



Minutes FSUG meeting of 22-23 May 2012

Tuesday 22 May

Adoption of the agenda and approval of the minutes of the last meeting (23-24 April 2012)

The Commission informed the group of some minor changes in the order of items on the agenda and the agenda was adopted accordingly. A number of FSUG members provided comments on the minutes of the April meeting and requested a number of changes. Other members of the group convened to re-discuss the minutes of the previous meeting on the second day of the meeting to allow sufficient time to members to review the minutes, since they were only distributed shortly prior to the meeting.

Ms Anna Passera, deputy head of the retail financial services and redress unit in DG SANCO assisted the opening session of the meeting. She addressed the group, highlighting two points in the agenda on consumer credit that were due to be discussed on the second day of the meeting.

In relation to the prior meeting in April, the group convened to redefine scope of one of the priority areas, referred to as: "Alternative financial provision", in the minutes of the April meeting.

A summary of comments from FSUG members during the opening tour de table session of the meeting is provided below.

A member informed the group about a research project in the UK on payday lending, which was due to be published shortly after the meeting. The research project's methodology was based on information collected on providers' websites but also on direct feedback from borrowers. It would address issues such as fees associated in the event of arrears as well as terms and conditions of such loans. The preliminary findings in the report indicated that loan's terms and conditions were unclear, important information on fees were hidden in FAQs, charges for defaulting were excessively high, charged with each reminder letter and disproportionate with respect to money borrowed.

In general, borrowers able to finance payday loans are satisfied as a result of fast procedures for acceptance and the generally smooth running of these loans. However borrowers having difficulties repaying the loan are faced with high charges and aggressive lenders. Finally, a large proportion of borrowers use payday loans for essentials rather than holidays, luxuries.

A member of the group gave an update on the level of defaulting of borrowers in Greece, where the tense political situation is having a negative impact on consumer detriment. He reported that there exist 20 thousand over-indebted households with

outstanding applications for protection that are subjected to delays in treatment and hardship.

In the Czech Republic an amendment to the law on consumer credit has been enacted, which should incorporate changes to the APR calculation in the Consumer Credit Directive ('CCD'). While the law in the Czech Republic currently does not implement the CCD in full, the purpose of this amendment was to close current loopholes in the law transposing the CCD.

A member referred to a mystery shopping study carried out by French consumer organisation UFC Que Choisir, which aimed to assess compliance with the pre-contractual requirements in the CCD. Among other things it reported failure in some cases of lenders to carry out a credit worthiness assessment.

Another member informed the group about a study carried out during the previous month on the implementation of Shareholders Rights Directive. The purpose of the study is to understand whether retail investors face obstacles in exercising the rights granted by the Directive. The study results would be available in autumn 2012.

A member updated the group on a government change in Romania, where a new coalition government composed of social democrats and liberals has taken shape. The member reported the outcome of a first meeting of Romanian representatives with a delegation of the International Monetary Fund, which has some negative repercussions on actions in the area of consumer protection in this country e.g. the postponement of action in the areas such as personal bankruptcy or the curtailing of aggressive debt collection practices. The member provided some statistics on the banking industry in Romania. Number of employees in banking system decreased by 10% during the financial crisis and there has been an 8,7% decrease in the number of branches. There are around 65K employees in the banking system currently.

The member also reported difficulties linked to erratic lending in Euros by Romanian banks over past years. Banks in Romania are 95% foreign owned and there are fears of foreign capital moving out of the country through market exit.

A member reported about an on-going online survey investigating consumers' awareness of SEPA. Questions ask respondents about their knowledge of IBAN and BIC codes among other things. The survey collected 1.000 replies that are currently being analysed.

Another member updated the group on action in Spain to address the sale of preference shares to consumers as part of the conversion of savings banks to banks.

Some members of the group asked clarifications to Commission officials present on the adoption of the Consumer Agenda and progress with negotiations on the Directive on Mortgage Credit.

Update on the OECD High-Level Principles on Financial Consumer Protection (Mr Maciej Berestecki; Internal Market and Services DG/H3)

Mr Maciej Berestecki informed the group about the state of play of implementation of the Principles. At the G20 Finance Ministers and Central Bank Governors meeting in Mexico City on 26 February 2012, the G20 reconfirmed its commitment to "advance

the financial consumer protection agenda by developing effective approaches to support implementation of the High Level Principles on financial consumer protection”.

The OECD Task Force responsible for this project is currently working on the guidelines (effective approaches / best practices) necessary for the implementation of the Principles. It is planned that the work of the Task Force will be as inclusive as possible and will go beyond G20, FSB and OECD members as well as Standard Setting Bodies, and it will include all relevant international organisations as well as consumer and industry associations. The guidelines will refer explicitly to the existing international and national instruments and their implementation will be voluntary. Following recent survey of the Task Force members, three key priority High Level Principles on financial consumer protection were identified for the development of further guidance in the first place. They are “Disclosure and Transparency” “Responsible Business Conduct of Financial Services Providers and Authorised Agents” “Complaints Handling and Redress”. At the G-20 meeting of Finance Ministers and Central Bank Governors in April 2012, the work plan for the development of the guidance was adopted and it will be submitted for endorsement to the meeting of the G20 leaders in June 2012.

Update on the Commission initiatives in the area of Microcredit (Mr Philippe Pellé; Internal Market and Services DG/H3)

Mr Philippe Pellé recalled the European Commission in its Communication on Social Business Initiative of October 2011, had committed to examine whether the current legal framework for microcredit in Member States constituted an obstacle to the further development of that sector. In this context, he reported on the outcome of a conference on microcredit jointly organised by the EESC and the European Commission (DG MARKT) on 2 December 2011. The main message was that microcredit providers are in need of more public recognition and credibility, as a way to facilitate their access to private funding.

Two approaches have been considered to achieve this enhanced status: self-regulation through a voluntary code of conduct for bank as well as non-bank microcredit providers, or the extension of the scope of application of all or part of the existing banking prudential requirements to the non-banking institutions. Microcredit providers in their majority showed little appetite for prudential/regulatory solutions, including in respect of a possible light touch, harmonised EU prudential regime for non-bank microcredit providers (such a regime exists in France and in Italy). This position is not disputed by the European banking supervisors.

With respect to codes, the Commission recalled that in October 2011, the European Commission (DG REGIO and DG ENTR) issued a European Code of Good Conduct for Microcredit Provision drafted in close relation with the microcredit sector. Around 100 microfinance/microcredit providers have already indicated their intention to adhere to the code. The long term objective of DG REGIO and the EIB is to create a quality label for microcredit providers adhering to the code. Such a label could be subject to external auditing.

FSUG members agreed that microcredit is a crucial source of funding for microenterprises and expressed their concerns that deleveraging by banks as a result of the new capital requirements may affect access to microcredit. Further, the

Greek representative of FSUG asked why Jeremie funding did not prove to be successful in Greece.

Mr. Pellé explained that in the opinion of the Commission, deleveraging should not affect the provision of microcredit and he promised to come back with the response concerning the Jeremie scheme in Greece.

Update on the state of play of MiFID 2 (Mr Salvatore Gnoni; Internal Market and Services DG/G3)

The Chair introduced this point noting that the FSUG is very concerned about the report of the EP rapporteur, which removed Commission's proposals on independent advice and weakens provisions on inducements and constraints in MIFID I.

Salvatore Gnoni gave an oral update about the on-going negotiations in Parliament and Council. He reminded that, in April, the Council gave priority to MIFID II and CRD files. MIFID II should be concluded by the end of the year and Commission services hope that an agreement can be reached within this deadline. Towards the end of its mandate, the Danish presidency has circulated a first set of compromise proposals and another would probably follow. One or two additional meetings were planned to take place in June when a discussion on the compromise proposals would take place. Regarding the Parliament, the draft report prepared by the ECON committee rapporteur was circulated in March. The vote in ECON was foreseen on 9th July and the vote in plenary planned in September 2012.

The Commission reviewed the draft report from ECON and shared its general objective to strengthen investor protection. However, on certain measures the draft report departs from the Commission's approach, including on proposals regarding inducements and independent advice. The report proposes no ban on inducements but rather focuses on disclosure. The Commission proposal considers that, when advice is provided on an independent basis, a specific treatment of inducements is justified. The existing rules should remain as the general regime for inducements, applicable to any inducements and to any service provided by investment firms and credit institutions. In particular, current rules foresee the obligation to disclose inducements as well as the requirement that they are designed to enhance the service provided to investors and should not impair the ability of the firm to comply with the duty to act in the best interest of the client. Disclosure only should not be sufficient.

The Commission also made proposals for mandatory telephone recording, establishing the right for investors to access such a recording. The draft report indicates that the telephone recording can be replaced by other means (written notes) and provisions for access to investors are toned down.

Salvatore Gnoni reminded that the ECON report is still in draft form and a great number of amendments (more than 2000) have been proposed by MEPs on the two legislative proposals included in the review of MiFID. It is therefore too early to understand what final position would be since proposals for modification take different approaches.

FSUG members provided a number of comments following this oral presentation, some of which are summarised below. One member noted that the DEV committee was expected to contribute to the MIFID EP position, and that the DEV position was

expected in May. On inducements a member reiterated that mere disclosure requirements would weaken MIFID I requirements, which were broader and provided more conditions. Another member quoted a Commission mystery shopping study, which covered 1200 intermediaries and found that appropriate information on inducements was only provided in 5% of cases. Salvatore Gnoni responded by confirming that the study suggests that intermediaries do not comply with disclosure requirements. This is more a compliance and supervisory issue.

Feedback on the FSUG response to the consultation of the Green Paper on card, internet and mobile payments (Mr Gerd Heinen; Internal Market and Services DG/H3)

Mr Gerd Heinen thanked for the FSUG response to the consultation on the Green Paper on card, internet and mobile payments which ended on 12 April. He said that the Commission had received around 300 contributions from a variety of stakeholders presenting very diverging views. In addition, on 4 May the Commission organized a conference to further discuss the issues and questions outlined in the Green Paper.

Mr Heinen confirmed that the opinion of payment users is crucial for the Commission in preparation for the next steps to be taken within the discussed policy area. He went through a number of questions commenting and discussing with the FSUG their opinion. The stakeholder consultation pointed out that financial inclusion is important and that many, mostly vulnerable, consumers, do not yet have access to modern means of payment or to e-commerce. In addition, it should be transparent for consumers what they are charged by retailers, but on the other hand consumers should probably not receive excessive information because it may confuse them. There are currently divergent approaches to surcharges across the EU since some Member States allow and others prohibit them in line with the Payment Services Directive and many stakeholders argued that a harmonised environment would be preferable. Regarding security, payment users were adamant that, together with innovation in payment services, consumer protection must be ensured accordingly.

Mr Heinen informed the group that a summary statement of the consultation feedback will be published in June together with the individual stakeholder responses.

The UK representative of the FSUG underlined the need for transparency of charges which consumers have to pay when using electronic payments.

Finalisation of the FSUG response to the Commission's public consultations on bank accounts

The lead member of the group provided a summary of the FSUG's response also highlighting open questions. He noted that the response is very detailed, providing 10 country specific annexes.

A number of decision points were highlighted:

- It should be considered that standardisation at EU level would hamper competition and product development.
- Regarding the management of comparison websites: No restriction to public only management, but in favour of oversight over public authorities.

A discussion ensued on the preferred level (EU or national) at which fee terminology should be standardised. Most members were in favour of national level standardisation, while one member favoured standardisation of main fee items at the level of the EU.

A discussion about the characteristics of a basic payment account should take place. There were differing views on a number of issues, such as whether to provide an overdraft facility or debit balance buffer.

The chair suggested that an executive summary would make document more readable, given the depth of the FSUG's response. The group agreed to submit the reply to the Commission by the 10th June. The deadline for responses was on 12th June.

FSUG strategy paper – discussion based on the received comments

A member of the group presented his proposal for an FSUG strategic plan. The presentation took account of the constitutional documents of the group, which are based on a Commission decisions and include the group's terms of reference.

A discussion ensued where group members expressed different views of the group's role. The Commission officials who provide secretarial services to the group were also asked to comment on the views expressed by members of the group.

One member of the group highlighted the group's advisory role to the Commission, its limitations in terms of promoting its views outside the scope of its role as an advisor to the Commission. Other members reminded the group that among other things, group representatives have the responsibility to provide a link between the Commission and the organisations they represent as well as other organisations in the Member States. In their view there was scope for the FUSG to pursue activities other than those strictly linked to the role vis-à-vis the Commission as part of this objective.

There were a number of suggestions including to make the group more visible on the European Commission website as well as to develop and promote a citizens' initiative.

FSUG would be useful to have a meeting with Commissioner Barnier, who is dedicated to the users' representation to balance all expert groups.

The group's chair noted that six members of the group were absent and suggested that it would be appropriate to discuss such a delicate issue with all members present. He concluded by noting that FSUG has an enhanced role compared to its predecessor FIN USE and expressed concern as to the availability of resources to spread the group's activities, given the already demanding schedule of the group.

Follow-up on the state of play of the 2012 FSUG research studies

Mr Maciej Berestecki explained the status of the tender preparation for the study on remuneration structures of financial intermediaries which should be launched at the beginning of July. Interested contractors will have approximately two months to submit their offers which will then be evaluated by the evaluation committee.

Following that, the contractor will be selected in October / November and the contract signed before the end of 2012.

Regarding another FSUG research study which will investigate the ownership of European-listed companies and which is also planned to be contracted before the end of 2012, the Commission asked the FSUG to provide an outline explaining the relevance of the study to the FSUG work. The outline will be drafted and submitted to the Commission by mid-June.

Wednesday 23 May

Revision of the Insolvency Regulation (Mr Jerome Carriat; DG Justice/A1)

Mr Jerome Carriat opened his presentation by reminding the group that the Insolvency Regulation, in force since 10 years is currently being reviewed. The Commission launched a public consultation. The deadline for responses is 21 June. The Commission plans to present its proposals by the end of the year.

Mr Carriat invited the FSUG to reply to the public consultation and clarified that awaits responses from all relevant stakeholders including industry, insolvency practitioners. etc.

He then provided a short summary of the state of play of the revision process and of the main challenges to be addressed. He noted the Regulation takes inspiration from private international law, providing common rules for insolvency proceedings (cross border insolvencies). It sets out provisions dealing with the choice of jurisdiction, competent courts, the possibility to open secondary proceedings in the Member State where the debtor holds its activities among others.

The purpose of the revision is to address a number of shortcomings in the Regulation. Meanwhile, the EP has made interesting proposals in insolvency and company law, which go beyond international private law context.

The Regulation focuses on liquidation proceedings and the safeguarding of creditors for a swift liquidation and realisation of assets. As a result it does not take a broader view such as supporting trade through saving business, saving jobs and developing cross border trade.

In addition the Regulation does not address group structures. Modern regulation needs to take account of group structures with many subsidiaries in different jurisdictions. Currently liquidation proceedings are held independently by each relevant jurisdiction. There is also the issue of avoiding form shopping, where companies move assets or activities for the purposes of insolvency.

The group member leading the FSUG response questioned the relevance of this initiative to the group's activities. He also noted that it would be useful to understand whether the FSUG's response should focus on specific issues.

In this context another FSUG member noted the distinction between creditors, which are the main focus of the consultation and consumers, which fall under the FSUG's area of competence. He noted that apart from question 5 in the consultation, which deals with personal bankruptcy, he saw little relevance to the groups' focus. The

FSUG agreed on the composition of the sub-group responsible for drafting the response to the consultation.

Finalisation of the FSUG response to the Commission's public consultations on the Green Paper on shadow banking

The FSUG member leading the response thanked the subgroup members for their contributions to the draft paper. In this context another member of the FSUG referred to the conference on shadow banking, held on 27 April 2012, where he represented the Group. He recalled what was said during the conference by the Commissioner Barnier who underlined the need for clearer role of shadow banking in financing of the economy but was also in favour of better protection of users of financial services. The FSUG member, who was the only speaker from the users' side, called for complete separation of commercial banking from the banks' trading business.

The leader of the response clarified with the contributors several aspects of the draft opinion and invited them to provide last comments by Friday 25 May, following which he will finalize the paper and will send it to the Commission for submission.

European Financial Stability and Integration Report 2011, Chapter 5: EU Households and the Financial Crisis – presentation by Mr Jonathan Carr (Internal Market and Services DG/G1)

Mr Jonathan Carr discussed Chapter 5 of the Commission's European Financial Integration Report 2011, entitled EU households and the financial crisis. It looked at how household wealth evolved over the crisis and why, as well as some of the policy implications. The focus was on households' experience as savers and investors, insurees and borrowers; as well as on relevant surveys. The report noted the difficulties for households in adjusting to volatile market and economic conditions in the crisis. It concluded that they, together with various structural changes – including reduced state provision (for pensions etc), the increased complexity and number of financial products, the emergence of new financial services providers, and technical innovation – underlined the need for a number of the measures the Commission was pursuing. These included those on DGS, PRIPs, insurance mediation and credit agreements on residential property; as well as a study on household over-indebtedness.

An FSUG member made a remark that the integration of financial markets is never measured from the demand side but only from the offer side. She explained that from a consumer perspective, there is no single market in the retail financial services area and consumers face enormous obstacles when they want to buy financial services in another Member State.

Conclusions and lessons to be drawn from the FSUG meeting in Madrid (23-24 April)

A general discussion took place within the group highlighting specific aspects of the FSUG meeting that took place in Madrid in April. The group agreed to send a thank you note to Adicae, who helped organise the meeting.

The group convened that as in the previous year's meeting in Greece, the choice of Spain was very useful to better understand the reality of the local financial sector and its impact on the on-going crisis in Spain. A number of members highlighted specific presentations which they had found most useful and informative. There was general agreement that the meeting in Spain was a success.

The Commission secretariat was asked to provide initial feedback and made a number of recommendations to the group as follows:

- The group's summary of lessons learnt from the meeting in Spain should feature in the FSUG's annual report, to have a lasting trace of them.
- The group should discuss its proposal of a venue outside Brussels as early as possible to enable appropriate preparation. It was noted that the success of these meetings depends to a large extent on having a good host organisation. This was the case in Spain.
- The group should possibly present two competing venues to the attention of the Commission for approval.

The group selected members to compose the sub-group in charge of drafting a document containing lessons learnt in the Madrid meeting.

Presentation and discussion on the interim report of the Study on personal bankruptcy (London Economics)

A representative of London Economics presented the interim report from the study on means to protect consumers in financial difficulty: personal bankruptcy, *datio in solutum* of mortgages, and restrictions on debt collection abusive practices.

He briefly commented on the sources of information and literature which had been used until then, and informed on the questionnaire which had recently been circulated to different stakeholders for their inputs. He also presented some preliminary conclusions from the study:

- many countries are moving from treating bankruptcy as a punitive state towards a mechanism to re-start the consumer as an active economic agent;
- countries feel that contracts cannot be held *sacrosanct* and that creditors must take a 'fair' share of the burden of over-indebtedness;
- countries have formalised systems to allow debts to be trimmed, both as a lever to force creditors to negotiate, but also to prevent consumers needing to apply for bankruptcy;
- countries are moving away from giving arbitrators discretion towards laying down standardised routes which lead to debt cancellation as standard;
- increasingly standardised mechanisms which are not predicated on discretion or the concept of maintaining contracts do not necessarily require judicial involvement (e.g. Sweden);
- *datio in solutum* solutions sit at one end of a spectrum of arrangements potentially available in response to the consumer not being able to meet their obligations in reference to mortgage debt.

Following the presentation and discussion on the interim report, the FSUG will submit its written comments in the next 20 working days. The draft final report is expected to be ready by the end of August and will be discussed at the FSUG meeting in September.

Update and discussion on the ongoing FSUG activities

In the context of 2012 FSUG priorities, a member of the FSUG explained that the priority concerning "Alternative providers of financial services" should cover all potential providers of financial services, except for banks, for instance: cooperatives,

credit unions as well as other types of providers. It should also present both good and bad practices of these entities as well as their impact on users of financial services. The members of the subgroup which will be working on this priority had already been appointed earlier and first discussion on the content of the 2012 FSUG priorities' reports will take place at the meeting in July.

A member of the FSUG proposed that the process of selection of the FSUG priorities in 2013 be more transparent and better organized so that the group members have more time for reflection on potential topics.

Upon request of the leader of the subgroup following the research study on "Personal bankruptcy", the group was extended to four additional members of the FSUG.

Debriefing of the 1st workshop of common activity on the Consumer Credit Directive (Mr Sebastian Bohr; DG Health and Consumers/B5)

Regulation 2006/2004 on Consumer Protection Cooperation applicable as from 2006 established a network of consumer enforcement authorities (CPC network). Mr Sebastian Bohr debriefed the group about a meeting that took place in Riga, which brought together representatives from nine Member States for a day and a half.

In preparation for the meeting, participating Member States received a questionnaire and 2 case studies to test how countries approach different situations. Replies indicate concurring views in MS regarding certain specifics of the CCD.

Some Member States have incorporated provisions in national legislation to cover loan products such as quick loans, small loans or payday loans although this is not foreseen in CCD. Sweden has incorporated these into its legislation, where arguments inciting people to take out such loans (e.g. money in 15mins) are now prohibited. Many Member States apply credit worthiness provisions for loans below 200€. However it was found that many countries were not in compliance with the credit worthiness test.

The meeting also addressed Member States' approaches to registration and licensing of creditors. Mr Bohr provided examples from the UK where infringement of provisions are treated as a criminal offense and as a consequence the creditor is penalised by rendering all credits unenforceable; and Slovenia where a register of creditors is publicly available for scrutiny for debtors to consult as a means to provide assurance as to reliability of creditors.

Regarding the Annual Percentage Rate calculation, some Member States analysed the actual application of APR provision and noted weaknesses including the provision of misleading information, errors or misstatement of the total cost on advertisements as well as shortcomings in the use of representative examples.

Mr Bohr concluded that the Commission considered this forum as a useful means to understand how successful CCD provisions are in the Member States and how they could be improved. It is also a good means for the Commission and Member States to communicate.

A number of FSUG members made comments following the presentation, which focussed on understanding the responsibilities of the CPC network better. The main

questions raised asked for clarifications about the composition of this network or whether conclusions of meetings are publicly available.

Guidelines on the application of the CCD in relation to costs and the annual percentage rate of charge (Ms Maria Lissowska; DG Health and Consumers/B4)

Ms Maria Lissowska presented the guidelines on the application of the CCD, published on 8 May. She highlighted a number of issues addressed by the guidelines including the Total Cost of Credit, indicating that not all costs in the APR need to be disclosed in TCC in advertising.

With respect to representative examples, the guidelines note that comparability can be construed at different levels, the national market or a specific product market. The guidelines also address questions such as whether Member States are allowed to set up provisions in national legislation on the use additional information or whether they can modify standard information. Ms Lissowska reminded the group that the CCD is a maximum harmonisation directive and therefore Member States are not allowed to modify standard information requirement.

She also described the influence of the Unfair Commercial Practices Directive ('UCPD') on CCD, where the UCPD fills in for missing provisions in the CCD.

A number of FSUG members made comments following Ms Lissowska's presentation:

- In Austria, information needs to be handed out in good time to consumers as part of pre-contractual conditions, while evidence indicates that it is handed with the contract.
- In the Czech Republic consumers seem not to make use of the APR as a comparison tool.
- A representative example should be unique per Member State or per bank. It would be better to have one per Member State to make it comparable. (Answer provided during the presentation as reported above)
- Do special conditions apply in credit unions, with respect to specific conditions that provide for cancellation of debt in case of death of a member and the doubling of savings to the benefit of the deceased's? (Answer: there exists a partial exemption for credit unions in the CCD)
- Is the currently available simulator still applicable given changes to the calculation of APR? (Answer: the Commission promised to prepare a simulator for Member States. The old simulator is still valid until the end of the year)