



## **Minutes FSUG meeting of 22-23 February 2011**

### **1. Election of the chairperson and vice chairperson**

FSUG members elected Mick McAteer as chairperson and Guillaume Prache as vice chairperson for one year.

### **2. Adoption of the Rules of Procedure**

The group adopted the rules of procedure by amending Articles 12 and 17. It was also agreed that minutes will be adopted by written procedure, silence meaning acceptance. If amendments are made, they will be discussed at the following meeting.

### **3. Feedback from participation in external events**

A member represented the FSUG at the debate of the European Parliament Financial Services Forum (EPFSF) on the response from the financial industry to the crisis at which BEUC and UEAPME were also present. As observer, FSUG can listen but also ask questions. The participating FSUG member expressed concerns regarding banks' behaviour that did not change, doubts regarding the CRD review, and expressed hope that the PRIPs initiative would harmonise all investment products. The next meetings will be held on 2 March on responsible lending and borrowing and on 13 April on investor protection. This FSUG member encouraged members to participate actively by reason of MEPs' presence who listen to stakeholders' concerns. Another member suggested asking for direct hearings with the EP committees, in order to be more efficient, and proposing amendments to EP documents.

### **4. Consultations on ADR and collective redress**

DG Health and Consumers presented the consultations on Alternative Dispute Resolution and Collective Redress open until 15 March and 30 April respectively.

The first one comprises schemes in which a third party helps consumers and businesses to solve their dispute (mediation, conciliation, arbitration). Some measures already exist at EU level: two non-binding recommendations on ADRs and some sector-specific Directives (encouraging or obliging Member States to create ADRs (MiFID, Consumer Credit Directive and Payment Services Directive as well as Directive on Mediation Linked to Court Procedures). Cross-border consumer disputes are a crucial issue for DG Health and Consumers (ECC-Net and FIN-NET already deal with such disputes). ECCs could be entry points for consumers to help raise consumer awareness.

Internal Market and Services DG underlined the difference between FIN-NET and ECC-net. FIN-NET is a network of ADRs in financial services, while ECC-Net only directs consumers to a particular ADR, not being a network of ADRs as such. FIN-NET has been operating since 2001. There is no full coverage of the sector as some ADRs have not joined the network. As many recent directives in financial services sector oblige providers to set up ADRs, the Commission will work to ensure that such ADRs join FIN-NET.

DG Health and Consumers encouraged the group to contribute to the consultation from the financial services side, in particular regarding online dispute resolution, e-commerce transactions, incentivising traders to be more willing to participate in ADR, and on the funding issue. On 16 March, a joint event with the European Parliament will be organised on ADR.

Finally DG Health and Consumers reassured FSUG that it intends to complement what already exists and not replace what is working well.

One member highlighted that providers lack incentives to engage in the ADR process. The best way to improve this would be through collective redress. Another member stressed that current recommendations did not work. Another participant underlined the necessity to make information more accessible the way the UN Convention on the rights of the disabled has done. A third considered efficient redress mechanisms (ADR and collective redress) key for consumer confidence, and indicated financial services as the most problematic sector. Another member suggested that participation in the ADR schemes should become obligatory.

The lack of transparency of ADR schemes in general was underlined. The guarantee of impartiality and the costs are very important as they can discourage consumers from engaging with ADR schemes. A binding instrument was considered necessary in order to force schemes to respect minimum criteria. There was also a comment on the subordination of arbitration courts to supervisory authorities, due to which providers lack confidence in ADRs' impartiality.

DG Health and Consumers follows the twofold strategy which aims at dealing with both individual and a group of consumers. It is aiming for a proposal for a Directive for the fourth quarter of 2011. The ADR proposal would also promote collective ADR schemes. Ombudsmen are considered ADR schemes under this proposal. Any suggestions on the effectiveness of ADR bodies are welcome. DG Health and Consumers is also working on ensuring the impartiality and independence of ADRs.

Sub-groups were formed to respond to the consultations.

## **5. Public consultation on legislative changes to the UCITS depositary function and to the UCITS managers' remuneration**

The Chairperson highlighted the strategy of the group which should be to focus on the detriment caused to consumers (which detriment, how does it happen and how to prevent it).

The group supports the overall aim of the UCITS consultation and emphasises the need for consistency and coherency amongst the different tools (UCITS, IMD, MiFID and PRIPs). It was felt that the Commission should prevent detriment instead of fixing it. Consumer groups should be able to send an early warning against an actor's behaviour to a supervisory entity.

The leader of the sub-group presented the draft response. Comments mainly concerned the burden of proof, remuneration and conflicts of interest.

It was agreed to send the response to the consultation by the end of February.

## **6. Public consultation on the Level 2 implementing measures for Solvency II**

The leader of the sub-group presented the draft response. The main questions concerned firstly, whether swaps or government bonds would be the best benchmark, and secondly, whether there is need for access to insurance (cheaper but riskier) or safe insurance (more expensive).

One member suggested adding that the impact of capital requirements on small insurers should be monitored because many of them could disappear from the market. Since Solvency II is designed to protect holders, one member also suggested adding in the general remarks the possible dangers such as the conflicts of objectives.

It was agreed to send the response to the consultation by the end of February.

## **7. Consultation on the review of the Insurance Mediation Directive**

The leader of the sub-group presented the draft response. In general there is a need to emphasise the link with PRIPs and MiFID and to harmonise the rules on selling practices and conflicts of interests, so that the same level of investor protection would be ensured.

According to one member, the main reason limiting cross-border activity is the contract and civil law liability. In Germany, for example, insurance intermediaries avoid giving advice to consumers since they will be held liable in case of wrong advice. Avoiding conflicts of interest and ensuring transparency for the consumer in any case are key issues. One member stated that there is no evidence that transparency works for lowering costs as concerning complex financial products, competition tends to drive prices up. Finally, regarding the commissions of intermediaries, caps were regarded as the only adequate instrument to control them.

It was agreed to send the response to the consultation by the end of February.

## **8. Discussion of the priorities of the FSUG and possible need for carrying out research**

The group decided on the following priorities and research projects for 2011, taking into account the number of consumers affected, the level of consumer detriment and benefit and the need to prevent new problems from emerging.

Priorities:

- collective redress
- consumer protection and supervision
- price transparency
- self-regulation

Research projects:

- pension reform and pension products
- mortgages and repossession – best practices and consumer protection
- remuneration structures and practices in the financial system and conflicts of interest

Volunteers to draft the Terms of Reference were asked to send their names to the chairpersons.

It was decided to carry out a mystery shopping study on MiFID and a study on the implementation of the CCD in 2012.

## **9. Consultation on the study of interest rate restrictions**

The leader of the sub-group presented the first draft. Internal Market and Services DG stressed the objective of this study which is to establish an inventory and assessment of interest rate restrictions, and welcomed the group to develop in-depth arguments.

Regarding the introduction of caps, the Group had arguments for and against but a general support for the cap principle was finally found with the justification of preventing over-indebtedness. However, caps should be decided at national level by regulators in order to ensure that each Member State deals with their own interest rate restrictions (principle at EU and implementation at national level). Caps should also include charges.

It was agreed to send the response to the consultation by 22 March.

## **10. Presentation of the Finance Watch initiative**

Finance Watch (FW) project manager Mr Philipponnat had been invited by the FSUG to give a presentation of the initiative. The purpose of FW is to offer expertise and strengthen the lobbying capacity of civil society including consumers in financial services. The project started on 1 December 2010 and is supported by 88 MEPs from 7 political groups. Future founding members are invited to manifest themselves before 25 March. Nevertheless, it will also be possible to become a member after that date. Provided that a critical mass of founding members is reached, the Association (to be established under Belgian law) will be created in April 2011. It should be running by summer 2011.

Its objective is to cover the full spectrum of financial regulation issues, firstly a reactivity work stream (topics of the agenda of the European Parliament, Commission, and the Council), and secondly a proactive work stream (fundamental issues concerning regulation). 10-12 people will be recruited to produce expertise. Expertise will be shared with member associations, which should relay the information to their own members.

The funding will be around EUR 2 million per year. At the moment, there are two sources of funding: Fondation Progrès de l'Homme and private funding from 10-15 MEPs. Marginal funding is envisaged from membership fees or donations. Funding by the Commission is also possible.

Funds from financial institutions or banks will not be accepted in order to guarantee impartiality and to avoid conflict of interest. Funds will have to be granted unconditionally. A committee on independence will be set up. FW's position will not be binding on its members.

FW aims at developing a horizontal relationship with consumer organisations and hopes to help them on very technical issues. One member defined the FW initiative as a unique opportunity to address the severe imbalance between financial providers and financial users lobbying.

## **11. Consultation on technical details of a possible European crisis management framework**

Internal Market and Services DG presented the consultation which serves as input to the legislative proposal on bank resolution and recovery. The rationale is to give authorities the powers they need in letting service providers fail in an orderly way. It will also serve to reduce the possibility of a new crisis. There will be obligations for banks and supervisors to plan ahead what actions they intend to take.

Several problems were underlined by members such as where to draw the line between saving the bank and saving the savers, the unforeseeable effects of regulation, the remuneration issue, and problems associated with the 'too big to fail industry'.

A sub-group was formed to draft a reply to this consultation by 10 March.

## **12. Update on Insurance Guarantee Schemes**

Internal Market and Services DG presented an update on Insurance Guarantee Schemes (IGS). Currently, the European Union is split in two: Member States with IGS and those without. The Commission is trying to spread best practices in the EU. A proposal for a Directive is expected for the end of 2011 to provide a similar level of consumer protection across and within Member States.

The FSUG highlighted that EUR 11 billion will not be sufficient in the worst case. IGS must be seen as a complementary tool to supervisors which themselves should focus on the big players of the financial sector. IGS should be financed by the insured and not by taxpayers.

## **13. Review of Markets in Financial Instruments Directive**

The leader of the sub-group presented the draft response to the MiFID paper. Differentiation between complex and non-complex products is irrelevant – a better approach would be to differentiate between a qualified and a non-qualified investor. The FSUG research project on price transparency could be useful for the MiFID review. It was proposed to mention conflicts of interest. Concerning responsibility in offering a wrong product, the burden of proof should be on the bank.

The response will be amended to include comments and sent to the Commission by the 28 February deadline.

## **14. Conclusions**

Members were asked to submit to the chairpersons a list of committees the FSUG should develop relations with. Before the next meeting, members should volunteer for leadership in research projects and priorities. At the next meeting, planning for 2011 will be discussed.

One member offered to arrange for a presentation and discussion on the merits of the reintroduction of basic savings and lending facilities.

## **List of participants**

FSUG: all members, excluding Federico Ferretti and Maeve Brehony

Commission:

Internal Market and Services DG: Philippe Pellé (H3), Maris Ilves (H3), Mattias Levin (H1) and Massimo Marchesi (H2)

DG Health and Consumers: Sebastian Bohr (B4), Jelisaveta Stankovic-Banka (B4), Agate Esch (B4)