



## **Minutes of the FSUG meeting 3-4 July 2013**

### **Wednesday, 3 July**

#### **Adoption of the agenda and approval of the minutes of the FSUG meeting in Bucharest (10-11 June 2013) – Tour de table**

The Group adopted the agenda and the minutes of the previous meeting subject to the correction of the names of speakers. The group also agreed to submit the minutes of the June meeting to external speakers for their review and approval.

The Chair thanked a Group member for his role in organising the previous meeting in Bucharest, which had been a success. The group briefly discussed the Bucharest meeting.

During the 'tour de table' session, a member informed the group that the National Bank of Slovakia was chairing the preparation of the Slovakian authorities' response to the EIOPA consultation on private pensions. He also referred to the FSUG position in discussions carried out with his Slovakian counterparts..

Another member informed the group about a mystery shopping study on remuneration practices being carried out in Austria. As previously planned, the results of this exercise would be fed into the FSUG's own on-going study on inducements during the month of July.

A member of the group suggested that the FSUG would seek to meet the newly appointed Commissioner for Consumer Affairs, Mr Mimica.

A consumer organisation in the Czech Republic hosted a meeting with a Russian bank that addressed corporate social responsibility and consumer credit.

There are a number of newly proposed measures in Belgium, which aim to further protect consumers of financial products. These include the provision of simple, standard financial products. The member indicated his willingness to present the Belgian developments in an upcoming meeting.

The UK Office of Fair Trading has identified shortcomings in the market for payday loans, which were also referred to by the Parliamentary Competition Commission. The main issues mentioned are a lacking assessment of credit worthiness, inadequate protection of borrower data and excessive charges. There is also some recent research carried out by consumer advocacy bodies on the effects of payday loans over people.

In relation to the on-going inter-institutional negotiations of the Insurance Mediation Directive II, there has been a thematic review of the mobile insurance market, (which is excluded from the scope of IMD). This is an important area that gives rise to a large number of disputes and presents one of the highest uphold rates (way over the average: 50%) in claims to the European Ombudsman.

The Greek authorities have been very concerned about funding in the economy, in particular with the aim to safeguard the operation of SMEs, which currently struggle to manage working capital, given significant liquidity shortages.

In Spain the preference shares scandal continues to provoke detriment to small retail investors. It has been decided that preference shares in government owned banks would be

converted to ordinary shares for publicly listed banks. For two banks that are not listed on the stock exchange, the Government will purchase the shares at a very low price, which will result in further losses to small investors. Currently it is estimated that retail investors have lost between 20% and 80% of the original amounts invested.

Ireland has opened an inquiry into the way the retail credit crisis happened in 2010-2011. This inquiry should form the basis for government future policy to avoid similar crises in the future.

A member of the group distributed a brochure from the Bureau Européen des Unions de Consommateurs (BEUC) regarding the Commission's recent proposal for a Directive on Payment Accounts. The brochure expresses BEUC's support for the proposal and makes a number of recommendations.

The Financial Services Authority in the Netherlands has launched investigations following the findings from recent research on fraudulent activities involving consumer credit.

In Romania the government has delayed again the application of the provisions of the New Civil Code that would allow court actions against abusive clauses in contracts. Banks are the main beneficiaries of this new delay.

The European Supervisory Authority's consumer protection day has attracted many participants from industry. Consumers were under-represented, which is not desirable. The Group members who sit on the European Banking Authority consumer committee participated in a discussion panel that addressed sales incentives and banking culture.

**Single Market Month** – update on the project by Ms Delphine Leroy (Internal Market and Services DG/H3) and Mr Bruno Franchetti (Internal Market and Services DG/A4) and discussion on the topics to be proposed by the FSUG

Ms Delphine Leroy and Mr Bruno Franchetti made a brief presentation on the state of play of preparation of the Single Market Month (SMM) project, with particular focus on the week dedicated to banking services. They presented the stakeholder kit to the FSUG members, which is provided on-line and contain all the information necessary for efficient participation in the initiative. The FSUG members were invited to come up with ideas for the EU intervention that would bring benefits to financial consumers and to submit them for the debate on the SMM national websites. They were also encouraged to spread the word about the initiative and share the kit at national level including within their relevant organisations in order to attract as many stakeholders to the discussion as possible.

The ideas can be submitted by 7 October at the latest and as of the beginning of September stakeholders and other participants will have a chance to vote on them. The week on banking services in the framework of the SMM will take place between 7-11 October and it will consist of live and on-line debates and interventions, with including high level Commission representatives and European Parliament members as well as with stakeholders' representatives.

Based on feasibility evaluation, the Commission is expecting to get between 20-25 interesting ideas per topic coming from stakeholders at the end of these debates. The FSUG agreed to coordinate the collection of ideas by the end of July and then submit them via national SMM websites in order to achieve greater impact.

**Simpler EU accounting rules for small companies** – presentation by Mr Jean Philippe Rabine (Internal Market and Services DG/F3)

Mr Rabine presented the new Accounting Directive whose overall aim is to bring clarity into the European regulatory environment for financial reporting and harmonise further financial statements of European Companies. This newly adopted legislation overhauls prior EU regulation in the 4th and 7th Company Directives, which had introduced principles led way of

regulating the preparation of financial statements. Listed companies will continue to use International Financial Reporting Standards.

The scope of the directive covers non-listed companies that are required to publish annual financial statements. It attempts to address the burden of accounting reporting by establishing simpler requirements for smaller organisations. The existing accounting directives needed some improvements, including measures to enhance the comparability of financial statements as well as the introduction of the notion of substance over form and materiality principles, which will however remain optional for Member States.

Small undertakings (less than 50 employees; €8m - €12m in turnover; €4 - €6m in total assets) account for more than 90% of limited companies in the EU. These companies are not subject to the statutory audit requirement from an EU perspective and are allowed to publish abridged versions of annual financial statements mainly through less note than today. The regime for medium and large sized companies does not changed significantly.

Member States will have until 2015 to transpose the directive, which will enter into full application in 2016.

**EuroFinUse research report on the real return of pension savings** – presentation by Mr Guillaume Prache (FSUG member)

Guillaume Prache, presented the report conducted by EuroFinUse on the real return of pension savings. The EuroFinUse report examined the nominal return of pension savings, i.e. net of fees and commissions borne by pension savers and after inflation and the deduction of taxes. In 1st phase Denmark, France and Spain were examined. The report found that investors in those countries do not get information about real returns, i.e. after inflation and the deduction of all charges and taxes. According to the report only in Denmark private pension products offered a positive real return, whereas in France and Spain the real yearly return was negative. The report found that the negative real returns were not caused by the capital market performance but by:

- fees and commission,
- investment firms' choices and performance,
- taxes and financial repression.

In 2nd phase the researchers will examine: UK, Germany and Eastern Europe. The presentation was followed by a discussion.

**Pension Forum** – presentation by Ms Helga Vogelmann (Employment DG/D3)

The pensions forum is a formal committee held annually set up by a Commission Decision on the setting up of a committee in the area of supplementary pensions. The Commission Decision specifies the forum's composition, which includes representative for each of the Member States, social partners and other stakeholders. It may also establish working groups on specific themes.

The historical purpose for setting up the forum is to address barriers to mobility in supplementary pensions. Accordingly the forum makes recommendations to the Commission on the policy approach to take towards retirement products.

The presentation was followed by a question session during which, some members asked for clarifications on the functioning and input of the forum into Commission policy.

**NewB (ethical bank) initiative** – presentation by Mr Bernard Bayot (FSUG member)

Mr Bernard Bayot presented the on-going initiative of the creation of a new ethical bank in Belgium. He explained that the plan was to create a branchless bank within the following 2 years. The bank is supposed to be part of a wider social initiative as a partnership between civil society organisations and professional bankers. NewB will be a low-cost bank offering ethical and innovative products as well as an interactive web platform for sharing of ideas as

well crowd funding. Mr Bayot informed that the preliminary promotion campaign was very successful. FSUG members congratulated on the initiative, some of them pointed to very heavy regulatory and capital requirements concerning setting up and operation of the bank, pointing that the alternative may be to set up a payment institution.

### **Online Dispute Resolution platform (ODR platform) – development of the IT tool – presentation by Ms Susanne Richter (SANCO DG/B4)**

Ms Richter briefly introduced the subject of her presentation by recalling that both the Alternative Dispute Resolution Directive (ADR) and the Online Dispute Resolution Regulation (ODR) have been published recently on the Official Journal of the European Union. The ODR Regulation establishes that the Commission must set up the ODR platform by 1 January 2016.

Ms Richter then provided a brief overview of the main provisions in the ADR directive, relating the functions of the ODR platform to the objectives in the ADR Directive. The ODR Regulation has a slightly wider scope than ADR since in the ODR platform it is foreseen that traders would also be able to file complaints against consumers. However for this to be implemented, it must first be allowed by national legislation within each Member State. Also, the platform only deals with online purchases, i.e. not purchases made in traditional brick and mortar stores.

The platform will bring together all traders and consumers and will help identify the responsible ADR entity to which a complaint should be addressed. It will also serve as a means to disseminate information about dispute resolution as well as about the ADR entities themselves and will provide invaluable information about complaints brought in front of the entities. The platform will operate as a case management tool, supporting ADRs in Member States where can ADR infrastructure is currently not in place.

It will also help with language translation where a trader, a consumer and the responsible ADR entity from all over Europe can share written documentation no matter what EU language they speak.

The Regulation sets out a number of requirements for the platform. It must be free of charge, accessible in all EU languages and available to all (including persons with visual or audio impairment). It is also being designed to interface with existing national ODR systems to render the ODR network fully interoperable.

The Commission has established an ODR expert group, which brings together experts from Member States, European Consumer Centres, the ADR entities, the European Disability Forum, Business Forum and BEUC. This group supports and contributes to the development of the platform.

The platform will have to be tested by January 2015 with both trader and consumer representatives. The Commission will prepare a report following the test phase and in advance of the rollout of the platform in 2016.

Ms Richter provided a brief overview of the complaint process from submission of a complaint form to the delivery of a decision.

### **On-going consultations**

- Consultation by the Commission on the Structural Reform of the Banking Sector (deadline 11.07)
- 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)

The FSUG members leading the group contributions to each of the above consultations briefly presented draft responses and discussed them with the FSUG members in view of upcoming submissions.

The contribution to the review of the European System of Financial Supervision was discussed more in detail. The FSUG members underlined the need for a thorough evaluation of the European Supervisory Authorities, in particular with regards to their responsibilities to protect financial users. It was pointed out that some of the important powers designated to the Authorities in this respect were never used (e.g. product intervention, investigation of breaches of the EU law) even when it had been required. The FSUG members agreed that one of the reasons for ESAs limited activity are insufficient resources assigned to them and that ESAs governance could be improved.

The FSUG members in charge of each of the responses proposed to circulate to the rest of the members their draft papers for final written comments following which they would submit them to the Commission.

### **Thursday, 4 July**

#### **Finalization of the terms of reference for the 2013 FSUG research studies:**

- How to promote access and use of appropriate saving products for all European financial services users

Members received a revised draft ToR for their comments prior to the meeting. The scope of the study was revised to address two aspects: savings products for vulnerable consumers and simple savings products for the population at large. One member briefly reported on the simple savings products initiative developed in the UK. It was agreed that the study should refer to vulnerable consumers and not only to low-income ones. Members discussed how to define savings products and what motivates people to save. It was agreed that Mr Bayot will finalise ToR following the discussion and written comments. The Commission representative informed that the study needs to be launched by the end of July as the open-tender procedure is very long and complex.

- Performance and efficiency of the EU asset management industry

Members discussed the draft ToR for the study on the performance and efficiency of the EU asset management industry. The Commission representative informed that the ToR needs to be finalised by mid-September. Due to the low budget of 30.000 EUR this study will be subject to the negotiated procedure. Members were asked to send their written comments to Mr McAteer.

#### **Discussion on the conclusions of the FSUG meeting in Bucharest – by Mr Alin Iacob (FSUG member)**

There were no comments from the FSUG members to the paper presenting the conclusions and lessons learnt from the FSUG meeting in Bucharest which had been drafted and submitted for discussion by one of the FSUG members. The group agreed that that the report (on the FSUG template) should be attached to the letters to be sent to speakers thanking them for their collaboration and participation.

#### **Commission Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law – presentation by Ms Malgorzata Posnow-Wurm (SANCO DG/B4)**

On 11 June 2013 the Commission adopted a Recommendation and a Communication as a package, both concerning access to justice. The Communication simply reports the views of stakeholders during the public consultation in 2011 and presents the main messages from the consultation process. The Recommendation sets out common principles for collective

redress mechanisms in Member States. Member States will have two years to implement the Recommendation and the Commission will have an additional two years to report on the impact of the Recommendation and assess whether any further action is needed.

Ms Posnow-Wurm referred to the FSUG's response to the public consultation indicating that most of the recommendations therein were retained in the Commission Recommendation, except for one critical request to make EU action binding on the Member States.

The Recommendation enshrines the principle of fairness and timeliness. It also establishes addresses the information needs of potential claimants as well as information about claimants' rights during on-going collective redress actions. It also deals with collective actions in cross-border cases, establishing that it should be possible for claimants to bring a single action in front of the courts subject to determining the appropriate jurisdiction.

The Recommendation promotes both in-court and out-of-court mechanisms as parallel avenues and favours the availability of collective alternative dispute resolution.

The Recommendation also contains provisions regarding the effectiveness and efficiency of the injunctive relief. It also contains important provisions on the registry of the collective redress, which serves to make available information about the process in general as well as ongoing claims. It provides for admissibility checks to prevent manifestly unfounded cases from being brought the courts.

The Recommendation favours the opt-in approach, treating opt-out as an exception that needs to be duly justified by the principle of sound administration of justice. It was difficult to find a consensus on this issue given the different approaches in European legal systems.

There are a number of provisions regarding the funding of actions and legal fees. These cannot lead to abuses of the system or to conflicts of interest. In this context, the Recommendation advises that remuneration should be clearly stated at the outset of a claim.

Finally, the scope of the Recommendation covers both injunctive collective redress, which was so far only addressed in the Consumer Protection Directive on Injunctions, as well as for compensatory collective redress.

**“Who owns the EU Economy? Evolution of the ownership of EU-listed companies between 1970 and 2012”** – meeting with Observatoire de l'Épargne Européenne and discussion over preliminary draft final report of the study

A preliminary draft final report of the study named 'Who owns the EU economy' was circulated to the group in advance of the meeting. Even though the report is only due by the end of July, the general findings in the preliminary report will not change. The database created as part of the study is innovative as it contains a number of features. Firstly it includes a very long term series of data since 1970. It uses a classification that was not available previously, i.e. considering all EU investors as domestic.

The contractor explained that it used statistics from the International Monetary Fund (IMF), which are only available since 2001. This data was complemented by a wide range of national statistics, based on the national financial accounts, (which are available for the period since 1995), the IMF's Coordinated Portfolio Investment Survey, which provided the split between European and non-European investors), as well as the WFE data on market capitalisation, and finally, OECD data on institutional investors.

The preliminary findings indicate that share of foreign investors in European capital market has grown by more than 40%. The holdings of households have fallen by 300% from 38% to 12% in market capitalisation. Sovereign holdings have fallen marginally but never accounted for a large proportion of equity markets. Even after excluding Irish and Luxembourgish pan-European funds, the share of investment funds in EU equity markets has increased. Surprisingly the share of insurance corporations and pension funds has fallen significantly from 28% in 1992 to 8%. Banks and banking groups held 3% of market capitalisation and the holding of non-financial corporations fell from 30% to 15%.

Market capitalisation has increased significantly over the period analysed by the study, mostly as a result of large-scale privatisation since the 1990s.

The holdings attributed to households may be overstated due to large holdings by individual families through holding companies. In any case households do not seem to have gone into to the stock market through direct holdings of shares as a result of privatisations.

The fall in holdings of pension funds may be attributed to the impact of an ageing population, where asset allocations move away from more volatile market prices of equity. Regulatory developments also play a role in diverting life insurance companies from equities as a result of the onset of Solvency II. Investment funds may to some extent have replaced holdings by pension funds, as the latter buy investment funds rather than purchase equities directly. In that case, it is the investment fund who is the owner.

The reason for the fall in holdings of non-financial corporations may be linked to the opening up of markets beyond national boundaries. In the 1980s France ensured that large corporations would continue to have French ownership. Thus all big corporations had large stakes in each other.

Foreign investors now represent 45% Of the capitalisation of quoted shares in Europe. Among these the non-European investors represent not more than 20%. Thus the difference (25%) represents pan-European funds in particular.

The statistical treatment of pan-European investment funds is not adequate. The EU directives provide for a passport, means continues to attribute a nationality to a passported entity, but this does not capture the pan-European funds in Ireland and Luxembourg. We need to know who are the investors in these funds and in each case and where are the amounts invested these amounts.

#### **First discussion on the 2013 FSUG Annual Report**

A template of the annual report with the list of FSUG members who led individual projects in the last year will be sent to FSUG members. FSUG members were asked to provide to the FSUG Chairman summaries of the projects by the date of the next FSUG meeting. The Annual Report should be finalized by the end of October at the latest.

#### **Report on the application of the Unfair Commercial Practices Directive (UCPD) and a study on the UCPD application in financial services – presentation by Ms Sophie Ridoux (Just DG/A3) and Dr Frank Alleweldt (Civic Consulting)**

Peter Rott (Civic), made a summary of the study undertaken to assess the application of the Unfair Commercial Practices Directive (UCPD). The objective of the study was to understand how the UCPD is used in the field of financial services and immovable property and what rules are in place in the Member States. It also aimed to identify the reasons for deviations and most common unfair practices that emerged.

The data for the study was collected through desk research and interviews with National Authorities. Surveys targeted in particular the enforcement organisations and national experts from a number of countries. These fed into country factsheets which were corroborated by the Authorities.

The Member States implemented UCPD in different ways. Few Member States have made use of Article 3(9), for example Belgium, which held its exemption for financial services following the CJEU judgement in 'Total Belgium.'

The study focussed on regulatory law and trading laws as well as professional regulations, which define due professional diligence (linked to unfairness), as well as contract law and pre-contractual duties, which are enforced through the UCP laws. The provision of standard terms in contracts also falls into this category.

The study found that the rules in Member States adopt different enforcement systems, which may differ from the way the UCPD is enforced in the relevant MS. They can also be enforced through the UCPD at times (e.g. pre-contractual information – as a breach under UCP law). The most comprehensive regulation in terms of financial services was found in the UK, which operates alongside the national implementation of UCPD, while it complies with the fairness standards in the UCPD.

The research found a number of bans linked to direct selling although generally, these did relate to financial services. Some Member States have adopted prohibitions on sales commissions and tying. Only very few prohibitions in favour of low income consumers were identified. Mr Rott went through the most common unfair practices identified in the study and the type of correction taken in Member States.

Ms Ridoux went on to provide a summary of the Commission's report on the application of the directive, which was adopted on 14 March 2013. The Commission also publishes a communication, which assesses the benefits of the Directive and identified key action areas. Ms Ridoux explained the legal basis for carrying out the report, which should identify whether further measures are needed to address unfair commercial practices.

The Commission consulted widely prior to concluding its report and collected data regarding the implementation of the Directive at national level as well as the scope of the Directive and its application to specific business sectors.

The report found that the UCPD has helped to enhance consumer protection and built consumer confidence when shopping across borders, and has served as a legal basis for numerous decisions. The report also concludes that the exemption in Article 3(9) should be kept. The directive was transposed quite late, (latest Dec 2009). However some measures should be taken to ensure that enforcement is more effective. The Communication highlights a number of key priorities going forward. These include holding regular thematic workshops to focus on cases and provide guidance on how to respond to unfair practices, strengthening guidance and developing better enforcement indicators.

#### **Directive on Payment Accounts** – discussion with MP Jurgen Klute, rapporteur of the ECON Committee in the European Parliament

At the beginning Mr Klute briefly presented the European Parliament report on the Commission proposal for a Directive on Payment Accounts. He explained that the basis of the report was the EP resolution of 4 July 2012 with recommendations to the Commission on Access to Basic Banking Services. In view of Mr Klute, every bank should be required to offer basic payment accounts and not just the one(s) selected at national level as proposed by the Commission. He also underlined the need to limit the cost of basic payment accounts for consumers and supported the idea of a website comparing bank fees. In addition, in his report, he proposed that all the Member States should introduce an automatic system for payment account switching.

One of the FSUG members suggested that the Directive should cover small and medium-sized companies. The Commission explained that this option had not been impact assessed and that it would have changed the scope of the proposal substantially. Another FSUG member underlined the need for adequate enforcement and supervision of the future legislation on payment accounts at national level. He also raised the issue of independence of the websites which will be tasked to compare bank account fees. Further, there was a discussion on the number of payment account fees which should be disclosed to consumers. Some FSUG members were of the opinion that all of them should be made transparent instead of proposed 20 fees, while the others were concerned about potentially excessive information to be provided to consumers.

Mr Klute confirmed that the Directive on Payment Accounts is a priority dossier for the European Parliament and therefore the institution will intend to adopt its report already in autumn 2013 (ECON Committee vote is foreseen for 30 September). He explained that the negotiations in the Council might take some more time and in order to speed up the process, the Parliament had addressed a letter to the Lithuanian Presidency inviting them to launch the negotiations as soon as possible. The FSUG proposed to draft a position paper on the Payment Accounts proposal and circulate it to the EP rapporteur and shadow rapporteurs by the end of July in the context of the discussions over the draft report.