



Minutes FSUG meeting of 20-21 September 2011, Athens

Tuesday, 20 September

1. Adoption of the agenda, rules of procedure and approval of the last FSUG meeting's minutes (6-7 July)

The Group adopted the agenda and approved the minutes from the last FSUG meeting.

Tour de table on members' activities of FSUG interest:

A member of the Group informed about the OECD high-level conference on consumer financial protection to be held in Paris on 14 October. Until before the FSUG meeting no users' representatives had been invited and therefore the Commission was requested to check the possibility of participation for an FSUG member.

Another member informed about the complaint submitted jointly by BEUC and Euroshareholders to the European Ombudsman. The complaint concerns the composition of the stakeholders' groups of EBA and EIOPA where according to the complainants the users of financial services are underrepresented which is in breach of the EBA and EIOPA Regulations.

A member of the Group informed about the updates he had made on its organisation website www.conso.ro where not only does he provide plenty of data useful for financial consumers in Romania but he also presents the FSUG activity.

Another member raised the issue of lack of coordination of consumer protection matters, and in particular of financial literacy among the stakeholders' groups of European Supervisory Authorities. It was also proposed to report on this problem to the European Parliament.

An FSUG member drew the attention of the Group to the protection of consumers' personal data following the changes introduced by the Lisbon Treaty, and suggested paying more attention to this issue. He also proposed to draft a paper on consumers' data protection.

Another member briefed the Group on the class actions his organisation had been taking to defend thousands of Spanish consumers. Referring to the mortgage market in Spain, he said that approximately 10 % of mortgages are currently not being paid regularly, a figure that had risen from 1 % from before the financial crisis.

A member of the Group informed on the first meeting the E-invoicing stakeholder group he participated in, and he mentioned that it was estimated that approximately GBP 240 billion will be saved thanks to e-invoicing.

The impact of the new Capital Requirements Directive on consumers was raised as an issue which should be further investigated and discussed by FSUG.

An FSUG member communicated the results of the study on the transparency of the commissions imposed on consumers' investments by banks, which his organisation conducted in Germany. According to the study consumers are seldom made aware of the commissions they have to pay. He concluded by saying that this confirms the need for regulation in this area.

Another FSUG member informed that it is estimated that approximately 180 000 micro enterprises will go bankrupt in Greece as a result of the crisis. The main problem for them is lack of liquidity and insufficient access to capital since banks refuse to provide credits to SMEs.

Two members of the Group informed about serious problems of thousands of consumers in Central Europe who pay their mortgages in Swiss frank. Due to a significant increase in the value of the currency last year, plenty of borrowers find it very difficult to repay their credits.

Another member of the Group informed about the new law adopted in Slovakia giving consumers the right for early repayment of mortgage credits. It is considered an important achievement of Slovak consumers.

2. Debrief from the meeting with the Chairman of the European Insurance and Occupational Pensions Authority (EIOPA) by Mr Mick McAteer and Mr Guillaume Prache

On 8 September the FSUG representatives Mr. Mick McAteer (Chairman) and Mr Guillaume Prache (Vice-chairman) met the Chairman of the European Insurance and Occupational Pensions Authority (EIOPA), Mr Gabriel Bernardino.

Mr McAteer and Mr Prache expressed its concerns on the composition of the Insurance & Reinsurance and the Occupational Pensions Stakeholder Groups which are the Authority's consultative bodies appointed under Article 37 of the EIOPA Regulation. According to FSUG, consumers and users experts are underrepresented in both Groups to the advantage of industry, which does not meet the requirement of 'balanced representation' stipulated in the Regulation. FSUG informed Mr Bernardino that BEUC and Euroshareholders were going to submit a complaint to the European Ombudsman regarding this issue. FSUG also mentioned that it found the process of selection and appointment of the Groups' members very untransparent.

In addition, Mr McAteer raised the problem of unclear and non-standardised definition of 'financial user'. This often hampers the selection of appropriate users' representatives to stakeholders' groups.

Mr Bernardino disagreed with the FSUG reasoning on under-representation of financial users in the EIOPA stakeholders' groups. He nevertheless offered to look into the matter and to pay greater attention to the selection of the groups' members in the future. At the same time, he highlighted the importance of the consumers' and users' input to the work of EIOPA and invited FSUG to closer collaboration.

Mr McAteer and Mr Prache pointed out that EIOPA should attach greater importance to the interests of consumers. They came up with the idea to create a register of independent European consumers' experts in the area of financial services who would be available for meetings, conferences or to participate in expert groups. They also proposed to set up under ESAs an expert group of users of financial services working across all financial services' sectors as a consultative body for the three supervisory authorities.

In the opinion of Mr Bernardino, the FSUG ideas could be further considered. In response to the FSUG complaint on little involvement of EIOPA in consumer protection matters, Mr Bernardino presented the Authority's work in this field (planned Consumer Strategy Day on 6 December, consumer unit within EIOPA, etc.) and invited FSUG to regular contacts with his staff as well as to participate in the Authority's consultations and events.

3. Basic principles for consumer protection in the area of financial services – discussion over FSUG draft proposal

This point was not taken and postponed to the October meeting of FSUG.

4. Financial and social impacts of the financial crisis on ordinary Greek citizens. What measures are regulators taking to protect citizens from such impacts? – presentation by Dr Dimitris Spyarakos, General Secretary for Consumers, Ministry of Labour and Social Affairs

Dr Spyarakos, General-Secretary for consumers, stressed the tough economic crisis that Greece currently faces. The consequences that flow from the current economic framework were briefly outlined:

- introduction of new taxes
- higher VAT on products and services
- inflation rate has raised considerably
- there has been a cut of around 10 % on salaries and pensions
- the salaries of civil servants have been reduced
- a lot of people have and will become redundant
- the unemployment rate has risen to 20 %
- businesses are closing down.

Since two years now the recycling of debt is no longer possible. A lot of consequences flow from the fact that consumers, businesses and households who have taken credit are not able to pay it back. After the last government elections a draft law on personal insolvency was introduced for voting in the Greek Parliament. The draft law is based on the same policy lines as other EU personal insolvency laws but differs in some aspects. It gives a way out to households/citizens who are not capable of paying their debts. It applies to those who are in a permanent inability to pay their debts, apart from merchants. According to the draft law an individual can apply to the court in order to create a plan for the payment of the debt. The plan is valid for 48 months after which the individual is released from his debt. If the creditor disagrees then the applicant goes to the court which will decide on the liquidation in order to satisfy the creditor. The applicant can save his home which is exempted from liquidation. The provisions of the legislation do not harm the interest of the creditor and the court reviews the financial situation of the applicant every 6 months.

The law is valid since January 2011. Since then, 12 000 applications were submitted out-of-court and 5 000 in court. To avoid turbulences it is necessary to ensure a transitional face during which debtors are protected by creditors. The law forbids auctions (EUR 200 000), and for consumers and businesses it forbids the auction of 1st residence. It gives time for

debt adjustment according to the new legislation and enhances competition and helps consumers make a choice on the best option available.

The Greek consumer protection system combines administrative consumer protection (French model) and the protection based on civil law as in Germany.

Additional characteristics:

- not sufficiently developed and insufficient resources are given by the government to the consumer protection policy
- only EUR 150 000 is assigned annually from public budget for all Greek consumer organisations
- consumer authority has a power to impose fines on traders but lacks human resources to ensure enforcement (lack of employees with expertise)
- consumer ombudsman – amicable mediation
- the government is currently reviewing the structure.

A new draft law to empower consumer protection will soon be filed in Parliament. Among others, it will cover transparency and information in private insurance and out-of-court settlement of consumer disputes.

There are reorganised ADR committees in municipalities. Businesses that accept to be bound by the decision of the committee are granted a special 'trust mark' which increases consumers' confidence in them.

An FSUG member asked about the practical experience of the application of the law on personal insolvency. Dr Spyrakos said that the first experience has been very positive if it is compared with the experiences of other countries. During the last 9 months there were many applications for personal insolvency and many good decisions were taken by the courts. Overall, the results are satisfactory.

Another FSUG member asked whether the funding by the government to consumer organisations, which currently stands at EUR 150 000, will increase. Dr Spyrakos responded by saying that because of fiscal problems it is not possible to increase the amount. They try to use other funds to support the organisations' activities. For instance they use European programmes in order to improve the associations' infrastructure.

A member of FSUG asked whether the applicants, under the regime of the new personal insolvency law, are eligible to free advice from consumer organisations. Dr Spyrakos said that before the applicant goes to court he has to make a proposal to the creditor and at this phase support and assistance from consumer organisations is provided to the applicant.

A final question referred to the unfair commercial practices, such as salary freezing and the imposition of extra charges by banks for delayed payments: Is there any legal action foreseen to ban such practices? Dr Spyrakos replied by saying that there is the possibility to impose a fine on the bank.

5. Accountability and citizen representation. Are Greek citizens able to hold policymakers, regulators, and banks to account? Do citizens/civil society groups contribute to the major decisions being made? – presentation by Mr Victoras Tsiafoutis, EKPIZO (Consumer Organisation)

Mr Tsiafoutis highlighted a very difficult situation of thousands of Greek consumers affected by the financial crisis and pointed out that his organisation represents many of them in group actions against rogue banks and insurance companies. He also underlined the successful procedure of out of court dispute resolution thanks to which many disputes between consumers and financial institutions have been successfully resolved.

The awareness of consumers' rights has increased in recent years among Greek citizens but consumers are still not capable of defending their rights. Over-indebtedness is the most serious problem that consumers in Greece currently face and approximately 90 % of consumer complaints that EKPIZO receives concern this issue.

EKPIZO has on many occasions made use of collective redress mechanism which is a very efficient tool to fight against unfair traders while defending consumers' interests. One of the examples was the case of abusive bank fees where after the intervention of consumer organisations, banks agreed to decrease excessive charges. Overall, EKPIZO has so far carried out some 47 collective actions against more than 70 providers, 90 % of which concluded in a favourable decision for consumers.

Mr Tsiafoutis mentioned several reasons for over-indebtedness in Greece:

- financing of credits with new loans
- high bank fees
- difficult situation of Greek economy in general
- overconsumption.

In order to help indebted consumers EKPIZO is very much involved in the procedures provided for in the new law on personal insolvency. They assist consumers to negotiate with banks the conditions of debt restructuration and settlement. If there is no agreement between the consumer and the bank then a court takes a decision. According to Mr Tsiafoutis these decisions are often unfair to consumers since they allow consumers for very little resources to live of.

Mr Tsiafoutis also complained that the Greek Central Bank does not take sufficient measures to defend consumers. With regards to excessive bank fees, the Bank refused to intervene stating that it is for the market to determine the level of bank fees.

6. The impact of the Greek crisis on small enterprises and small entrepreneurs as users of financial services – presentation by Dr. Christos Ioannou, Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE)

Dr Christos Ioannou from the Hellenic Confederation of Professionals gave a presentation on the impact of the Greek crisis on small enterprises and small entrepreneurs. The financial and banking system is skewed away from SMEs. Their access to finance and the use of financial services denote a rather unbalanced sector. Therefore SMEs use alternative methods of financing such as: informal investors (mainly family) or financing through the use of 'post-dated' cheques.

A 2008 survey showed that SMEs rely heavily on own funds and are reluctant to raise new equity from sources outside the family circle. They have limited access to debt and their access to grants is marginal. The financing of SMEs comes from the following sources:

- family members and close relatives provide appr. 49 % of the funding required
- banks provide 34 % of the funding and
- government programmes cover 15 % (GEM 2004).

Nevertheless, corporate credit growth continues to slow down. The use of cheques during the crisis is decreasing and this is because the risks are much higher. Banks do not provide banking services for SMEs and consequently financial services in this sector are not subject to competition. The aim is to move away from these informal mechanisms (informal investors, 'post-dated' cheques, diverted financial practices) to normal financial tools.

7. Collective redress as an FSUG priority – discussion over draft document

One of the FSUG members referred to the draft report on collective redress by MEP Lehne. The report limits the application of collective redress to cross-border disputes and for infringements of EU law. Another member of the group recalled that the Czech Republic strongly opposes the implementation of collective redress at EU level. One of the members stressed that when the EU seeks to introduce harmonised measures in areas where something exists in Member States it is difficult to set up a precise common approach and therefore adoption of general principles at EU level seem more appropriate and relevant.

The collective redress file is a priority for the FSUG. The members of the Group agreed to draft a short paper to reflect the criticism of MEP Lehne and to present other essential aspects of collective redress. The group will prepare a two-page paper with its position on the subject where it will also provide useful case studies.

8. Principles and practices of financial market regulation (PPFR) – outline of the report by Mr Mick McAteer

Mr McAteer explained that the principles are needed because in the stability and preventive measures which policy makers take in response to the financial crisis, they often forget that it is equally necessary to improve consumer protection and make the markets work for citizens.

The FSUG initiative on principles and practices of financial market regulation is therefore aimed at EU policymakers, ESAs, national supervisors as well as other stakeholders, like consumer groups. Its principal objective is to help policymakers understand the purpose of FMR from user perspective and to improve the effectiveness of this regulation.

The paper will define principal consumer needs, many of which are shared by SMEs, and will intend to respond to what extent these needs are met. It will also provide 10 guiding principles necessary for the new financial market regulation, i.e. philosophy and culture, consumer focus and objectivity, market neutrality, evidence based and targeted, early intervention and effective deterrence, transparency, accountability, consistency and coherence, efficiency and effective redress. Finally, the paper will outline how the principles should be put into practice and how they should be reflected in the policy formulation. It is planned that the paper will be drafted by mid-October. It will be sent for comments to members of the Group and finalised by the end of 2011.

One FSUG member proposed to change the title of the paper into 'Principles and practices of financial services regulation' to better reflect its focus on users of financial services and not on the market itself. Another member mentioned that some additional ideas concerning the principles should be considered, notably the need to ensure adequate enforcement of consumers' rights including sanctions for rogue traders. It was also stressed that the paper should move the focus of policy makers from end process (point of sale) to much earlier stage where the detriment of consumer is usually much bigger (e.g. pre-contractual stage).

9. Long term performance – the primary factor for pensions' adequacy and sustainability (hard lessons from a real case) – presentation by Mr Guillaume Prache, managing director, EuroInvestors

Mr Prache compared two exactly the same retail pension investment products offered to consumers but with different fees imposed on each of them and different marketing strategies. It resulted in the products' very different performance in the long term.

They are complex 'packaged products' which can generate lots of commissions and fees for the financial industry. Both of them are managed by the same asset management company but fund A is not actively marketed and very rarely 'advised' by retail intermediaries to consumers because it provides very low or no commissions to distributors while fund B is actively marketed on the internet by a large retail bank. However the charges imposed on fund B are twelve times higher than those of fund A and in addition fund B inducements are not disclosed to consumers. Also, nobody informs or advises the consumer, including supervisors, about the dramatic consequences of these expenses for the long term performance of the product. Subsequently, in long term the results achieved by fund B are very unfavourable to consumer unlike those of fund A despite the fact that in principle both funds were exactly the same pension investment product.

Conclusions which can be drawn:

- Investing early even in a diversified packaged portfolio of equities can often lead to value destruction over the long term.
- Packaged equity products do not guarantee real value protection and growth over the long term.
- The choice of a right investment product is much more important than the starting date of the retirement saving effort.
- Product disclosure and information at the point of sale is often misleading, and the damage caused to the retirement savings value can be very serious.
- The lack of disclosure of real net performance and of the performance of the comparable indicator can also be very misleading.
- It is very difficult to assess the long term performance of long term retail investment products due to the lack of publicly disclosed long term track records.

The following measures should be taken to prevent such situations:

- improve disclosure principles
- better enforce the MiFID information and inducements rules
- issue warnings

- ban 'toxic' products (this power could be within the remit of ESMA)
- require investors' indemnification for failure of information and advice duties.

Wednesday, 21 September

10. Discussion over research projects – update on state of play of Terms of Reference and tender procedure including 2012 FSUG meeting dates

The following dates have been proposed for the FSUG meetings in 2012:

18-19 January
13-14 March
16-17 April
22-23 May
3-4 July
18-19 September
6-7 November
4-5 December

The proposed dates have been adapted to the planned stages of the FSUG research studies to be carried out in 2012. The dates will allow the Group to meet the contractor(s) to discuss the consecutive parts of the studies. Two members of the Group asked for the April date to be changed due to Orthodox Easter holidays overlapping with the proposed dates. For the rest of them, it was agreed that FSUG members would check their agendas back home and would confirm their availability for the meetings in 2012. Following that, if necessary some of the dates might still be amended.

The initial timeline for the implementation of the FSUG research studies in 2012 has been presented. It is planned that the three studies will be carried out in parallel, starting from January 2012 and will be finalised in October 2012.

11. Administrative matters of interest for FSUG

Mr Maciej Berestecki from DG Internal Market and Services of the European Commission presented the IT tool – Circa to be used by the FSUG. It will serve as an Internet-based database where all the documents from the Group's meetings will be stored and only members of the Group, as well as the Commission, will have access to them. FSUG members will be provided with the necessary logins and passwords allowing the access to Circa: <https://circabc.europa.eu/faces/jsp/extension/wai/login.jsp>.

Mr Berestecki also informed the Group about the Commission Transparency Register and invited the members to subscribe their respective organisations which will allow them to be updated on the ongoing Commission's consultations. The Register can be found at: http://europa.eu/transparency-register/index_en.htm.

In addition, the on-going consultation of the European Commission can be viewed at: http://ec.europa.eu/yourvoice/consultations/index_en.htm.

12. ADR/ODR legislative proposal – presentation by Mr Xenios Xenophontos (DG Health and Consumers, Unit B4)

Several problems have been identified in the ADR study in 2009 which encouraged the Commission to come up with the legislative proposal:

- Gaps in the coverage of ADR schemes. Although about 750 national ADR schemes exist, gaps still remain both at sector-specific and geographical level.
- Lack of awareness of consumers and business:
 - On average 44 % of EU traders are not aware of any ADR scheme.
 - Around 30 % of those European consumers who were unable to resolve their problem directly with the trader, did not know either how to take their complaint further or about the existence of ADR.

Businesses rarely provide consumers with information on the competent ADR that could deal with their dispute, either at the point of sale or post-sale, unless this is regulated (e.g. in the financial services sector in the UK and the travel sector in Belgium). In addition some ADR schemes are often not in line with core principles laid down by the two Commission Recommendations, in particular with transparency and impartiality.

It is also important to promote ADR for cross-border e-commerce transactions. In 2010, more than half of complaints (56.3 %) received by the ECC-Net were linked to e-commerce transactions. However, out of the 35.000 cross border complaints received by ECC network in 2010, 91 % could not be referred to an ADR scheme in another Member State.

Commission conducted an extensive public consultation on ADR. The consultation confirmed a strong support for ADR as an efficient alternative to in-court proceedings for consumer disputes. The majority of stakeholders welcomed action at EU level. A fundamental condition to improve the use of consumer ADR schemes is to raise awareness of consumers and businesses. All respondents also agreed that ADR should be low cost or free of charge for consumers.

Commission is planning to present in November a 'package' which will include:

- a framework Directive on ADR
- a Regulation on On-line Dispute Resolution for cross-border e-commerce transactions
- a Communication.

The framework Directive aims at ensuring that all disputes related to the sale of goods or provision of services can be submitted to an ADR scheme which respects a certain number of quality principles. Businesses will be vested with the obligation of informing consumers about the ADR schemes competent to deal with their dispute.

The Regulation on ODR intends to establish a European Online Dispute Resolution platform ('ODR platform'). The ODR platform is an interactive website offering to consumers and traders a single point of entry for out-of-court resolution of disputes. Consumers will be able to submit any dispute related to the cross-border online sale of goods and provision of services. The adoption of both legal instruments by co-legislator (European Parliament and Council) is expected in 2012.

One FSUG member asked whether an impact assessment of the proposal on small firms had been carried out. The Commission confirmed that an extensive impact assessment had been conducted, including the impact on small and medium-size enterprises in relation to the information obligation. Another member raised the issue of vague ADR principles and inefficiency of many schemes which may take up to 9 months to solve a dispute. The need for obligatory participation of businesses in ADR schemes was also stressed by FSUG. The Commission also informed that all consumer disputes will be covered by the proposed legislation.

13. The impact of the new, low-growth/debt deleveraging economic paradigm on the financial services sector: How will this affect financial users in terms of restricted access, higher prices or product design? – introduction by Mr Mick McAteer followed by FSUG discussion

The FSUG discussion paper on the impact of high debt, low growth, low interest rate and higher inflation on EU citizens drafted by Mr McAteer and circulated prior to the FSUG meeting should be a starting point for a document to be addressed to ESAs. The objective will be to ask the European Supervisory Authorities about the measures they are planning to take to prevent consumers and users of financial services from being affected by the consequences of the financial crisis.

The draft paper briefly summarises the possible consequences for EU consumers of the EU economy entering in a sustained period of high debt, low growth, low interest rates and higher inflation (that is, higher than is consistent with the current low growth environment). It could have major impacts on household incomes, consumer behaviour, access to products, product pricing and design, investment returns and attitudes to risk, sustainability of business models, and both consumer protection and prudential regulation.

The paper was welcomed by the FSUG members but they also suggested keeping the paper brief and straight to the point. They were requested to provide written comments to the document by the next meeting of FSUG.

14. Principles for external relationships of the FSUG – finalisation of proposal

An FSUG member responsible for external relations said that the Group's primary objective in terms of external relations should be to raise awareness about the FSUG activity and to cooperate with national consumer organisations. An important element of this strategy is to communicate the existence of the FSUG externally. The members of the Group proposed to set up a communication sub-group to that end but it was not decided who will head the sub-group. It was mentioned that it is essential to have a close contact with other organisations, not only consumer associations. It is planned that the final list of the relevant organisations will be concluded at the next meeting in October; however the organisations will have to be carefully selected. This was welcomed by the FSUG members and one of them suggested that it would be a good idea to add the European Banking Federation to the list of organisations.

15. Financial supervision – discussion over draft letter on how the European Commission intends to tackle financial supervision with regards to consumer protection

The members of the Group discussed over the draft letter and agreed that the new supervisory authorities at EU level (ESAs) should have a coordinated approach to consumer protection. In the first place, the FSUG members would like to focus on underrepresentation of consumers in the stakeholders' groups of ESAs.

The Group also suggested drafting the definition of 'financial user' to facilitate ESAs the selection of relevant candidates. The role of the supervisory authorities in consumer protection should also be further investigated and clarified. Another important issue to be looked into by ESAs is over-indebtedness.

The draft letter will be ready by December and it will be presented to the Group for comments. It will then be finalised in January-February next year.

One of the group members suggested changing the wording of the title in the agenda to include over-indebtedness which is a very important aspect in financial supervision. Another member suggested that consumers should also be represented in the executive board of the supervisory authorities.

16. Conclusion

The next meeting of the FSUG will be held in Brussels on 18-19 October.