



Minutes of the FSUG meeting 12-13 February 2013

Tuesday, 12 February

World Bank Report on the Treatment of the Insolvency of Natural Persons – presentation and discussion by Professor Iain Ramsay, member of the Working Group on the Treatment of the Insolvency of Natural Persons and of the Report drafting committee

Professor Ramsey presented the findings and conclusions of a recent World Bank report compiled by a working group, of which he was a part. The working group brought together academics, judges, practitioners and policy makers. The report aimed to build on existing action at national and international levels and provide a tool to assist policy makers in addressing the treatment of insolvency of natural persons.

The working group agreed not to restrict the scope of their report to consumer insolvency but to include individuals including traders. This is due to the fact that many small individual businesses may have similar problems as consumers. Also, many employees have become self-employed but may be classified as a business, but their situation may not be different to an individual as a consumer. However the report focusses on the insolvency of individuals rather than the interaction between business and individual insolvency.

Professor Ramsey then went through the main chapters of the report and providing the salient features in each chapter.

Costs/Benefits: The report outlines benefits to debtors, creditors and society. The risks associated with moral hazard should be taken into account in measuring the costs of a personal insolvency system. It is hard to measure whether and how action leading to debt relief may give rise to a reduction in payment morality. Studies indicate that personal insolvency systems manage this risk appropriately by screening applicants.

Core issues section of the report asks key questions about the design of a system. These comprise; how a system relates to informal settlement processes, what the role do the courts and intermediaries take in the process and the price that a debtor must pay-if any-for discharge

Regime design looks at the main characteristics of a system including whether the debtor should have prior recourse to voluntary settlement systems before being granted access to the personal insolvency scheme and whether the legal architecture of systems should be inscribed into insolvency law or be enacted in tailored personal insolvency legislation.

The section dealing with institutional frameworks essentially analyses the governance of systems. The report provides an inventory of different setups in and exhibits diverse approach in the countries analysed. In a number of countries, public/private partnerships operate personal insolvency systems, while others have appointed administrative agencies. Court-based systems funded by public money prevail in yet other countries.

The report also analysis different means of financing systems, which may range from financing being limited to public funding of the court system to levies on creditors, to finance

the system. Other measures include subsidies to professionals such as lawyers to provide services to individuals who enter into an insolvency procedure.

In some countries, a personal insolvency procedure can only be initiated by a debtor. Other systems, (e.g the United States and the United Kingdom) allow creditors as well as debtors to make use of the system.

Rules regarding access to systems also differ widely, with some countries setting more conditions on creditors than other. The system in the United States does not require a debtor to be declared insolvent before she/he can open a bankruptcy procedure. Several countries use an 'unable to pay your debts' test as a condition to grant access to the system. Yet other countries place bigger hurdles such as: by granting access only after a debtor is unable to repay within 5 years; by only granting access in case of force majeure or by requiring a good faith test.

Repayment plans play an important part in many personal insolvency systems. Most systems will require the repayment of at least a part of debt outstanding. In many cases individuals entering insolvency schemes own little or no assets that may be used to repay debt. The report identifies a number of safeguards aimed to assist debtors starting afresh following discharge from debt.

One of the central policy objectives of personal insolvency systems is that of enabling economic rehabilitation. One important aspect of rehabilitation is ensuring non-discrimination against people who have been insolvent. Some countries require individuals to undergo counselling: can insolvency be used to change behaviour, given that many individuals who become insolvent often exhibit weak financial skills.

Study on remuneration structures of financial services intermediaries and conflicts of interest – kick-off meeting with iff (institut für finanzdienstleistungen)

The IFF presented the objective of the study which is to investigate the status of existing remuneration models of financial services intermediaries (dependent/independent insurance intermediaries) and of sales force of banks/insurance companies (focus on variable pay). It is also to provide information on the existing legal provisions regulating remuneration models and conflicts of interest at national level. Finally, the study is to briefly map the ideas and possible solutions for improvements of remuneration schemes. The IFF outlined the steps to be taken for the timely implementation of the study: theoretical preparation, drafting of the questionnaires (economic part and legal part), collect legal details from the 10 MS experts (legal survey), contact relevant authorities/regulators and stakeholders, collect the views of national authorities, regulators, insurance professionals (insurers and intermediaries), consumer associations and trade unions.

It was agreed that the following 10 MS will be covered by the study: DE, FR, ES, UK, IT, FI, DK, PL, SI and IE. Two other MS (NL, AT) will be included only anecdotally. Two principal remuneration models will be analysed in the framework of the study: commissions paid by institutions and fees paid by consumers. The IFF presented its initial approach to the research and explained its understanding of the areas which are supposed to be looked at closely, such as: conflicts of interest, misseling, economic function of intermediaries, remuneration, transparency, etc. It has also provided an example of Germany and outlined the legal rules which have to be followed by insurance intermediaries in this country. Finally, the IFF requested the assistance of the FSUG members in collecting national data necessary for the project and facilitating contacts with national experts.

The FSUG members insisted that the IFF closely follows the terms of reference in carrying out the study.

Adoption of the agenda and approval of the minutes of the last meeting (3-4 December 2012) – Tour de table

During the tour the table, a member of the FSUG presented the results of the survey conducted between 10-19 December 2012 by the Greek Confederation of Professionals, Craftsmen & Merchants (GSEVEE) on the income and expenses of Greek households. The following are some of the most striking results obtained by surveying 1207 households across the country:

- About 40% of Greek households have at least one unemployed family member.
- A significant shrinking of the family income has been observed: 2 out of 3 households state that the family income does not exceed the amount of EUR 18,000 per year.
- 93% of households have experienced income losses following the outbreak of the crisis (on average by 38%).
- Almost 50% of citizens could not cover their main financial obligations with their current income, while only 2% were able make savings.
- The majority of households met their obligations by using a part of their savings or borrowing from relatives and friends.
- 40% of households have debt in arrears.
- 47% of households have loan obligations.
- Shrinking of consumption is dramatic in all categories e.g. in food, transportation, household bills, clothing, restaurants, travels, etc.
- Excessive tax burden on products and services in combination with shrinking income and cutting down of social benefits/allowances softens tax morale in the society increasing the risk of reducing public revenues. The tax burden and income reductions have forced people to exceed their limits.
- The society of 50% emerges: half of the population (with a tendency to increase) is at risk of finding themselves at the economic margin.
- Half of the households will not be able to meet their tax obligations next year.

8th Consumer Scoreboard – presentation by Ms Anna Jassem-Staniecka (Health and Consumers DG/B1)

Ms Jassem-Staniecka presented the group with some highlights from the 8th Consumer Scoreboard. She recalled that the autumn edition of the scoreboard ranks 51 consumer markets within the European Union, Iceland and Norway, representing approximately 60% of consumer expenditure.

This survey based analysis asks consumers about how they rank consumer markets in terms of comparability, trust, satisfaction, problems and complaints, choice and switching. The survey then makes use of a market performance indicator to measure and analyse responses in a comparable manner.

Top level measure – across the 51 markets: generally the market assessment has slightly improved, mainly due to improvements recorded in the goods markets rather than services. Within the services sector, financial services continue to record a below average score as in previous years. The Scoreboard analyses four banking markets for investment products, bank accounts, loans, credit and credit cards and mortgages.

The scoreboard also groups services into 30 market clusters, where banking services are the worst performing cluster. Insurance services perform better, ranking second.

Comparison with previous year: Overall financial services improved. Banking services improved furthest although they remain the worst.

Country differences in the market assessment: Spread of market assessment across EU countries – services seem to be less homogenously priced than goods prices which move

more freely across borders. Interesting: combining spread with overall assessment with cross-border trade.

As a follow up to the survey the Commission will launch two market studies as in previous years. This year one study will cover the market for 2nd hand cars, which was the lowest performing goods market. In addition a consumer vulnerability study is also due to be carried out. This should help the Commission develop a more refined methodology to study mechanisms of vulnerability and financial services will definitely be one of the sectors to be covered by the study.

Following a number of comments and questions from FSUG Members, Ms Jassem-Staniecka invited the group to provide any further feedback in writing.

How can the FSUG make better use of the results of the personal bankruptcy and pension studies?

It has been decided that following the conclusion and publication of the studies, the FSUG Chair will draft an e-mail briefly presenting a given study which, together with the link to the final report and the FSUG position on the study results, will be circulated to the FSUG external contacts. Some members of the FSUG proposed to hold a press conference at national level in order to present and disseminate the results of the study.

Administrative points

In preparation to the meeting with the heads of units in charge of the FSUG secretariat in the European Commission, the FSUG members evaluated the FSUG activities in 2012 pointing to positive aspects and those which could be improved in the functioning of the group. They stressed the importance of the research studies which are contracted annually on behalf of the FSUG and of the feedback which the group receives from responsible officials following the adoption of the initiatives by the Commission. In this context, the FSUG members underlined that they would like to better understand how their input is used in the Commission policymaking and whether it has a real impact. They also underlined the usefulness of the FSUG external meetings held once a year in one of the Member States and the possibility for the FSUG members to participate in events on behalf of the group. The FSUG requested to receive a printed copy of the FSUG annual report and to look into the possibilities to improve external communication of the group.

Regarding the external meeting of the FSUG in Bucharest, the Commission is in close contact with the FSUG member from Romania to proceed with the organization of the meeting. A conference room for the meeting has already been booked in the European Commission Representation in Bucharest and the Romanian member of the FSUG is supposed to start contacting the proposed speakers from Romania. Following their confirmation of participation, they will be addressed with a formal invitation by the FSUG Chair.

Wednesday, 13 February

Discussion and selection of the topic for the 2013 FSUG research studie(s)

Six proposals of the topics for the FSUG research studie(s) to be launched in 2013 were submitted by the group members and briefly presented during the meeting:

- Collective redress in financial services
- Barriers to cross-border retail financial services
- Empirical evidence on the function of credit bureaus and consumer data sharing
- Mystery shopping test on the implementation / enforcement of the legal requirements for "inducements"
- How to promote access and use of affordable saving products for all European financial services users, in particular low income people?

- Welfare loss caused by high charges and inefficiencies in the EU asset management sector

It has been decided that following the meeting, the FSUG members will vote by e-mail indicating their preference from 1 to 6 and based on the voting results as well as in agreement with the Commission, the topic for the 2013 FSUG research studie(s) will be decided at the FSUG meeting in March.

Discussion on the FSUG response to the on-going consultations:

- Informal questionnaire on private long term investment funds

Mr Timothy Shakesby (Internal Market and Services DG/G4) briefly presented the questionnaire on private long term investment funds and asked the FSUG for their response by 8 March. The results of the consultation will feed into the Green Paper on long term investments which the Commission is planning to publish in March.

- Draft Implementing Technical Standards on reporting of national provisions of prudential nature relevant to the field of occupational pension schemes by EIOPA

The member of the Group who took the lead in drafting the FSUG response went through the EIOPA consultation document. The consultation document is quite comprehensive. However the questions focus mainly on financial stability aspects not operational aspects of occupational pensions. Thus the main theme underlying the consultation is what is the critical data Member States should collect to support prudential regulation. The consultation ends at the end of February 2013.

Brief update on the negotiations of the European Commission proposal on PRIPs – by Mr Timothy Shakesby (Internal Market and Services DG/G4)

Regarding the proposal on PRIPs which is under negotiations in the Parliament and in the Council, Mr Shakesby explained that it seems that IMCO and ECON Committees have reached an agreement and the plenary vote could take place around April. The Parliament has proposed to include saving products in the scope of PRIPs but the Council is not supportive of this inclusion. The Council is close to reach a common position but since this file is not a priority for the Irish presidency, it may still take several months to finalize the negotiations. In general, the differences in views between the Parliament and the Council do not seem very difficult to solve.

FSUG letter concerning the Commission proposal for Insurance Mediation Directive to the European Parliament – brief discussion

The Chair made a brief introductory statement thanking the lead member of the Group for drafting the letter to the ECON Committee rapporteur, MEP Langen regarding the review of the Insurance Mediation Directive (IMD). He briefly recalled the main points raised by the Group in this letter.

Ms Anna Kadar from the Commission gave an update on the state of inter-institutional discussions on this file. She thanked the Group for drafting this letter which alerts the ECON Committee against proposed amendments that would weaken consumer protection when compared to the Commission's original proposal.

While inter-institutional negotiations are on-going, they are not yet close to completion. At least two more meetings are foreseen in the Council working group. The Council's position has not been determined at this stage.

In the European Parliament a vote in plenary is planned to take place in July 2013. Meanwhile the IMCO Committee was due to discuss the amendments in the Langen report on 20th February 2013. IMCO's positions are generally in line with the Commission's proposals or may even go beyond the Commission's proposals in some respects. IMCO may

seek to obtain direct responsibility for consumer protection elements of the proposal from ECON.

The Commission intends to maintain its stand on consumer protection aspects of its proposal. Other contentious issues include the provisions covering disclosure of remuneration, cross-selling of insurance products and recourse to delegated acts in the proposal. Another main issue continues to be whether IMD should align to the provisions on sales practices in MiFID or seek to tailor these to the insurance market.

Update on the EU initiative on credit rating agencies – presentation by Mr Philippe Caluwaerts (Internal Market and Services DG/G4)

In response to the EU commitments made by G20, in September 2009 the EU adopted the Credit Rating Agencies Regulation (CRA Regulation) which entered into force in December 2010. The Regulation imposed on the credit rating agencies rigorous registration requirements and mandated national regulators to supervise them. A later amendment to the CRA Regulation (Regulation 513/2011) introduced in 2011 entrusted ESMA with direct supervisory powers over credit rating agencies. Since July 2011 ESMA is in charge of the registration and supervision of all credit rating agencies established throughout the EU.

However, the sovereign-debt crisis of spring 2010 revealed some shortcomings of the CRA Regulation and the need to re-examine certain aspects of rating activities. The identified issues included: over-reliance on external ratings, remaining threats to CRA independence, high market concentration and limited choice, insufficient right of redress for investors as well as the issues on transparency of methodologies and their application.

The overall objective of the revision of the CRA Regulation launched following the sovereign-debt crisis was therefore to reduce remaining risks to market stability due to the use of external ratings. The most important changes introduced by the revision of the Regulation were the following:

- measures to reduce overreliance on ratings
- provisions to take account of the specificities of sovereign debt
- introduction of a direct civil law claim for investors against CRAs (in cases of gross negligence or intentional infringement of the Regulation)
- measures to increase the choice in the rating market
- measures to address conflicts of interest inside the CRAs, improve procedures on methodologies and disclosure of ratings

The Commission adopted its proposal on 15 October 2011 and following the negotiations in the Council and the Parliament, the legislators agreed on the compromise text in November 2012 and was voted in the EP in January 2013. The text will formally be adopted by the Council in the first half of 2013 and will enter into force 20 days after the publication in the Official Journal.

European Commission study on overindebtedness of European households – presentation by Mr Francesco Gaetano (Health and Consumers DG/B4)

Mr Francesco Gaetano provided an update on the status of the Commission's on-going study on over-indebtedness in European households.

The oral presentation focussed on the outcome of a recent seminar held in Brussels in January 2013 that followed the completion of the study's interim report and brought together a large number of stakeholders who were consulted through interviews carried out as part of the study.

The seminar was structured along the lines of the main themes addressed by the study, comprising: the causes; consequences; broader impact on households and alleviation

measures for the over-indebted. The purpose of the seminar was to present the preliminary findings to stakeholders and collect their views on the interim outcome of the study.

Mr Gaetano recalled some of the questions that were made to each of four sets of participants and gave a brief description of the contributions received from participants during the seminar. In addition he sought feedback from a number of members of the FSUG who also participated in the seminar, representing consumer groups.

A number of FSUG members sought further details on the methodology used in the study to capture comparable data on indicators of over-indebtedness. In particular the Chair noted that some of the indicators used in the study, such as data on mortgage/bills arrears payments may not capture a number of important lending products, such as interest-only mortgage loans, that may contribute to long-term over-indebtedness.

Another member of the FSUG commented that some of the findings in the study may already be found in the outcome of prior studies on the subject and hoped that this study would provide further insight than existing literature.

Mr Gaetano recalled the pan-European nature of this study, whose methodology is based on a prior Commission study performed in 2008, whose purpose was to try to establish a common definition of over-indebtedness. The on-going study uses this definition to attempt to determine trends in the causes and consequences of over-indebtedness. The significance of indicators and their relationship with external factors, such as economic cycles can only be explained through a consistent collection and analysis of comparable data over the longer-term.

“Who owns the EU Economy? Evolution of the ownership of EU-listed companies between 1970 and 2012” – kick-off meeting with Observatoire de l'Épargne Européenne

At the beginning Mr Didier Davydoff, the director of the Observatoire de l'Épargne Européenne (OEE) briefly presented the organisation and its activity as well as his colleague and project partner, Mr Daniele Fano. He explained that the main goal of the project is to provide evidence of trends in the breakdown of share-ownership in Europe (individuals/institutions) and to create a new classification of (European) investors. He also presented the challenges of the project such as: getting time series with a long history, splitting listed shares from unlisted shares and other equity and reprocessing available data to comply with the newly proposed classification.

The OEE proposed the following data sources to be consulted in the course of the research: National Financial Accounts, Balances of Payments and CPIS survey (IMF), National Stock Exchanges. Mr Davydoff stressed that the countries will be included in the survey according to the year of their accession to the EU, however the UK, Ireland and Denmark will be included as of 1970. Where data is missing for a country, it will be estimated based on the information received from national experts and extrapolation from other years and the same years in other countries. Given the limitations in the collection of necessary data, the OEE will provide two different datasets for 1970-2011 using the traditional methodology and 1997-2011 using the new definition of domestic investors.

Regarding the timeline of the project, it has been agreed that the OEE will provide the mid-term report in mid-April and it will be discussed at the FSUG meeting at the end of the month. Draft final report should be submitted at the end of June/beginning of July and the final report at the beginning of September.

Study on the position of savers in private pension products – discussion on the final report

The lead member of the FSUG for this study made a presentation to summarise the outcome of this project and evaluate the main strengths and weaknesses of the project.

This member of the FSUG went through each of the sections in the study in order, comprising: the setup of pension schemes, costs and charges, returns and risk and consumer information. For each section the member highlighted the main sources used by the study contractors to collect relevant data.

Overall the study objectives were achieved, providing a collection of data that can be expanded upon by the Commission. The member of the group expressed the wish that this database would be updated for it to remain relevant over time. In addition, the fact that the study contractor changed its approach from that to identify a dominant product to identifying a dominant scheme, gave way for more comparable country data, which enabled more meaningful recommendations. The member also highlighted that the study findings were adequately corroborated by key stakeholders with the assistance of FSUG members.

The study also had a very ambitious scope and could only reasonably be expected to provide groundwork for further data gathering, using the study methodology. The group agreed that the database was a tool for 'internal' Commission use.

Feedback from the meeting of the FSUG chair and vice-chair with the heads of units in charge of the FSUG Secretariat

At the meeting it was agreed to continue and improve, where possible, the feedback which the FSUG receives from the Commission officials following the adoption of initiatives by this institution. The Commission will check the areas where the FSUG communication could be improved and it will ensure a printed version of the annual report which the FSUG members could further disseminate. It was also proposed that the Commission contacts the European Supervisory Authorities and suggests the FSUG's contribution to the European Consumer Day which the ESAs are jointly organising in June 2013. Commission will also explore the possibility to invite the representatives of the Secretariat General and Legal Service of the European Commission to cover the aspects such as the high-level strategic view of the Commission's financial services policy (recent and future), the Commission's competences and legal boundaries as well as inter-institutional aspects.