



Minutes FSUG meeting of 16–17 November 2011

Wednesday 16 November

Adoption of the agenda, rules of procedure and approval of last meeting's minutes (18-19 October)

The meeting agenda was modified, to add a point on the group's paper on Collective Redress, and was adopted as amended. Minutes from the last meeting were approved.

Studies: Various members requested for clarifications in advance of the discussion on offers received for the three studies requested by the group.

Tour de table:

- Members' activities of FSUG interest
- Update on identified consumers' risks or detriments as early warnings which could potentially be reported to ESAs
- Debrief from the meeting with the Chair of EBA

One member of the group briefly presented a brochure named 'A good investment' issued by BEUC. The Chairman of the group commented on the similarities between this publication and the group's own draft position paper on Financial Supervision and noted that the paper should be discussed in the meeting to be held in January.

A member from Czech Republic informed the group that he was appointed on the national implementation council of SEPA.

An FSUG member briefed the group about recent statistics on revolving credit in Belgium indicating increasing levels of personal debt. Revolving credit increased by 26 % in 2010. New revolving credit amounted to 412 000 new contracts in October 2011 alone. The number of defaults overall increased by 2 % during 2011, and 4.5 % on revolving loans. The overall amounts of debt increased by 10 %. The member asked whether other members had comparable data in their Member State. The chairman noted that trends in the UK differ between middle income earners whose overall indebtedness appears to be lowering and lower income earners where more difficulties are apparent.

One member of the group highlighted ongoing research in Austria on the performance of private pension products. Preliminary findings indicate that fixed yields could be as low as between 0.2 and 0.8 %. The yield for a 35-year-old male over a 20-year period could be

approximately 1.3 %. This was complemented by a mystery shopping exercise assessing fees demanded by financial intermediaries selling pension products and the level of expenditure for retail investors.

For action: The Chairman asked the member to circulate the study when completed.

For action: The Chairman suggested that the group should create a repository of all research projects carried out by their respective organisations or other studies of which they are in receipt.

A member of the group made reference to a mystery shopping exercise carried out in Germany which looks at written documentation which is required under German statute by financial advisors. This documentation is to be used as proof of misleading or inadequate information in the event of a claim from a retail investor.

A member of the group indicated the risk that financial institutions would be tempted to make use of misleading tactics to attract capital in the form of deposits as a result of stricter capital adequacy requirements to be introduced following BASEL III. He provided an example in Spain, where old age clients (in the region of 5 000 savers) were reported to be victims of such attempts and have brought an action to the courts through the consumer organisation he represents.

The issue of pressures to raise capital vs. respecting consumer protection measures was also the subject of a mystery shopping exercise in the UK that looked into aggressive sales practices adopted by investment advisors and the level of disclosure of commission-based remuneration.

An FSUG member briefed the group on newly enacted legislation in Ireland covering powers given to the Regulator to dissolve a bank as well as other measures including the lowering of the period after which debt obligations are prescribed following personal bankruptcy (from ten years to three years) as well as debt forgiveness measures. The member then commented on some negative aspects of such measures, without criticising the measures as such. He indicated that such measures have a cost (through for example higher provisions for losses made by banks) which most likely will be shifted onto bank clients.

The same member proceeded to comment on the adverse impact that lowering bank base rates as a result of the ECB rate has on savers in a protracted low interest rate period, while borrowers may have an interest in seeing their borrowing rates shrink. The group discussion went on to highlight the level of dependence society has on financial markets and the risks of a lack of governance.

For action: The Chairman suggested looking further at the issues raised during the tour de table session and requested the group to suggest names of relevant MEPs that could be invited to a meeting of the group for this purpose.

Follow-up on the public consultation on an EU corporate governance framework – presentation by Mr Matthias Schmidt-Gerdt (Internal Market and Services DG/F2)

The public consultation on the EU corporate governance framework was launched on 5 April and closed on 22 July 2011. The consultation does not focus on financial institutions and is not linked to the financial crisis but it aims to explore ways forward to improve corporate governance in companies at large. The key issues investigated in the consultation were the following:

- How to improve the functioning of boards?
- How to enhance shareholders' involvement?
- How to improve monitoring and enforcement of national corporate governance codes?

A total of 409 contributions to the consultation were received, 85 % of which came from organisations (including retail investors' organisations), 8 % of them were submitted by public authorities and 7 % by citizens.

In general, the respondents welcomed the reflection on the improvement of the corporate governance framework and were divided as to the need of further regulation on the EU level. They favoured a principle-based and flexible approach against one-size-fits-all. Some of the contributions called for EU measures in some specific fields, like for instance shareholders' identification or disclosure of remunerations. In addition, respondents opposed specific corporate governance rules for small and medium listed companies as well as corporate governance measures for unlisted companies.

The results of the consultation will be duly analysed and based on this proposals for any new measures will be presented in a package together with proposals on company law (taking into account the results of the upcoming consultation on the future of EU company law) in the second part of 2012.

The results of the public consultation are available at: http://ec.europa.eu/internal_market/company/modern/corporate-governance-framework_en.htm.

Revision of the IORP Directive – presentation by Mr Eelke Postema (Internal Market and Services DG/H2)

Mr Postema referred to a previous presentation to the group made in April. As indicated in that presentation the Green Paper attracted a large number of responses. The White Paper that is being prepared by the Commission builds on these and is expected to be adopted by the end of the 2011. Its publication was foreseen during the 3rd quarter but was delayed.

Meanwhile, the ongoing revision of the IORP Directive for occupational pension funds should also be completed by the 4th quarter of 2011. Mr Postema went through a number of features of this revision which include provisions to enable employers to join a pension scheme in another Member State to benefit from the internal market by lowering the overall cost of pension provision or the system for the provision of information by pension funds, (which he clarified only refers to 2nd pillar pensions). He also mentioned that, with regard to quantitative rules for assessing asset and liability values, the IORP revision takes inspiration from Solvency II provisions for insurers while taking account the specificities of occupational pension funds.

Mr Postema indicated that EIOPA has been requested to look into the technical aspects of the IORP revision and is running a public consultation that will close on 2 January 2012. EIOPA has until mid-February to advise the Commission as a result of its conclusions from the public consultation.

Following the presentation various group members asked questions on a number of issues. One member asked whether it was foreseen to address issues such as portability and tracking systems. On portability the Lisbon Treaty has brought about a major change in Council voting on this issue, moving from unanimity to qualified majority voting which would make it more likely that proposals could be adopted. This may be therefore one of the issues dealt with in the White Paper.

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

There are several reasons for the review of the Market Abuse Directive (MAD) which has been proposed by the European Commission:

- growth of over-the-counter trading, emergence of new platforms as well as high-frequency trading and commodity derivatives
- lack of clarity of some current provisions which undermines the MAD effectiveness
- regulators lack certain essential powers whereas available sanctions are too divergent and not sufficiently dissuasive.

This has a negative impact on market integrity and investors' protection, and prevents SMEs from accessing securities markets. Therefore, the objective of the review is to ensure that the regulation keeps pace with regulatory and market developments, and to guarantee clarity and legal certainty as well as effective and dissuasive enforcement. It also aims to harmonise standards (create a single rulebook) and to reduce administrative burdens where possible especially for SMEs.

The European Commission has also adopted a proposal for the Market Abuse Regulation (MAR) which extends the scope of MAD. It concerns other types of trading (instruments only traded on multilateral trading facilities, organised trading facilities and over the counter trading) and ensures that derivatives are covered when they are used for manipulative purposes. It also applies to emission allowances and clarifies application to high-frequency trading.

Finally, the Commission has come up with a proposal for a Directive on Criminal Sanctions for Insider Dealing and Market Manipulation which regulates several key aspects:

- It defines offences of insider dealing and market manipulation which are to be regarded as criminal offences by the Member States if committed intentionally.
- It requires Member States to treat inciting, aiding and abetting these offences as criminal offences.

Moreover, it clarifies that attempts at insider dealing and market manipulation should also be criminal offences and that criminal sanctions should be effective, proportionate and dissuasive. In addition it extends the liability to legal persons.

Reform of the data protection legislation in the EU – presentation by Mr Jose Manuel de Frutos Gomez (Justice DG/C3)

At the beginning, Mr de Frutos Gomez presented legal sources of data protection in Europe as well as data protection principles from Directive 95/46/EC. He explained that globalisation and technological development are the principal drivers of the reform and reminded main changes introduced in the area of data protection by the Lisbon Treaty. The objective of the reform is to create a consistent EU data protection framework for processing activities in the EU in order to address the challenges posed by new technologies, based on the principle of technological neutrality and that will be valid for years to come.

The roadmap for the reform of data protection legislation was outlined in the Communication of the Commission of 4 November 2010 'A comprehensive approach on personal data protection in the European Union'. The most important elements of the reform are:

- strengthening individuals' rights
- enhancing the internal market dimension
- revising the rules on police and judicial cooperation in criminal matters
- the global dimension of data protection
- better enforcement of data protection rules.

Following the Communication, a thorough evaluation and impact assessment were carried out and the new legislative proposal was expected to be adopted by the Commission at the beginning of 2012.

Discussion over the offers for the FSUG research studies from the contractor(s)

The Group decided not to make public the content of the discussion with the contractor over the proposals for the FSUG studies.

Thursday 17 November

Presentation of the Commission Communication on the Gender Directive/Test-Achats – presentation by Mr Lukas Bortel (Internal Market and Services DG/H2)

Mr Bortel recalled the 1 March 2011 ruling of the Court of Justice of the European Union, the Test Achats case, on the use of gender as regards insurance premiums and benefits. Mr Bortel informed the group about an upcoming Commission Communication, which is in its final stage, (Inter-service consultation completed), but could not divulge the detail of the Communication not to pre-empt the decision of the College. The Communication is expected by the end of 2011.

In response to a number of questions from FSUG members, who asked whether gender insurance practices would continue to be allowed, he clarified that the ruling covers pricing and benefits to the insured and would therefore not impact the use of internal models by insurers. When asked whether the Commission intended to monitor the impact of the ruling on insurance premiums, Mr Bortel indicated Vice-President Redding's willingness to follow up on the ruling in this respect. However, he mentioned that the introduction of Solvency II

Directive would also impact premiums, and it is likely to be difficult to isolate the effect on prices from the causes in the short term. Any monitoring initiatives may therefore not give clear indications. There would also be limited legal avenues to the Commission in the event of price rises.

General comments from the participants indicated expectations that premiums could rise at least initially due to the cost of implementing the ruling. Parallels were made with unisex premiums in motor insurance, which indicated some increases in Belgium especially for young female drivers.

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

Mr Gnoni presented the state of play of the review of the MiFID and a short debate followed on some of the issues. Some highlights from Mr Gnoni's presentation are provided in the summary below. He presented some important proposals adopted by the Commission on 20 October for the review of MiFID. Proposals, which include a directive for the recast of MiFID and a new regulation, aim to address developments in the market structure and trading technology since the current MiFID came into force and developments due to the financial crisis. One of these was the introduction of a new trading platform category, named, 'organised trading facilities' that would cover platforms that are not currently captured by the categories in the present MiFID. Mr Gnoni also mentioned measures to enhance investor protection and to broaden the scope of the MiFID, for pre- and post-trading requirements to cover trading in bonds, structured finance products and derivatives in addition to equity instruments as well as trading of over-the-counter derivatives through recognised exchanges as a means to address the concerns raised by the G20 in the aftermath of the financial crisis.

FSB Consultation on Mortgage Underwriting Principles – discussion over FSUG response

An FSUG member presented the FSB consultation in order to coordinate the response of the group. The presentation highlighted the main areas of concern that will feature in the draft response to the consultation.

Among the concerns listed in the presentation, members discussed constraints on some categories of borrowers (such as the young, past unemployment history etc.) to provide income records covering a number of years. The group also discussed the merits and demerits of credit scoring. Some members criticised the predictive nature of credit scoring while others highlighted the duty of care when using scoring and transparency. There was a general agreement on the fact that principles should allow for elements of flexibility for a lender to look at a borrower's actual means beyond purely statistics-based indicators. In summary the response aims to be borrower focussed.

The consultation period ends on 9 December. The group agreed to circulate a draft reply by 30 November. The deadline for comments to the draft was set to 6 December.

ADR schemes – discussion over FSUG draft paper

An FSUG member responsible for the initiative recalled that the purpose of the paper on ADR schemes was twofold; 1) as a contribution to the FSUG annual report and, 2) as a means to influence the legislative proposal brought by the Commission on ADR.

The chairman asked whether the paper would not come too late to influence the proposal given that adoption by the College was imminent, but indicated that the paper could be directed to the EP and Council, where it will be discussed as a next stage of the legislative process.

It was agreed to forward the paper to Patrick Fay for a final check and to send the paper out through the FSUG mailbox.

FSUG external relations – follow-up on the FSUG initiative

The FSUG member responsible for the initiative presented a list of organisations together with their addresses where a letter promoting the Group and its work would be sent. Before the letter is prepared, it was proposed to verify whether the addresses of organisations are correct. European Commission's representative will verify other European institutions and bodies, whereas SMEs organisations, financial market authorities in Member States, BEUC members, think-tanks and NGOs will be checked by designated FSUG members.

The letters will be drafted by FSUG and sent out by the secretariat from the FSUG mailbox. It was also proposed to attach the FSUG annual report to the letters. One member of the Group suggested adding to the list of organisations the international network of financial ombudsman schemes. The need for a regular update of the list of organisations was raised as well.

Principles and Practices of Financial Market Regulation – discussion over FSUG draft paper

This point was postponed to the FSUG January meeting.

Collective redress – discussion over FSUG draft position

The Group briefly discussed on how to present its position regarding the opt-in/opt-out option in the article concerning collective redress which will form part of the FSUG annual report. One FSUG member proposed to present a simple table with pros and cons of each option however it has been decided that there is not enough time to properly discuss and prepare the table since the annual report had to be submitted very shortly. Therefore, it was agreed that a simple paragraph explaining briefly both the opt-in and opt-out mechanisms will be sufficient for the article and that the Group will come back to this complex issue and will explain its position in a more elaborated way in a separate document.

State of play of the Basel III implementation projects – presentation by Mr Mario Nava (Internal Market and Services DG/H1)

In July 2011, the European Commission adopted CRD IV proposal in order to translate the Basel III agreement into the EU legislation. Its principal objective is to ensure financial stability and sustainable growth but also to review and simplify earlier legislation in this area. The Commission's proposal takes into account the results of a thorough impact assessment and stakeholders' consultation as well as of the own initiative report prepared by the European Parliament.

The CRD IV proposal is a package of a maximum harmonisation Regulation establishing prudential requirements for financial institutions, and of a Directive where the degree of prescription is lower and where the links with national administrative laws are important. The Regulation introduces a so-called 'single rule book' which is a set of harmonised prudential

rules which banks throughout the EU must respect and it covers the provisions on capital, liquidity standards, leverage ratio and counterparty credit risk. The Directive concerns in particular the powers and responsibilities of national authorities (for instance on capital buffers, sanctions and enhanced supervision) as well as the requirements on internal risk management and corporate governance provisions.

The adoption of the CRD IV proposal is just the first step in the EU legislative process and the package is now negotiated in the Council and the European Parliament.

Corporate governance in financial institutions (chapter covered by CRD IV) – presentation by Ms Natalia Radichevskaia (Internal Market and Services DG/F2)

Ms Radichevskaia presented recent initiatives of the European Commission in the area of corporate governance.

In the Communication of 4 March 2009 to the Spring European Council the Commission committed to report on corporate governance in financial institutions and to propose solutions to deal with failures revealed by the financial crisis. Following the Communication, the Commission adopted on 2 June 2010 the Green Paper on corporate governance in financial institutions (FI) and launched a public consultation on the ways of improvement.

The results of the consultation demonstrated that excessive risk in the financial system is mostly caused by implementation of excessively risky strategies and insufficient external control of excessive risk as well as by lack of effective risk oversight by boards and ineffective internal risk management in FI. The majority of respondents supported a more effective supervision of implementation of corporate governance principles as well as further improvement of regulatory framework. They also favoured a principle-based and proportionate legislation focused on desired outcomes as opposed to detailed rules prescribing specific structures or methods.

In addition, the CRD IV proposal adopted by the Commission in July 2011 introduced certain important provisions on corporate governance. For instance, it defined the necessary competences and experience of FI board members and set out the requirements concerning effective risk oversight and control. It also clarified that corporate governance issues and mechanisms should form part of the prudential oversight.

Debrief from the EBA Stakeholder Group meeting which took place on 16 November – by Robin Jarvis and Marcin Kawinski (FSUG members)

Robin Jarvis and Marcin Kawinski briefed the group about the EBA Banking Stakeholder Group meeting they attended a day earlier. They explained a draft letter which was brought to the EBA stakeholders for endorsement but failed to be agreed upon.

The two participants reported their view coming from stakeholders on the outlook of the banking sector. A discussion ensued on the effectiveness of the stakeholder group after a year in operation that was linked to the EBA's own lack of output during this setting up period.

The two participants informed the group that the EBA stakeholder group has set up four working groups dealing with areas as follows: Consumers; Liquidity; Systemic risk; Capital.

FSUG members felt that the group should be active in countering influence coming from industry groups on the EBA stakeholders. The members agreed on 2 actions: 1) Set up an FSUG list of priority areas from the EBA work programme circulated to the group and 2) Invite the EBA stakeholder group chair to an upcoming FSUG meeting.

Preliminary debate on the EU country where the FSUG could hold the 2012 meeting outside Brussels

Two Member States, Spain and Poland were proposed for the external meeting of FSUG in 2012. Based on the vote, members of the Group decided that the meeting will be held in Spain. The FSUG member from Spain agreed to come up with draft programme of the meeting as well as to propose the objectives to be achieved by the visit. Both, the programme and objectives are going to be presented and discussed at the FSUG meeting in January and, once agreed by the Group, they will be submitted for the Commission's approval.