



## **Minutes FSUG meeting of 6-7 July 2011**

Welcome note by Mr Mick McAteer, chairman of FSUG.

### **1. Adoption of the agenda, the Rules of Procedure and approval of last meeting's minutes (12-13 May)**

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

#### **Tour de table on members' activities of FSUG interest**

Members were updated on activities of FSUG interest:

One member informed the group about work carried out by the OECD to draft a set of principles for consumer protection in the area of financial services. An open consultation will be launched at the end of July on this matter. Members were informed of a possible seminar/conference organised by the OECD on consumer financial protection which will be held in France October. Commission services will inform the group in due time to what extent FSUG representation at the conference is possible.

Another member of the group mentioned the TACD financial services conference which was held on 22 June. The member reported that on the panel discussing Financial Supervision, the European Banking Authority (EBA) representative Adam Farkas expressed his concern about the lack of sufficient representation of consumer interests in EBA. The European Banking Authority will produce a questionnaire addressed to all national supervisors engaged in the area of consumer protection as well as to consumer associations. At the conference, Commissioner Barnier emphasised his open-door policy towards consumer organisations and stressed the need for increased consumer representation in expert groups.

One FSUG member took part in a conference on consumer financial protection and financial education organised by the European Economic and Social Committee (EESC) in Vienna. At the conference, various financial education initiatives and programmes at Member States level (Spain, Italy, and France) were presented. The member claimed that there was a number of Member States initiatives in that field, however coordination was still missing.

It was agreed that the FSUG will develop its own set of basic consumer protection principles in the area of financial services by the end of the year. Upon completion, the document will be circulated to the relevant Commission services and members of the three European Supervisory Authorities (ESAs). The FSUG members established a subgroup to draft the principles and envisage inviting senior Commission officials, as well as the Chairmen of the ESAs for a roundtable meeting to discuss concrete actions taken by regulators to ensure consumer protection in the area of financial services. A first draft of the principles will be discussed at the 20-21 September meeting.

**2. Update on Finance Watch** – presentation by Mr Thierry Philipponnat (Secretary General, Finance Watch)

Mr Philipponnat gave a presentation on the organisation, membership and objectives of Finance Watch. He argued that Finance Watch will be developing expertise on financial issues with a view to strengthening the voice of non-financial actors in the debate over financial regulation and contribute to making financial industry regulation take into account the public interest dimension of finance. He also informed the group that a new website had been launched two weeks prior to the meeting and that all positions taken and analysis conducted will be disclosed on the website.

One FSUG member asked about the requirements for becoming a qualified member. Mr Philipponnat explained that there are four main conditions – abiding by Finance Watch's founding principles, qualifications, the lack of conflict of interest and self-representation. A question on prioritisation of policies was also raised. Mr Philipponnat mentioned the importance of taking into consideration several factors, namely the most important topic in the public interest, where an impact can be made, and the reality principle i.e. how many topics can be worked on. In this context it was also mentioned that impact of such advocacy work is sometimes difficult to measure.

**3. EU multi-stakeholder forum on E-invoicing** – presentation by Mr Gerd Heinen (Internal Market and Services DG/H3)

The Internal Market and Services DG representative presented the Commission Communication 'Reaping the benefits of electronic invoicing for Europe'. Key objectives of the Communication are to facilitate a consistent legal environment for e-invoicing throughout the EU, to create maximum e-invoicing reach between trading partners and to promote an e-invoice standard model. The Commission would like to see e-invoicing become the predominant method of invoicing by 2020, especially by increasing its take-up by SMEs. Important future steps include the development of national strategies to promote e-invoicing, supported by national multi-stakeholder e-invoicing fora which the Commission asked Member States to put in place by June 2011. The group was also informed of the creation of a European multi-stakeholder e-invoicing forum by the Commission. On this note, the group members were called upon to propose a candidate from the FSUG to represent the interests of consumers and micro-enterprises at the EU e-invoicing forum.

**4. The Social Business Initiative** – presentation by Ms Esther Wandel (Internal Market and Services DG/G4)

The Internal Market and Services DG gave an update on the work related to the Social Business Initiative (SBI) more broadly, and the work social investment funds more concretely, which is flagged as a priority in the Single Market Act of 13 April 2011. The FSUG members formed a subgroup to draft a response to the consultation on social investment funds launched on 13 July (deadline 14 September). Members were informed of discussions that took place during a workshop on social business held in May. One element, which emerged in these discussions and which will have to be taken into account for this initiative, is that investors in social investments are interested in creating positive social/environmental impact by means of their investment, i.e. beyond mere generation of financial returns. Follow-up questions would relate on how to make such positive impact transparent and measurable. One FSUG member stressed the importance of adequate definition of the scope of social business and providing concrete examples of best practices. Another member pointed out the need to ensure appropriate reporting and certification requirements for social investment funds.

For October, the Commission is planning a Social Business Communication by which all strands of work of the Commission in order to develop social business in Europe will be outlined (access to finance more broadly beyond the use of investment funds, other areas such as public procurement, education etc.). The Commission will also launch a Communication on Corporate Social Responsibility and socially responsible investment more widely planned for adoption in parallel with the Social Business Communication.

**5. BEUC's Report on Financial Supervision in the EU – A consumer perspective –**  
– presentation by Ms Anne Fily (Head of Legal & Economic Department, BEUC)

Ms Fily presented the key findings of BEUC's Report on Financial Supervision in the EU. Members were debriefed on various models of financial supervision existing throughout Member States. They encompass general consumer protection authorities, National Central Banks, stand-alone insurance supervisors, stand-alone integrated financial supervisors, stand-alone securities supervisors and others. The report argues that there is divergence of consumer protection within financial supervision. While consumer protection is an explicit legal goal of agencies for two-thirds of the respondents, others revealed that the interests of consumers are indirectly protected through other goals and tools of supervision, such as market-supervision, conduct of business, solvency and compliance rules. Against this background, general recommendations concerning a Financial Consumer Protection Agency were given. Those, inter alia, include necessity for its creation in each country, co-ordination at EU level, to be solely responsible for consumer protection, oversee all financial services offered within the market they supervise, irrespective of whether they originate from a national or a supplier based outside their jurisdiction, have effective enforcement mechanisms and work to inspire confidence among existing consumer networks operating in the area of financial services.

Against this background, the FSUG members decided to form a subgroup whose task is to draft an open letter to the relevant Commission services drawing their attention to the shortcomings identified in financial supervision with regard to consumer protection and asking them whether any work is foreseen/carried out to address these issues.

**6. Consumer Market Study on Advice within the area of Retail Investment Services**  
– presentation by Ms Angela Black (Health and Consumers DG/B4)

The Health and Consumers DG gave a presentation on the results of the Study on Advice within the area of Retail Investment Services. The main objective of the study was to assess the state of investment advice in the EU using the Markets in Financial Instruments Directive (MiFID) as a benchmark. The framework for the study was twofold. On the one hand, it focused on evaluating the advisory process taking into consideration due diligence (information gathering by the advisor) and transparency and comprehensiveness of financial advice (information provided by the advisor). On the other hand, it aimed at evaluating the products recommended for investment suitability considering investment liquidity and investment risk. The study's findings revealed some possible biases. For example, one was that many advisors recommended their own banks' investment products and another was that advisors who proposed unsuitable products, despite exercising greater diligence during the advisory process, may have applied their own judgment on what constitutes a 'suitable investment', based on their interpretation of the shopper's profile. One FSUG member questioned whether any correlation existed between no commission (fees) and higher incidences of recommendations of risky products in Nordic countries. Following the meeting the contractor who carried out the study clarified that during the course of the study he did not come across any mention of commissions being prohibited in Denmark and Finland. Based on his own reasoning, however, the contractor believed that the prohibition of

commissions would not necessarily result in riskier recommendations (rather, the presence of commission may well provide an incentive for advisors to give riskier recommendations). However, the contractor did not have any quantitative data to validate this line of reasoning.

## **7. FSUG work programme regarding priorities and research projects – Finalisation of Terms of Reference for FSUG studies**

The Commission had informed the group of the possibility to increase the 2011 budget allocated to research, making EUR 300 000 available instead of EUR 150 000. As such, the FSUG decided to expand the scope of some of the studies or increase the number of countries analysed.

- a) The Terms of Reference for the study on mortgages and repossessions are drafted and comments provided by the Commission on the draft document were taken on board. The study shall cover three issues: personal bankruptcy, 'datio in solutum' and business practices for debt collectors.
- b) The Terms of Reference for the study on remuneration practices will focus on three aspects: evaluation of current remuneration models, evaluation of legislation referring to remuneration and development of ideas and solutions for better remuneration practices.
- c) The Terms of Reference for the study on pensions shall focus on four countries: the UK, France, Austria, Netherlands, Poland, Sweden and Italy.

The final drafts will be sent to the Commission as soon as possible to ensure any further comments/suggestions can be incorporated in the final version of the Terms of Reference.

## **8. Public consultation based on a Green Paper *The EU corporate governance framework (deadline 22 July)* – finalisation of FSUG response**

The subgroup formed to draft the FSUG response to the public consultation presented the key points raised. The issue of gender balance on boards was discussed lively. In that respect, one member stated to be decidedly against advocating a binding instrument in the group's response. It was agreed for additional comments and suggestions to be incorporated in the final version of the contribution. The document will be sent out to the Commission services on 19 July to allow for formatting and submission to the public consultation within the 22 July deadline.

## **9. Update on the initiative on access to a basic payment account – presentation by Mr Philippe Pelle (Internal Market and Services DG/H3)**

The Internal Market and Services DG was invited to provide an update on the current state of play of the initiative on access to a basic payment account. Mainly, the FSUG members challenged the Commission decision to adopt the initiative under the form of non-binding legislation (i.e. Recommendation) instead of binding legislation (i.e. Regulation or Directive), as initially foreseen. The Internal Market and Services DG representative informed the group on the need for appropriate consideration of the subsidiarity principle when designing binding legislation at EU level. Additionally, it was argued that the decision to launch a Recommendation on access to a basic payment account should be regarded as a first step to address the issue, allowing for more time to gather substantial data in favour of proposing binding legislation at EU level. At the same time, the group was assured that the Commission services attach much importance to the subject. The situation will be reviewed a year after

the Recommendation is adopted and, should evidence point to lack of improvement in Member States, the Commission services will take further measures, including, if need be, regulatory ones.

The FSUG members, however, expressed their deep disappointment with the soft law measure and stressed the fact that denial of access to a basic bank account infringes on basic fundamental rights of European citizens. Consequently, the FSUG members formed a subgroup which will draft an open letter to President Barroso and Commissioner Barnier challenging the Commission's decision to address this issue by means of non-binding legislation.

**10. Bank recovery and resolution framework** – presentation by Mr Laszlo Butt (Internal Market and Services DG/H4)

The Internal Market and Services DG presented the proposal for an EU Framework for Bank Recovery and Resolution scheduled for Commission adoption after the summer. The legislative proposal will follow three Communications on crisis management, one on resolution funds another one on a crisis management framework adopted in 2010. Such a proposal is needed in order to address the lack of effective resolution tools to manage the failures of credit institutions and investment firms, the absence of effective cross-border arrangements to face banking crises and to ultimately protect taxpayers' money. The proposed Directive has a three-fold dimension: preparation and prevention, early intervention and resolution.

**11. New initiatives in the field of credit rating agencies (CRAs)** – presentation by Mr Michael Fridrich (Internal Market and Services DG/H4)

The Internal Market and Services DG gave a presentation on the proposed amendments to the Regulation on credit rating agencies (CRAs) scheduled for Commission adoption late autumn. The 2009 Regulation on CRAs which entered into force in December 2010 requires credit rating agencies to comply with rigorous rules of conduct in order to minimise potential for conflicts of interest, ensure higher quality of ratings and greater transparency of ratings and the rating process. The Regulation introduced mandatory registration for all credit rating agencies operating in the EU. Regulation (EU) has vested the European Securities and Markets Authority (ESMA) with the power to supervise and register CRAs. The registration process will be finalised in September for all credit rating agencies. In order to further strengthen the regulation related to CRAs the following issues will be addressed: (1) over-reliance on external credit ratings; (2) sovereign debt rating; (3) competition amongst CRAs; (4) civil liability of CRAs. A question was raised on whether efforts to improve the current system should be replaced by a reform of its whole structure.

The FSUG intends to form a subgroup that will draft a response to the upcoming consultation on overreliance on external risk rating once the amendments to the Regulation on credit rating agencies will be adopted.

**12. Review of Deposit Guarantee and Investor Compensation schemes** – presentation by Mr Charles Canonne (Internal Market and Services DG/H4)

The Internal Market and Services DG gave an update on the current state of play of the 12 July 2010 package, comprising of the Recast of the Deposit Guarantee Schemes Directive (DGSD), the amendment to the Investor Compensation Schemes Directive (ICSD)

and the White Paper on Insurance Guarantee. The DGSD and the ICSD are currently under negotiation in the Council and the European Parliament.

**13. Consumer Market Scoreboard** – presentation by Ms Margareta Theelen (Health and Consumer Policy DG/B1)

The Health and Consumers DG presented the findings of the spring Consumer Conditions Scoreboard and informed the group of the upcoming Autumn Consumer Markets Scoreboard. The biannual scoreboards are usually published in March and October and they present evidence based on how markets are working for consumers. The spring scoreboard looks at consumer conditions in Member States, mainly enforcement at national level, and cross-border aspects (e.g. e-commerce). The autumn scoreboard focuses on consumer satisfaction in 50 different markets, which is ultimately translated into a ranking of the various markets in question. Market performance indicators are comparability, trust, problems and complaints, switching, overall satisfaction and – starting with 2011 – choice. Data for the scoreboard is collected through telephone interviews with 500 consumers per Member State who are asked to rank the performance indicators of the relevant markets on a scale from 1 to 10.

In terms of follow-up, DG Health and Consumers representative clarified that each year one or two markets ranking lowest are subject to further in-depth studies. One FSUG member argued that the Commission services could develop a set of indicators or performance metrics to evaluate the impact of its regulatory measures.

**14. Discussion over expectations of 20-21 September meeting to be held in another Member State** – location & logistical support, draft agenda

The discussion over location and expectations of the 20-21 September meeting was held before lunch.

FSUG members voted in favour of holding the September meeting in Athens after careful consideration of reasons in favour of both locations initially proposed (i.e. Athens and Bucharest). Commission services will provide secretarial and logistical support for the organisation of the meeting in Athens and the agenda will be drafted jointly with the Greek FSUG member. The objective of the meeting is to liaise with Greek consumer and investor representatives, as well as with government officials to debate on measures taken to tackle the Greek crisis with a focus on consumer protection.

**15. Simplification of Member States' withholding tax relief procedures** – presentation by Ms Federica Liberatore (Taxation and Customs Union DG/D2)

The Taxation and Customs Union DG gave an overview of the work on the simplification of Member States' withholding tax relief procedures. First, it explained the scope and content of the Recommendation on withholding tax relief procedures, that was adopted by the Commission (joint initiative by Taxation and Customs Union DG and Internal Market and Services DG) on 19 October 2009. The Recommendation concerns procedures applied by Member States to grant relief from withholding taxes on cross-border 'securities income' (mostly dividends and interest) which are earned by EU investors and are paid via one or more financial intermediaries established in the EU or in an EEA country. It suggests that Member States implement a relief at source system whereby foreign financial intermediaries would be authorised to claim tax relief on behalf of their investors and on a 'pooled basis'. The Investor's entitlement to tax relief would be checked by the intermediary closest to the

investor by means of self-documentation (as opposed to residence certificates). The system presented in the Recommendation would also require authorised intermediaries to report investor-specific information to both source and residence Member States. Taxation and Customs Union DG is currently engaged in follow-up work with Member States in this area. The work is being carried out in a Project Group of interested Member States. Taxation and Customs Union DG has also launched a feasibility study on a relief at source system implementing the principles of the Recommendation and involving information exchange between intermediaries and Member States. FSUG members welcomed Taxation and Customs Union DG's involvement in this group, and expressed the wish for their continued participation in the future. A member asked if and how the Commission was monitoring the implementation of such measures by Member States. In response, Taxation and Customs Union DG stressed that the Recommendation is a non-binding legislative instrument but argued that the DG intends to follow the progress made by Member States in this area in the Commission Working Group of direct tax experts (WPIV).

## **16. Discussion over FSUG complaint letters on consumer/retail investor under-representation in the ESA's advisory groups**

The FSUG intends to send letters of complaint to the three ESAs regarding the lack of sufficient consumer representation in their advisory groups. Should their replies prove unsatisfactory, the group considered submitting a complaint to the European Ombudsman.

The group was informed that, given its mandate, the FSUG would have no standing for filing a complaint with the European Ombudsman. However, group members are at liberty to file such complaints in their personal capacities, should they wish to do so.

The group decided to finalise the three letters and send them to the Chairmen of the three European Supervisory Authorities shortly.

### **Discussion over draft principles for external relationships of the FSUG**

The group welcomed a first draft of the principles for external relationships of the FSUG and further work is being carried out to finalise the document. The scope covers also measures to improve visibility of the FSUG, circulating FSUG papers to other relevant expert groups and establishing contacts with proposed groups in coordination with the Commission services.

## **17. Conclusions**

The FSUG aims at raising more attention to consumer protection in financial services. For this reason, a set of basic consumer protection principles in financial services together with possible emerging risks will be drafted to ensure these are carefully considered when policies are being designed at EU level.

### **List of participants**

FSUG: all members, excluding Maeve Brehony

Commission:

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

Health and Consumers DG: Fotini Zianga (B4), Christoph Decker (B4)