



## Minutes FSUG meeting of 12-13 May 2011

Welcome note by Mick McAteer, chairman of FSUG.

### 1. Adoption of the agenda

The group adopted the agenda. Minutes from the last meeting were approved.

### Feedback from participation in external events

No feedback from participation in external events was given. Some members suggested having an update on the work of Finance Watch to identify common points of interest or possible collision with its activity.

One member updated the group on a future event entitled “Reflections on the Mortgage Directive: Specialised Credit Markets – Specialised Regulation” to be held on 24 May 2011 in Brussels and invited the members to participate. A programme will be circulated to all group members shortly.

### 2. State of play of the Basel III implementation projects – presentation by Mr Mario Nava (Internal Market and Services DG)

The Internal Market and Services DG debriefed the FSUG on the state of play of translating the Basel III guidelines into EU legislation, in particular in what concerns the Capital Requirements Directive IV (CRD IV). The European Commission will present by the end of the summer its proposal for new minimum capital reserves and liquidity requirements for banks. These minimum requirements will implement new international standards for capital reserves following the Basel III guidelines agreed on in December 2010. Because Basel III standards are not legally binding, the Commission services are currently working on the implementation of Basel III through the revision of the Capital Requirement Directive (CRD). In 2010 the European Commission held public consultations regarding further possible changes to the Capital Requirements Directive.

The third of the Basel Accords was developed in a response to the deficiencies in financial regulation revealed by the global financial crisis. Basel III strengthens bank capital requirements and introduces new regulatory requirements on bank liquidity and bank leverage.

These new minimum standards for capital requirements and liquidity requirements for banks not only increase the amount of capital but also the quality of this capital. They raise the minimum high quality capital buffers from 2 % to 7 % (including an additional 2.5 % countercyclical buffer) of their total risk-weighted assets. In addition to revising risk-based

minimum capital requirements, Basel III also introduces a leverage ratio as well as short and long term minimum liquidity ratios.

Leverage ratio proposes that banks do not become excessively leveraged meaning that the capital requirements are complemented by a non-risk-based leverage ratio that will serve as a safeguard for risk-based measures.

The purpose of the liquidity ratio is to ensure the bank can manage a short term and long term liquidity crisis. The short term liquidity indicator estimates the bank's liquidity against net cash outflows over a 30-day period under stress assumptions and the long term liquidity indicator requires banks holding at least an amount of long term funding equal to its long term assets. Long term generally means more than one year. The aim is to significantly reduce the refinancing risks on the balance sheet.

Some members questioned on the impact of CRD IV and of Basel III on consumers. The Commission explained that in the event of an increase in equity capital, the issue lies in how the costs will be divided between banks cost-cutting, investors and consumers. However, given the current high number of banks in Europe, a high impact on consumers is not likely. Another point mentioned is that Basel III will be beneficial for consumers in the long-run providing safeguard measures to avoid any future financial crisis from happening.

### **3. Public consultation based on a Green Paper the EU corporate governance framework** – discussion of FSUG response (open consultation deadline 22 July)

The Commission adopted a Green Paper on The EU corporate governance framework which launched a public consultation on possible ways forward to improve existing corporate governance mechanisms. The Green Paper contains questions touching upon: boards, shareholders and the comply-or-explain principle and covers issues like shareholders' say on pay, the composition of boards (including gender diversity), employee share ownership, minority shareholder protection, etc. The public consultation document consists of 25 questions.

One member updated the group on the progress in delivering a response to the consultation document. One of the issues raised was whether to include institutional shareholders in governance and how to definite corporate governance per se. In this context, two approaches of corporate governance exist – the stakeholder and the shareholder approach. Furthermore, the group was debriefed that 12 questions have been so far answered to but, as the deadline is 22 July, reflection on the final responses will be given at the next meeting on 6–7 July. One member will circulate a study on the corporate governance model in Sweden. The corporate governance subgroup members agreed it might prove useful to insert in the response examples of different corporate governance models and possible detriment caused.

### **4. Presentation of the Draft guidelines of the Commission for the calculation of APR in the Directive on consumer credit agreements** – presentation by Ms Maria Lissowska (Health and Consumer Policy DG/B4)

The Health and Consumer Policy DG gave a presentation on the draft guidelines for the calculation of APR in the Directive on consumer credit agreements (2008/48/EC). Primarily, members were debriefed that the transposition deadline for the Directive was June 2010 and that so far 24 Member States adopted the Directive. The Directive sets the principal areas of full harmonisation which include information requirements at advertisement, pre-contractual and contractual stage, right of withdrawal and right of early repayment. It also defines APR

as a single figure representing total cost of credit for the consumer and is calculated on the basis of assumptions at advertisement, the pre-contractual stage, and finally on real contractual conditions at contractual stage. The formula and assumptions to be applied in calculation of APR are listed in Annex I of the Directive.

Given that some Member States encountered several problems in the process of implementing the Directive and that there is a possibility for amendments of assumptions via comitology, the Commission services are currently conducting a series of discussions on possible amendments and problematic issues.

Against this background, members were updated that the first meeting of the Committee was held on 3 March when the working group of experts was set and that the second meeting of the comitology Committee is planned for 30 June when the results of the work of the expert group will be considered and draft measures will be voted on.

One member posed a question on consumer understanding of APR in general and its usage. Another group member suggested the costs of default should be made more transparent. In EU 15 there is a long term habit of using APR and consumers are familiar with it but in new Member States sometimes consumers do not thoroughly understand it, so more emphasis should be placed on financial education. Default costs are excluded from APR, but at pre-contractual stage information on default should be given. Also, linkage of CCD to the Unfair Commercial Practices Directive (UCPD) was mentioned in the framework of information clarity at pre-contractual stage.

**5. Update on the Packaged Retail Investment Products (PRIPs) initiative—**  
presentation by Ms Esther Wandel and Mr Timothy Shakesby (Internal Market and Services DG/G4)

The Internal Market and Services DG briefly mentioned the conference on behavioural economics held in the USA (Behavioural Finance (BeFi) Forum, Washington DC). In this context, one member questioned the possibility of quantifying human behaviour and its transfer into real life situation. It was explained that it is difficult to quantify human behaviour as factors influencing it are numerous, namely psychological and linguistic influences. Moreover, it is acknowledged that the rational choice theory does not function well in real life and the question is if it is rational to assume consumer rationality.

Concerning the PRIPs initiative, members were informed that the open consultation was organised through 3 consultation documents i.e. alongside the consultation on the review of the Insurance Mediation Directive (IMD) and the one on the review of the Markets in Financial Instruments Directive (MiFID). It was mentioned that useful input was given especially regarding technical points and that contributions received are available on the Commission website. Currently, the Commission services are working on finalising the impact assessment. The legislative proposal is planned for Commission adoption in July 2011.

FSUG members were updated on the future Social Business Initiative (SBI) which was flagged in the Single Market Act as an action to promote social entrepreneurship. The aim is to introduce more fairness in the economy and contribute to the fight against social exclusion. In order to ensure a level playing field, the Commission will present a legislative proposal on the transparency of social information provided by companies in all sectors. The consultation document shall be made public in July 2011. More updates to be discussed at the 6-7 July meeting.

**6. FSUG work programme regarding priorities and research projects** – discussion with relevant policy officers on draft proposals for Terms of References of studies in three separate working groups

The following three topics were selected for research:

- a) Remuneration structures/practices and conflicts of interest
- b) Pension reform and pension products
- c) Mortgages and repossessions – best practices and consumer protection

Prior to the meeting the FSUG members submitted to the Commission services a first draft of the Terms of reference for the 2011 studies. Several Commission policy officers were invited to provide feedback on the drafted documents.

**a) Remuneration structures/practices and conflicts of interest**

The purpose of the study on remuneration is to look into the existing microstructures in a sample of Member States. The study will cover all types of intermediaries (i.e. insurance brokers, insurance agents, consultants, credit intermediaries) and will identify bad/best practices within different remuneration models. The research will also touch upon the commission vs. fees systems, the level of commissions in Member States and detriment caused to consumers.

It was suggested that Italy, France and Luxembourg to be included on the list of sample Member States. One policy officer suggested adding one Baltic country in the research because Baltic countries do not have their own banks but mostly branches of foreign banks and it could prove to be an interesting point of comparison to other existing models.

**b) Pension reform and pension products**

The study will aim at conducting a mapping exercise to identify clusters of countries with similar pension systems in place, covering the second and the third pillar pension systems. Research will look into assessing coverage and trends, safety (indicators, level and scope of regulation), cost-effectiveness analysis and investment risk. The study will focus on 'products', not just 'models' and will analyse adequacy and safety of existing pension products, including the concrete risks run by consumers in a number of Member States.

**c) Mortgages and repossessions**

Research will focus on two issues: personal bankruptcy laws and 'datio in solutum' or 'datio in payment'. The study will cover 15 Member States, among which a Nordic and a Baltic state.

Overall, the proposed Terms of Reference were found ambitious and covered issues of importance to the Commission services involved. In this context the policy officers also drew the members' attention to practical details such as the importance of choosing the appropriate methodology and taking into account the existing budget constraints when drafting the Terms of Reference.

**7. Legislation on central securities depositaries (CSDs) – (deadline end June/beginning July) – presentation by Mr Marcel-Eric Terret (Internal Market and Services DG/G2) and discussion of FSUG response**

The Internal Market and Services DG was invited to provide more information on its expectations from FSUG's feedback on the future legislation on central securities depositaries (CSDs). The Commission is currently working on two pieces of legislation related to securities (i.e. Securities Law Directive and CSDs). Members of the group were invited to provide a comprehensive response to the questions covered by the presentation on CSDs and to address any other points related to this matter from a consumer/investor perspective. One group member drew the attention to possible conflicts of interests if an issuance body is to be found at the beginning of the holding chain and also identified as intermediary further down the holding chain.

**8. Update on the Review of the Markets in Financial Instruments Directive (MiFID) – presentation by Mr Salvatore Gnani (Internal Market and Services DG/G3)**

The Internal Market and Services DG thanked the FSUG for the contribution to the Review of the Market in Financial Instruments Directive (MiFID) and gave an update on it. The consultation period on this initiative is now closed. The review of MiFID will take into consideration a number of issues, such as recent market developments (i.e. progress of innovation and technology), orientations at G20 level, the institutional context (i.e. setting up of the ESAs) and the interaction between this initiative and other regulatory proposals touching upon related issues. The presentation described the main proposals on which the Commission has consulted and the answers received by different stakeholders, with a particular focus on the proposals dealing with the protection of investors in the provision of investment services. Currently, there are ongoing discussions on possible ways to move forward but the proposal is planned for Commission adoption in July, to be delivered as a package together with the review of the Market Abuse Directive (MAD).

For information purposes, the Internal Market and Services DG wishes to provide the FSUG members with a link to a Consumer Market Study on Advice within the Area of Retail Investment Services,  
[http://ec.europa.eu/consumers/rights/docs/investment\\_advice\\_study\\_en.pdf](http://ec.europa.eu/consumers/rights/docs/investment_advice_study_en.pdf).

**9. Update on the Review of the Market Abuse Directive (MAD) – presentation by Mr Philip Tod (Internal Market and Services DG/G3)**

The Internal Market and Services DG provided the group with an update on the review of the Market Abuse Directive (MAD). The consultation period for this initiative closed in 2010. The focus of MAD is on insider dealing and market manipulation. One group member questioned the Commission's approach to market abuse on the derivatives market in particular in what concerns speculation. The Internal Market and Services DG clarified that speculation can be abusive, but in most cases is considered as being legitimate. However, the Commission is considering in the context of the review of the Markets in Financial Instruments Directive (MiFID) whether any measures are necessary (e.g. position limits) to tackle the possible negative consequences of excessive speculation through commodity derivatives on the prices of underlying commodities. It was also mentioned that the use of derivatives to manipulate prices of other financial instruments is considered as market abuse. For this reason the Commission tries to provide the necessary tools to detect and address such practices.

## **10. Standardisation of corporate actions and general meeting processes – presentation by Mr Christoph Schieble (Internal Market and Services DG/G2)**

The Internal Market and Services DG gave a presentation on the Commission's work stream on the standardisation of corporate actions and general meeting processes inviting FSUG members to reflect and provide feedback on how this type of exercise is perceived by consumer/investor representatives.

## **11. Overview of draft proposals on Terms of References for studies**

Following discussions held on the first day of the meeting it was agreed that a new draft of the Terms of Reference for the three studies will be submitted for review by the Commission services in two weeks' time. The Commission shall provide advice on substance and tender specifications.

## **12. Discussion of membership of ESA stakeholder groups including a discussion over FSUG complaint letters on consumer/retail investor underrepresentation in the ESA's advisory groups – finalisation of FSUG reaction**

FSUG members concluded that there is an unbalanced representation of industry and consumer interests on the European Supervisory Authorities' (ESAs) advisory groups, with many more industry representatives on the board. They also stressed the fact that there is an unbalanced geographical representation with heavy industry representatives from Western Europe and more low profile consumer representatives at EU level from Eastern Europe. Hence, the FSUG is currently finalising the complaint letters to the three ESAs and, in case of an unsatisfactory response, the members of the group are considering submitting a complaint to the European Ombudsman. However, further clarification shall be provided by the Commission on whether such measures fall under FSUG's sphere of activity. The complaint letters will be finalised and sent out to the three ESAs by the 6-7 July meeting.

## **External relationships of FSUG**

To further develop FSUG's external relationships it was agreed to draft a proposal reflecting the principles for external relationships with other groups. One FSUG member will circulate a first draft. Group members shall send to the chairman more names of external groups for possible contact. In this context the Commission shall ensure full operability of the FSUG website by end May at the latest.

## **13. Conclusions**

FSUG members suggested Greece or Romania as possible destinations for the 20-21 September meeting. The group will decide by the 6-7 July meeting on the exact location, pending further clarifications from the Commission on the extent of support to be granted to facilitate the organisation of this meeting.

## **List of participants**

FSUG: all members, excluding Guillaume Prache and Anne-Sophie Parent.

Commission:

Internal Market and Services DG: Anita Varga (H3), Irena Vukic (H3)

DG Health and Consumers: Fotini Zianga (B4)