012

The FSUG member in charge of the study asked for comments, if any, to be provided by other members as soon as possible on the interim report for the study submitted earlier by the contractor. He said he was planning to send them to the contractor in the next few days. It was also proposed to invite the contractor to the FSUG meeting in July to discuss the preliminary draft final report which should be submitted at the beginning of July.

- Terms of reference for the 2013 FSUG studies

It has been decided to take this point of the agenda at the FSUG meeting in Bucharest in June.

#### **Conclusions**

A number of administrative points were addressed during the closing session of the meeting, including the status of concluding preparatory work for the meeting to be held in Bucharest and the members' reimbursement procedures.