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FOREWORD

The European Commission set up the Financial Services User Group (FSUG) to improve the level of user representation at the heart of EU policymaking. We have the privilege of introducing the sixth and, sad to say, final annual report of the FSUG in its current form as our mandate has now finished.



FSUG activities

This report describes the activities of the FSUG from November 2015 to October 2016. As the FSUG website shows, we have had another busy year to date, producing eight opinions in response to requests from the Commission and consultations from the three European Supervisory Authorities (ESAs)¹. In addition, we produced a range of proactive opinions, initiatives, and engaged with a range of policymakers and opinion formers. Our letters to European Commissioners and others can be found on page 14-16.

Our work covered the whole spectrum of financial services from retail to institutional and wholesale markets and financial markets infrastructure. We covered consumer credit, pensions, insurance, investment funds, and banking services. We also analysed a wide range of cross-cutting issues including: consumer and investor protection, conduct of business and prudential regulation, financial stability, product governance, conflicts of interest in the supply chain, and big data and 'fintech'.

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¹ European Securities and Markets Authority (ESMA), European Banking Authority (EBA), and European Insurance and Occupational Pensions Authority (EIOPA)

Major research projects and policy papers

The FSUG had its own research budget. We used this to focus on areas where there are significant gaps in research from the user perspective. After looking at a number of options, we contracted research studies and published opinion papers on financial guidance and pension decumulation.

Creating alternative ways of providing financial guidance is critical if we are to meet the needs of financial users who cannot afford, or who may not wish to use, the services of the commercial, for-profit financial advice sector. The FSUG argues for the establishment of non-profit financial guidance providers. This type of service would help improve consumer decision making in a 'sales free' environment.

We have already published two major reports showing how poorly financial users are served by the private pensions (2013) and asset management industries (2014) when trying to accumulate assets for future needs such as retirement. But, the decumulation phase is just as important especially now that, with improvements in life expectancy, people are having to make their income last longer in retirement. Working out how to generate an income in later life can be one of the most important and difficult financial decisions consumers face in their lifetime - and they have to live with the consequences of their decisions for longer. It is critical that they have access to the right products and right advice and guidance to make the decisions that are best for them. Our new research project analyses decumulation practices across a number of countries. In our position paper, we make a number of proposals to improve the advice and products available to people during the decumulation phase.

Further details of the research projects and FSUG position papers can be found on page 24.

FSUG priorities

In addition to research projects, we produce papers to prompt awareness of important issues and to influence policy development. This year we produced three new papers: the use of credit data and creditworthiness practices; the impact of 'big data' on financial services; and enforcement and better regulation.

Conventional wisdom is that the use of credit data by credit reference agencies and lenders is a 'good thing' for the industry and consumers. In our paper, we challenged these assumptions and asked fundamental questions about the role of credit data in meeting three important policy objectives: managing overindebtedness, improving prudential regulation, and promoting access to fair and affordable credit. Contrary to the conventional wisdom, there is actually little evidence that the use of credit data contributes towards those objectives. Of course, we cannot say that credit data is definitely detrimental – rather that there is no compelling evidence that it has a positive effect. We concluded that the burden of proof should be on the credit data industry and policymakers before extending the use of credit data in lending markets, and that tougher regulation is needed to prevent abuse of credit data.

Credit data is a subset of a much wider debate about the use of 'big data', fintech, algorithms and artificial intelligence in financial services. As with many innovations in financial services there has been surprisingly little objective analysis of the potential benefits and detriments for ordinary financial users and the real economy. Evangelists for these innovations have been vocal about the potential benefits – and we agree there *are* many potential benefits. For example, if harnessed properly, these innovations could lead to more convenient, accessible products and services, more empowered financial users, more responsive financial providers and more efficient disintermediated supply chains. But, the numerous potential detriments and risk are also obvious. We could see greater financial exclusion (through more granular segmentation) - indeed, there are concerns that the mutuality principle underpinning certain financial services such as banking and insurance is under

threat. Rather than empower consumers, these innovations could allow providers and intermediaries to further exploit users' behavioural biases in order to mis-sell unsuitable or unnecessary products, or to price discriminate based on the likelihood an individual will shop around.

The greater connectivity associated with these innovations exposes people to outright financial scams, often outside the jurisdictions of EU regulators. Nor is it even clear that we will see more efficient supply chains. It is just as likely that we will see even more intermediaries operating at the interface between the end-user and financial providers and infrastructures. These interface organisations have to get paid in some way and unless they can create or add value, then by definition they must destroy value for end-users. There are also the more fundamental concerns about who owns a person's data and privacy laws, which are heightened by the increased use of big data and technology. This is a fast changing market but policymakers and regulators cannot stand back and allow the market to evolve in its own terms – the market must be shaped to meet the needs of financial users and protections put in place to prevent abuse.

The third major area we looked at was enforcement and better regulation. We published a new paper that assessed different approaches to regulation and enforcement across a range of EU Member States and set out principles for effective enforcement and regulation. This followed on from a paper called *New Model Financial Regulation*. Historically, policymakers have focused on promoting competition and choice and utilising demand side interventions such as financial education and providing consumers with information to tackle information asymmetries. The hope was that the magic of market forces would ensure that consumer pressure would reward the best and punish the worst providers. We know this has not worked as the sheer amount of market failure in financial services shows: inefficiencies, poor value products, mis-selling of unsuitable products, rock-bottom levels of consumer confidence and trust in key sectors. A new prescriptive approach to regulation is needed to *make* financial markets work in Member States.

But, there a second reason for a new approach to financial regulation. We have not made much progress towards an efficient, well-functioning single EU market in retail financial services². Policymakers have tended to highlight regulatory barriers in Member States and demand-side barriers such as information asymmetries. The belief seems to be that if these regulatory barriers are removed and consumers provided with information about a greater range of choices, a demand-led single market should emerge. This is wishful thinking. People do not need or want *more* choice. They need and want better choices. A consumerled single market has not happened, and will not happen. The biggest barrier to a single market is the structure and behaviours of providers and intermediaries in local markets. Dominant local providers and intermediaries will continue to block the distribution of better value products from other parts of the EU unless they are forced to change their behaviour by robust regulatory interventions at the local level. A truly effective single market can only emerge if it is built on the foundations of well-functioning local markets.

The existence of these structural barriers (and market fragmentation generally) can be explained to a large degree by the 'silo' approach to legislation and regulation³ and inconsistent supervision and enforcement across the EU. Legislation and regulation has been developed to meet the different business models, legal and corporate structures in the industry rather than the core needs of financial users or the real economy. This is exacerbated by the current architecture and structure of the European Supervisory Authorities (ESAs), with different conduct of business supervisors for banking, securities and

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² The picture is somewhat different in institutional and wholesale financial markets

³ Where legislation and regulation has been developed to meet the different legal and corporate structures in the industry rather than the needs of financial users or the real economy

investment markets, and insurance and pensions. As national authorities across the world move to a more unified approach (either a single regulator, or a 'twin peaks' model), the FSUG believes it is now time for the EU to create a unified conduct of business and consumer protection authority, and a single prudential regulatory authority. This would increase efficiency, and help ensure consistency across different retail markets.

Further details of these priorities can be found on page 29.

Wider engagement

FSUG meetings are usually held in Brussels. However, as part of our wider engagement, we hold one of our meetings each year in a Member State, to listen directly to public interest representatives. This year we held our meeting in Berlin, where we learned about the German regulator's approach to supervision and enforcement; developments in the insurance and pensions sector; financial guidance and the role of the financial market 'watchdog'; consumer protection in the German capital market; and the potential benefits and risks of fintech developments. We also heard a political view of consumer protection developments from a member of the Bundestag Finance Committee. A more detailed account of the lessons learned can be found on page 17. We are very grateful to our hosts in Berlin for a very informative session.

Special features

This report also includes a number of special features. As the European Commission will no longer fund the experts on the FSUG, one of our features is on user representation – ironic given the fate of the current group. The job the FSUG was set up to do still needs to be done. There will be no equivalent replacement body that works across financial services and is able to influence policy from the outset. This will tilt the balance even more in favour of the industry, which already has far larger resources than consumer representatives. The risks to EU consumers of a reduction in user representation should not be underestimated. Although the financial crisis happened in 2007-08, we are still living with the consequences and the process of regulatory reform is far from complete. In our view, little progress has been made on the challenge of making financial markets work for EU citizens and the real economy. This is borne out by research that finds EU consumers continue to rate most main financial sectors as performing below average compared to other consumer sectors⁴. The job of making financial markets work for EU citizens has only just begun.

We gave a presentation to Commission staff at our final meeting on how EU economies and financial markets face a new paradigm of low growth and low returns. This presents huge challenges for financial institutions and households. Financial markets are being distorted, creating new post-financial crisis risks, and causing capital to be diverted away from economically productive activities. New conduct of business risks are being created as financial institutions struggle to make sustainable returns in this new low growth/low return environment. We are in uncharted waters, and it will be a long time before market conditions adapt to a 'new normal'. It is important that policymakers are guided by experienced, and independent user representatives to help steer markets through these difficult times.

 $http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/10_edition/docs/consumer_market_brochure_141027_en.pdf$

⁴ Consumers rated: private life insurance; loans, credit, and credit cards; bank accounts; mortgages; and investments, private pensions and securities worse than average. Only vehicle insurance and home insurance were rated higher than average. Source: EU Consumer Markets Scoreboard, Making Markets Work for Consumers, 10th Edition, June 2014,

We are already seeing concerted efforts by powerful industry lobbies to reverse legislation and regulation that has not even begun to take effect. The decision to end the FSUG mandate in its current form is one that we cannot comprehend as it leaves a huge gap in the capacity of civil society to counter the damaging activities of industry lobbies. We truly hope the Commission provides user representatives with alternative opportunities to contribute to the development of policy.

We also have a feature on redress. Consumers' ability to get access to redress and compensation varies widely cross EU Member States. We cannot have a genuine single market in financial services while this situation persists.

Finally, we have looked back at our years as user representatives, and picked an area that has benefited consumers: namely the Single Euro Payments Area (SEPA).

And last but not least

And last but not least, we would like to thank the staff from DG FISMA and DG JUST and staff from predecessor DGs Markt and Sanco who took the time over the years to present initiatives to us. We appreciate their efforts to seek and incorporate our views.

We would especially like to thank Malgorzata Feluch from DG FISMA, and Francesco Pontiroli-Gobbi from DG JUST for their invaluable guidance and support throughout the years. We would also like to thank those Commission colleagues we have worked with in the past — particularly Maciej Berestecki, Christopher Gauci, Anita Varga, Maris Lives and Alessandro Gianini. It has been a privilege and pleasure working with and knowing them. We would also like to thank the team who provide much needed administrative support to the FSUG — especially Ann Van Mello, Donna McKillion, Tessa De Roock-Dierickx and Monika Taxer. Without their support the FSUG would not have been able to function.

Mick McAteer Guillaume Prache Chair, FSUG Vice-Chair, FSUG

ABOUT THE FSUG

In its White Paper on Financial Services Policy 2005–2010, the Commission stated that it attached great importance to ensuring proportionate user representation in policy making. In the Communication for the European Council – *Driving European Recovery* – the Commission put the interests of European investors, consumers and SMEs at the centre of the financial market reforms.

As a measure to achieve these aims, the Commission set up a Financial Services User Group (FSUG). The FSUG's task is to:

- advise the Commission in the preparation of legislation and policy initiatives which affect the users of financial services
- provide insight, opinion and advice concerning the practical implementation of such policies
- proactively seek to identify key financial services issues which affect users of financial services
- liaise with, and provide information to, financial services user representatives and representative bodies at the European Union and national level.

FSUG has up to 20 members, who are individuals appointed to represent the interests of consumers, retail investors or micro enterprises, and individual experts with expertise in financial services from the perspective of the financial services user.

FSUG meets eight times a year in Brussels and its Chair is elected from amongst the group members. The Commission (jointly DG FISMA and DG JUST) provides secretarial services for the Group.

The Group works on a consensus basis and tries to ensure that it arrives at a collective opinion on issues it considers. However, from time to time, individual members may register a minority opinion.

As well as responding to requests from the Commission, the FSUG:

- responds to consultations from other policymakers
- proactively seeks to identify key financial services issues which affect users of financial services and
- liaises with, and provides information to, financial services user representatives and representative bodies at the European Union and national level.

FSUG CONSULTATION RESPONSES

From November 2015 to the end of October 2016, the FSUG produced eight responses to requests for opinions from the Commission and other authorities plus a range of own opinions and communications.

European Commission consultation: Covered bonds in the EU

The FSUG supported the Commission's intention to further integrate national covered bond markets. Covered bonds as a direct investment product (or as part of a packaged investment product) provide a low-risk alternative to unsecuritised debt securities and asset backed securities. They have also proven to be resilient during times of recession. No covered bond has ever defaulted, although the bail-out of a number of covered bond issuers undoubtedly contributed to preserving this record. The FSUG believes further high-quality harmonisation of the regulatory and supervisory frameworks applicable to covered bonds issued in Europe, along the lines of the EBA Best Practices, would further improve the resilience and attractiveness of this product for retail investors in Europe.

Joint Consultation Paper on PRIIPs key information for EU retail investors

The FSUG said it believed that the ESAs should stand firmly on the side of retail investors and take necessary steps to avoid selling products that have features causing misunderstanding of the risk-reward or cost-effectiveness of the products. In order to do so, the ESAs should clarify the criteria using not only a descriptive approach, but also showing the typical features that makes the products "not simple". The FSUG argued that this should be accompanied by an impact analysis clearly showing where the misunderstanding might occur and what consequences this may have for the individual investor.

The PRIIPS KID is intended to educate and inform retail investors. They should be able to rely on this document in order to understand the main features of the product. Research shows, however, that the KID is also used as a comparison tool. The FSUG believes that monetary as well as percentage terms should be used. This would enable investors to understand the relationship between these figures, and see the impact on expected return of the investment. Furthermore, when a manufacturer creates scenarios for presenting

expected returns, it should include performance related fees in the simulation model to estimate the impact of these fees on net returns.

The credit risk assessment of a PRIIP should not include consideration of whether a compensation scheme exists. Even if a guarantee scheme exists at the national level, retail investors should not be misled by its existence, as there is no uniform procedure on compensation, nor the same level of coverage, across the EU.

The products offering nominal capital protection during their whole life span should not be viewed as low-risk and thus automatically allocated to MRM class 1. Nominal capital protection is misleadingly presented as a form of investor protection, and a marketing tool. There is a risk that investors would rely on this feature without understanding the real costs and low probability of achieving higher potential returns because, in many cases, consumers are paying for the protection through a reduction in positive return.

EU regulatory framework for financial services

The FSUG responded to the Commission's Call for Evidence on the EU regulatory framework for financial services. The Commission sought empirical evidence on: *rules affecting the ability of the economy to finance itself and growth; unnecessary regulatory burdens; interactions, inconsistencies and gaps; and rules giving rise to unintended consequences.* It also sought evidence on the impacts of national implementation (known as gold-plating) and enforcement.

The FSUG, of course, does not support *unnecessary* regulation - for example, if it adds to costs without producing better consumer outcomes. But, we were concerned about the tone adopted by the Commission towards regulation with the use of terms such as 'regulatory burdens'. Consumer organisations have genuine concerns that well-resourced industry lobbies are increasingly effective at portraying regulation as detrimental or counterproductive to the interests of financial users or the real economy by allegedly jeopardising business investment, limiting loans to households, increasing the price of retail financial services and ultimately destructive to employment and growth.

It is important to remember that there was a strong reason to regulate the financial sector. We witnessed the worst financial crisis in a century. This financial crisis turned into an economic crisis in the form of recessions across the EU, in turn causing a social crisis with ordinary citizens bearing the brunt of severe cuts to public services. Taxpayers had to bail out too-big-to-fail banks in many European countries⁵. Moreover, the practices of financial institutions in the EU with respect to their retail customers have not improved sufficiently to allow for a reduction in financial conduct regulation. Unfair practices, mis-selling, marketing of products with little or no social utility, advice biased by conflicts of interest and misaligned incentives are still widespread. Poor value, unsuitable, products sold by inefficient providers, which cost EU consumers billions of Euros, are still dominant in too many EU member states.

In a speech addressed to regulators and supervisors, former Commissioner Lord Hill stressed the need to better protect consumers and regain their trust⁶. We cannot agree more. Consumer trust in financial services providers regularly scores at the lowest level among all providers in the Consumer Market Scoreboards published by the European Commission. For instance, in 2013 (the most recent data available), only 35% of retail investors trusted investment services providers to respect consumer protection rules. Low

http://www.finance-watch.org/hot-topics/blog/909

⁵ The 2008 financial crisis cost taxpayers €1,600 billion to rescue banks:

⁶ http://europa.eu/rapid/press-release SPEECH-15-5117 en.htm

levels of consumer confidence and trust affect not just individual consumers, but hurt the real economy. Without confidence and trust, citizens are unwilling to invest for the future or save for retirement, which in turn deprives the real economy of much needed investment capital. Far from reducing regulation, it is clear that much still needs to be done in both in terms of regulation and supervision.

There has been a significant amount of legislation introduced post financial crisis, aimed at improving financial stability and conduct of business and consumer protection. But, we will not know whether financial stability regulation is effective until we encounter a new financial crisis. With regards to consumer protection and conduct of business most of those new or revised laws have only recently entered into force, or are in the pipeline. It is therefore too early to assess the positive impact on consumers.

The emphasis should be on harmonising consumer protection to higher standards as there are certainly gaps and inconsistencies. Critically, the FSUG has also identified a severe lack of proper enforcement in several Members States and a lack of convergent EU culture and practices with regards to the supervision of conduct of business.

That is why the FSUG expressed scepticism about the real objective of this call for evidence. It is hard to imagine how this exercise will improve consumer outcomes if the existing legislation is already being questioned before it has had a chance to take effect. The FSUG urges the Commission to resist any pressure tending to undermine the current legislation, when so much remains to be done to restore financial stability, improve consumer confidence, and make markets work for citizens and the real economy.

Green Paper on Retail Financial Services

The FSUG welcomed the European Commission's second Green Paper on Retail Financial Services, which affords another opportunity to bring about a single European market for retail financial services. Thanks to the EU Single Market, more than 500 million consumers should benefit from cross-border competition, resulting in a better choice of products, better services and lower prices. But not so for retail financial services, although this is the consumer segment that requires most improvement in terms of performance and prices as shown by the annual EU Consumer Scoreboard, which ranks "investment products, private pension and securities" as the worst of all consumer markets.

The FSUG considers that a common market of retail financial services would bring huge benefits to EU citizens in terms of performance and prices, in particular in the following priority areas: personal pensions, retail investment funds, life insurance, mortgage credit, card purchases in foreign currencies, payment services, car insurance, investment life/unit linked insurance and savings accounts.

Consumer benefits from common markets in these services could amount to tens of billions of euros per year and would have a significant impact on EU growth and jobs as well.

Whereas technology continues to help the creation of a single market by enabling companies to improve the availability and comparability of information, facilitating cross-border transactions, simplifying disclosure and driving down prices, further integration of payment services and systems remains a necessary precondition for companies to reach customers in other Member States.

The same applies to widespread tax discrimination, with EU citizens having to pay more taxes on the same product if it is purchased in a Member State other than the one they reside in. This is inconsistent with the goals of the Treaty of Rome and with any attempt to progress towards a common or "single" market.

Of course language is another key barrier to cross-border retail financial services. Again, technology should further lower the cost of providing multi-lingual information and communication.

Financial suppliers do not offer products to consumers in Member States other than their own, weary of excessive operational costs. Consumers on the other hand do not have enough information or confidence to acquire services from companies based in other Member States and, if they did, they would have trouble accessing them.

Another key barrier to cross-border retail financial services is the insufficient and inconsistent enforcement of existing EU rules. The FSUG believes that this major obstacle to the provision of better retail financial services to EU citizens can only really be solved by setting up an EU financial user protection authority. This would mirror what has been done in the aftermath of the financial crisis by, for example, the US (creation of the Consumer Financial Protection Bureau) and the UK (creation of the Financial Conduct Authority). It implies a fundamental reshuffling of responsibilities between the existing European Supervisory Authorities.

Finally, as a general comment, FSUG believes that the Green Paper should be quickly followed by a timetable for concrete and measurable objectives in order to ensure that, unlike the previous initiatives of the European Commission in this area, there will be real progress towards a common market for retail financial services to the benefit of European citizens and of the economy as a whole.

FSUG analysis and proposals on the integration of the EU retail investment funds market (Annex to Green Paper response)

Following the 2014 FSUG <u>research</u> and <u>position papers</u> on asset management, it published a detail analysis and recommendations on the retail fund market as an annex to its response to the European Commission's Green Paper on Retail Financial Services.

Our analysis shows that:

- EU citizens are sold mostly alternative investment funds (AIFs), not the Pan-European UCITS funds, in particular in big Member States' markets such as France and Germany;
- Investment funds are only a small portion of citizens' financial savings (7%) as they
 are sold more packaged (and often more fee-laden) retail investment products such
 as bank products, life insurance and pensions;
- Past performance and fees of retail funds are hard to find;
- Over a ten-year horizon (2003-2012) both equity (- 24%) and bond (-8%) funds under-performed their benchmarks;
- The overall number of funds in the EU is four times higher than in the US for a market that is half the size of the US one;
- The level of fees is two and a half time higher in the EU in the case of equity funds, not including the entry fees, and the wrapper fees often added by providers and distributors.

Based on these facts, the FSUG recommends the following actions as part of the CMU and the retail financial services action plans of the European Authorities:

 Fact finding on the number, nature (UCITS, AIF, etc.), fees and past performance of retail investment funds in Europe;

- Implementation of the CMU Action Plan, which asks the ESAs to collect, analyse and report on the performance and price of retail financial products in compliance with article 9.1 of their Regulations;
- Maintain the mandatory and standardised disclosure of past performance of UCITS funds and of their chosen benchmarks in the PRIIPS KID: we refer to the FSUG letter to the EU Level I Authorities of 19/01/2016, and to its replies to the ESAs' discussion and consultation papers on PRIIPs issued in 2015;
- Ban the use of AIFs in retail packaged products; and
- Create as soon as possible the Pan-European Personal Pension (PEPP) as a simple, portable and low cost individual DC product.

EIOPA consultation on Personal Pension Products (PPPs)

While the FSUG welcomed EIOPA's consultation on PPPs, we wish to make clear that looking to harmonise the existing regulatory framework among the 28 Member States is only a second best option compared to the Pan-European Personal Pension product approach (PEPP). We doubt that any meaningful harmonisation of the myriads of PPP regulatory regimes within the EU could happen any time soon. But the pension issue is a ticking time bomb of tremendous magnitude, so time is of essence, and no further delay should be allowed for the completion of a common market for personal pensions in the EU. Only a PEPP approach can achieve this.

As the successful experience of UCITS funds (the only pan-European retail investment product so far – almost 60 years after the Treaty of Rome) shows, the only realistic and effective approach is a pan-European PP Product Regulation.

Harmonisation of distribution rules for PPPs should be based on recognition of a consumercentric approach and acknowledgment of cognitive biases. Distribution rules should be based on pre-contractual transparency and comparability of PPPs. Both aspects, transparency and comparability, are closely linked to the ability of consumers to make an informed decision on financial products.

The FSUG believes that PPPs would also benefit from harmonisation of disclosure rules. This is the most important area of EU savings and it is the least harmonised despite the identification of pension savings as a critical area as long ago as 2007 by the European Commission in its first Green Paper on retail financial services. Since then, personal pensions have been excluded as such from all the post 2008 crisis reforms on investor protection. However, some "individual pension products" (PRIIPS Regulation terminology) are covered by recent investor disclosure rules.

The FSUG is concerned about EIOPA's approach to risk disclosure: "a risk indicator similar to that with the PRIIPs KID could be designed to indicate risk in the short term, while performance scenarios could be more useful for communicating risk in the long term". The FSUG favours a more specific approach to pension savings and PPP risks that takes into account not only the underlying asset classes in which the PPP intends to invest but also the different time horizons involved.

ESMA discussion paper: UCITS share classes

The FSUG supported ESMA's efforts to harmonise national practices on the use of share classes by UCITS management companies. The use of share classes can be a valuable tool to customise investor needs and to generate cost reductions, to the benefit of end investors. However, the FSUG emphasises that the use of share classes should adhere to certain rules aimed at protecting investors. In particular, the FSUG thinks differences between share classes should be clearly communicated to investors when they have a choice between two

or more classes. We believe this requires a separate KIID for each share classes. Furthermore, any cross-subsidisation should be strictly forbidden, and there should be no spill over of share class specific risks to other share classes.

CMU action on Cross-border Distribution of Funds (UCITS, AIF, ELTIF, EUVECA AND EUSEF) across the EU

The FSUG recognises the marketing and distribution of investment funds in the light of existing practices of financial intermediaries, where the banks play a crucial role.

Retail financial products are "advised", promoted and sold to EU household mainly based on two criteria:

- Level of profitability for providers (commissions)
- Tax advantages (perceived or real) for savers

This is usually detrimental to direct investments in securities (shares and bonds), to simple low cost packaged products such as index ETFs (index funds are a 50/50 market between institutional and individual investors in the US versus 90/10 in Europe), and to Pan-European products such as UCITS funds, as they usually do not enjoy the tax advantages of other local investment products such as specific AIFs.

Intermediaries generally only provide the KIID when a retail investor shows interest. The first documents the potential investor sees are marketing materials that focus mostly on tax advantages or some special features of the product.

Marketing materials should be clear and straightforward, with detailed requirements on key parameters. For example, if the product is marketed as innovative, it should be compared to other dominant products offered on the market and the differences explained. The fees must be compared to the market average. The historical returns should be compared to the benchmark including at least the dominant competing products.

The FSUG stresses that it is hard to find comprehensive information (for example, web sites) comparing investment funds. As long as the information is in the national language, retail investors will not know or not realise if a fund is domiciled locally or in another Member State. It is different of course if the foreign-domiciled fund information is provided only in a foreign language. Lack of pan-European web sites mean investors cannot compare the foreign funds to the domestic ones. Another limitation is that selling platforms will not generally mention low cost no-commission funds such as index ETFs.

Therefore, the FSUG suggests that marketing materials should always be accompanied by the KIID and the marketing communication rules should be align to a maximum level in the EU across all types of funds.

European Commission: Consultation on a potential EU pension framework

Personal pensions can help secure adequate replacement rates in the future as a complement to state-based or occupational pensions. Creating a framework for EU-wide personal pensions could bring attractive and accessible products to all EU savers. The FSUG welcomed this EC initiative and supported the development of such a framework.

The FSUG emphasised that a Pan-European Pension Product (PEPP) should be viewed as a retirement saving product based on investment features where simplicity, cost-effectiveness and transparency are the key elements of design. Simplicity requires having a limited investment options, and the saver having a full overview of allocation profile and the ability to adjust it during the saving period according to the saving goal. There should be a

targeted solution promoted where not only short-term risks are considered but also the ability to achieve a targeted replacement rate in retirement.

Cost-efficiency is a key element. Many existing personal pension products do not fulfill this criterion. A low-cost PEPP based on passive investment would be unattractive to intermediaries due to low sales commissions. To encourage promotion, financial intermediaries should be required to explain to a consumer exactly why a more expensive and complex product would better than a low-cost PEPP. This is based on the so-called "RU64" rule introduced by the former Financial Services Authority in the UK. This rule was successful in building sales of 'stakeholder' (simple, low cost) pensions.

Transparency of the PEPP should be based on the existence of a retirement account where the saver is able to see all aspects of the product including contributions, all paid fees and charges, past performance compared to the respective benchmark and other information related to the product and investment options.

FSUG therefore supports product-based regulation where the PEPP could serve as a perfect example of such activities.

LETTERS FROM THE FSUG



To: Martin Schulz, President of the European Parliament Roberto Gualtieri, Chair ECON Pervenche Beres, MEP Commissioner Jonathan Hill Commissioner Jyrki Katainen

Re: The elimination of past performance in the contents of the Key Information Document, and its replacement by "future performance scenarios"

The Financial Services User Group (FSUG) advises the European Commission in the preparation of legislation or policy initiatives which affect the users of financial services, provides insight, opinion and advice concerning the practical implementation of such policies, and proactively seeks to identify key financial services issues which affect users of financial services.

We are writing to you to express our serious concerns about the decision to eliminate past performance data from the Key Information Document under the PRIIPs Regulation. The FSUG is of the view that eliminating standardised, easily comparable data on past performance will be a regressive step for investors and will reverse some of the partial progress made on making the investment market more transparent and accountable. Moreover, we are also very concerned that UCITS funds will also have to eliminate this key information from their KIID by the end of 2019. We fully support the letter sent to you by the ESMA Securities and Markets Stakeholder Group on the subject (see attached).

The FSUG, of course, recognises that past performance is not a reliable predictor of future performance. It is important that policymakers and regulators introduce measures which prevent investment firms and intermediaries misleading investors through the selective use of past performance data and unrealistic projections for marketing and promotions (we set out some proposals, below). But, eliminating past performance data to achieve this would create more problems than it would solve.

As a matter of principle, it would be wrong to eliminate past performance. Investment managers are in the business of managing other people's money. Investors have a right to know how well investment managers are performing.

There are a number of practical reasons why eliminating past performance would be a bad outcome for investors. Without consistently reported past performance data, it is not possible to establish: if the fund manager has produced value; if the product has met its investment objectives; how well the product has performed against the chosen benchmark; and the relative performance of the product against peer groups.

Economic theory supports the view that past performance data should be retained and, importantly, that the presentation of data should not be used to mislead investors. Rational expectations hypothesis holds that economic agents form rational expectations about the future, using all the past and present information on all factors that influence or have

influenced the state of the economy. It is not possible to eliminate errors in decision making completely. But errors can be minimised and prevented from having a systematic effect.

The consistent reporting of past performance is a pre-requisite for transparency and for holding the investment industry to account. Furthermore, we fear that eliminating past performance data would further undermine effective competition. Effective competition needs transparency. Underperforming investment managers would be able to shelter behind the lack of disclosure.

This is not the time to eliminate a measure that benefits investors. Indeed, this provides a good opportunity to toughen up regulations to fix industry behaviours which distort investor decisions. There are a number of measures which policymakers and regulators/ supervisors could adopt to ensure that investment managers are held to account and minimise the potentially negative impacts of the use of past performance data on investor behaviour.

The selective use of past performance data for marketing and advertising supports selection bias, survivorship bias and reporting bias by fund managers and intermediaries. Tougher conduct of business rules for investment managers should be introduced to ensure that:

- fund managers disclose past performance of all funds against objective benchmarks (and specific time periods) agreed by regulators;
- fund managers (and custodians/ trustees/ fiduciaries) are required to explain in detail: why funds have underperformed against benchmarks, what actions have been taken to address this poor performance, and justify why they are not cutting investor charges to compensate for poor value;
- fund managers cannot change the benchmark unless approved by regulators/ supervisors;
- selective use of past performance data and benchmarks for reporting and marketing/ promotions are breaches of regulation and can be enforced against; and
- custodians/ fund trustees or similar fiduciaries act more responsibly and monitor the behaviour of fund managers and disclosure to investors.

Similar measures should also apply to investment intermediaries given the role they play in influencing investor decisions including a requirement to report and explain why funds recommended have underperformed and justify clearly why higher charging funds are being recommended when similar lower cost funds are available.

The FSUG asks the Level I EU Authorities to take urgent action and reintroduce, in article 8 of the Regulation, the disclosure of past performance of investment products and their chosen objective benchmark. This should be done as soon as possible and must happen before 31 December 2016 (the date when the Regulation will apply). Furthermore, this is a good opportunity to enhance, not weaken, accountability mechanisms and improve the behaviours and performance of investment managers. We also urge Authorities to consider the measures outlined above. We are happy to provide more detail if required.

We look forward to hearing from you.

Yours sincerely,

Mick McAteer and Guillaume Prache, Chairman of the FSUG Vice Chair of the FSUG



To: Commissioner Jonathan Hill Commissioner Pierre Moscovici

Dear Commissioners,

We are writing to you to express our support for the response sent to you by four organisations which represent the interest of consumers and financial services users in Europe (AURSF - Romania, Better Finance, BEUC and COFACE) regarding the letter you sent to the Romanian Minister of Public Finance, Ms Anca Dragu, about the Romanian law of Datio in solutum.

The Financial Services User Group (FSUG) commissioned the London Economics' "Study on means to protect consumers in financial difficulty: Personal bankruptcy, datio in solutum of mortgages and restrictions on debt collectors abusive practices" (December 2012). The report suggested a range of effective measures to support distressed debtors. As mentioned in our position paper on the study, we support the conclusion that Datio in solutum delivers greater benefits to consumers than no debt cancellation system.

This, unfortunately, was the very sad position Romanian debtors found themselves in. Datio in solutum not only provides protection for distressed debtors but, in our view, can also discipline markets by constraining aggressive or reckless lending behaviours. As it was repeatedly mentioned by our Romanian colleague during our meetings and in some of our replies and papers, the situation of the Romanian financial services users was one of the most difficult in the EU. Despite the very low income levels of Romanians, they paid one of the highest interest rates on credit in the EU. Consumers were vulnerable to unfair clauses and commercial practices relating to credit contracts. It is no coincidence that Romanians were one of the most affected by the Swiss Franc loans, which were sold aggressively by banks before the financial crisis. During the recent years, there were no legislative measures to help Romanian consumers in financial difficulty. Banks were reluctant to negotiate and to offer suitable solutions to affected consumers.

We therefore believe that the Datio in solutum law adopted in Romania is very much needed and is a just, progressive, and effective way of helping large numbers of distressed debtors.

The FSUG is there to advise the Commission on issues which affect financial users. We look forward in future to helping the Commission reach a balanced view on critical issues such as protecting distressed debtors.

Yours sincerely,

Mick McAteer FSUG Chair

FSUG EXTERNAL MEETING, BERLIN, 6-7 JUNE 2016

The 2016 external meeting provided the FSUG with a helpful insight into the German capital markets and markets for financial services users, respectively. Two of the presentations tied in closely with the FSUG's priorities for 2016. Christian Ahlers, from the finance team of consumer organisation Verbraucherzentrale Bundesverband (vzbv) presented their financial guidance model for consumers. This was particularly relevant for the FSUG research project on financial guidance as Germany is one of the few European Member States which has a well functioning guidance service. Elisabeth Roegele, Chief Executive Director of Securities Supervision / Asset Management at the supervisory authority BaFin, addressed another of the FSUG's priorities, supervision and enforcement.

Other speakers addressed issues relevant for financial services users from various angles: the legal aspects of investor protection in Germany, trends and developments of financial services user protection from the political and also from the users' view, regulatory challenges for the financial services sector stemming from cyber security developments, as well as new solutions for fintechs.

1. Supervision, enforcement in retail financial services.

Presentation by Elisabeth Roegele, Chief Executive Director of Securities Supervision/Asset Management at BaFin (Federal Financial Supervision Authority)

Consumer protection is a relatively new supervision objective for BaFin, because the agency has focused on market transparency in previous years. With the new retail investors protection act, the objectives of the agency have been expanded and now include stricter requirements on distribution and market conduct, thus signalling that consumer protection is a key public good. While individual consumer protection remains the responsibility of the consumer advice offices (vzbv) and ombudsmen, BaFin is in charge of collective consumer protection. BaFin focuses on breaches of law or case law, while its possibilities in the field of soft law are limited.

In order to cope with the new objectives, Bafin has modified its organisational structure and increased capacity. Consumer protection is part of a new department within the unit for securities supervision/asset management. It also deals with other sectoral fields such as banking and insurance. The leading principle of its implementation is EFA: einer für alle (one for all). Like other key functions with a BaFin-wide role, consumer protection has been assigned to the unit with which it has the most professional closeness. Currently, 130 staff are employed in consumer protection and work in seven different divisions (general policy, analysis and education, banks, insurances, investment companies, supervision of compliance and supervision of violations and product intervention).

BaFin's objective is ensuring transparent and comprehensible products and market conduct that enables informed decisions by consumers. BaFin does not believe that provision of information and education to consumers are sufficient, so a strong focus of its work is correction of irregularities. BaFin is able to issue general orders to providers, but it can also restrict and prohibit specific products and practices. BaFin monitors and evaluates the market through qualitative and quantitative analyses, including risk analyses for early detection of harmful developments. Onsite visits and consumer complaints are important source of information. BaFin can however only conduct open investigations, but not mystery shopping. While BaFin doesn't advise consumers when they complain (this is the task of consumer advice offices and ombudsmen), consumers are informed on general procedures and options available to them. When taking decisions on action, BaFin refrains from disrupting markets by overprotection.

BaFin is cooperating with the Finanzmarktwächter (Financial Market Watchdog), an initiative led by the Verbraucherzentrale Bundesverband since 2015 and using its findings as an

important source of feedback for its work. A further source of input is an advisory council at BaFin with members from the academic field, NGOs, ombudsmen, public institutions and labour unions. The council meets 3 times per year and provides input on main trends and risks.

Several examples were presented to illustrate BaFin's work in consumer protection:

- An employee and complaints register closely follows individual advisors, even when they switch employers. In this way, BaFin is able to recognize hotspots where consumer harm could be taking place early and intervene with additional inspections. For example, if more than three complaints are detected against the same provider, a procedure starts to assess the compliance with relevant norms. In 2015, BaFin received 4.500 complaints, issued two formal warnings and started 150 administrative fine procedures in the field of retail investment.
- Risk oriented thematic surveys are a tool for general market analysis. Currently, BaFin is looking into sales of credit-linked notes because sales have risen due to a lack of other investment options, and the complexity of this instrument for consumers. Within the survey, 100 companies are being questioned on how staff are trained and risk information disclosed. Further current thematic surveys are on sales of PPI and on how changes in interest rates are passed on by banks to consumer loans;
- Powers in the field of product intervention have been implemented ahead of time and before MIFID, and can be used anywhere in the product lifecycle, even before the marketing phase, independent of distribution model and for all product types. The main criterion is a concern of serious and widespread harm to consumers, as well as markets and the financial system;
- Supervision of compliance in the field of advertising takes place also via the internet, especially when the grey market is concerned. It is closely linked to the activities of the Finanzmarktwächter.

2. Trends and developments in the insurance/pension sector.

Presentation by Axel Kleinlein, Bund der Versicherten (BdV, Federation of Insured)

The BdV is established as a non-governmental organisation which counts 50.000 members. Their headquarters is near Hamburg and they are a member of vzbv and Better Finance. BdV is entitled to take class actions in Germany.

Overview of the German life insurance and pension sector

The German pension system includes three pillars:

The 1st pillar is composed of the state statutory pension and the Rürup-Pension (tax incentivised life insurance pension system). The latter is attractive only for wealthy people and beneficiaries cannot stop and leave if they wish to.

The 2nd pillar is composed of a range of occupational pensions in different shapes and forms:

- Book reserves (defined benefits, declining in use)
- Direct life insurance
- Pension funds
- Pensionskasse: regulated or deregulated special life insurance. These are complex products for the consumer, and for SME employers. Will become even more complex in the future. Employers must guarantee the value but it is not clear how.

- Support funds ("Unterstützungskasse")
- Riester-Rente: established to complement 1st pillar pension but turned out to be a costly failure.

The 3rd pillar is composed of a variety of personal pension/saving products with some tax incentives:

- Private Pensions
- Private Saving Plans
- Private Investment Plans
- Real estate investments
- Shares and other securities

There are big discussions going on in Germany on how to find new pension systems looking at the Swedish model. More people wish to reinforce the 1st pillar. No decision is however expected before the next Federal elections in 2017.

The German market

Impact of low interest rates. German insurance contracts contain strong guarantees. In the current context of low interest rates, insurers have to build up additional capital reserves to protect these guarantees: in 2016 they will need €32bn additional capital reserves. This is a heavy burden for the industry, and consumers are frustrated because returns are currently 4%, as against advertised rates of 8%. The rules are not appropriate for life insurers. The problem is expected to peak in 2018. BdV feels it is unfair that consumers should pay for building the reserve, which the industry miscalculated. For the moment insurers have no difficulty paying 4% benefits as long as they raise enough capital, but several companies have stopped selling new contracts.

Solvency II. It is too early to assess the impact since the directive was introduced in 2016 with a transition period of 16 years, but it is likely to have an impact on smaller insurers. BdV feels it that it may be necessary to prevent small insurers from selling life insurance pensions as this poses too much of a risk for consumers. There is also a problem with the sleeping benefits which are treated as hidden capital that belongs to the insurer while under German law benefits not yet handed over to the insured belong to the insured.

Capital Markets Union. The German insurance industry needs Solvency II compatible investments with higher interest rates. National efforts so far are not broad enough to fulfil the German market needs. CMU could provide a solution and should open up to retail investors.

KID for PRIIPs. This will apply from January 2017. There is discrepancy between the German Law on the KID for Riester-Rente and the EU legislation on the KID for PRIIPs; as a result three or four KIDs will be available to consumers in 2017, which will cause confusion.

Insurance Distribution Directive. BdV will contribute to the ongoing EIOPA consultation on the IDD

Product Oversight & Governance requirements. EIOPA published its report on POG Guidelines for insurance undertakings and insurance distributors in mid-April. POG will minimize the risk of mis-selling. Manufacturers have to disclose to the distributors who is the target group and who is not. This will strengthen process controls by manufacturers before product launch and should foster a change of culture in the sector. BaFin has to decide within two months if preparatory guidelines have been taken on board or not.

There is a strong discussion around mis-selling (products with high entry and exit charges) versus individual advice, and hidden commissions versus net tariffs based on disclosed fees.

The German association of distributors does not want mandatory disclosure of fees. Two years ago, there was an attempt to adopt legislation but MPs opposed it. UK experience is not very encouraging.

Pan-European Personal Pension product. The Commission does not seem so keen anymore to introduce a PEPP. Discussion on the decumulation phase has started in Germany. Until last year decumulation was done mainly through life insurance. Decumulation is now seen as much broader than life insurance and actuaries are discussing that. A PEPP could bring about change.

There is a problem in Germany with small/medium size life insurance companies (mergers and acquisitions). Small life insurers will disappear. The German industry is very poorly digitalized, a real problem across the financial sector in Germany as a whole. Google, Apple could take over the life insurance business in the long run.

In general, more complex products are reaching the German market from other Member States. There is no fair competition on commissions (info on net performance is rarely available). Consumers will continue to need to pay for independent advice.

3. Financial Guidance and the Financial Market Watchdog.

Presentation by Christian Ahlers, Project Leader Financial market Watchdog at vzbv

Verbraucherzentrale Bundesverband (vzbv), the Federation of German Consumer Organisations, is a non-state-non-profit Federal organization with 16 independent offices (VZn), and 200 advice centres all over Germany, covering all types of consumer advice including health, food, finance, and energy.

Financial Guidance

Financial guidance covers all areas of consumer finance: insurance, mortgaging, banking, investing, and private pensions.

The VZn provide guidance that is:

- Generic (no buying/selling recommendations),
- Independent from sales incentives (though not for free),
- Based on the individual life situation of consumers, and helps consumers to help themselves.

Guidance is provided before the consumer signs a contract for a product or service, to help them taking financial decisions, and after a contract is signed to support consumers in dealing with contractual problems (often legal advice).

As regards private pension and investment, the advisor makes an analysis of:

- the consumer's financial situation, ideally before a contract is signed, which includes insurance and credit and other forms of advice related to investment decisions (e.g. pay off debts before saving);
- the contract or the portfolio against individual benchmark (goals, horizon, time willing to invest in the portfolio, risk bearing capacity and attitude towards risk).
- The comprehensive interview lasts around two hours and costs between €100 and €150, depending on the federal VZ providing the advice. The consumer receives a detailed document describing his/her personal situation and the guidance provided.

Consumers who would like some help selecting a specific product are invited to consult the tests carried out by Stiftung Warentest in the financial services area (Finanztest), the magazine of Stiftung Warentest that investigates and compares financial goods and services in an unbiased way. There is also a list of independent advisors (a small market segment in Germany) that consumers can consult if they want to get a personal recommendation, available at VZn.

Market watch financial services

The objective of this project is to analyse the market based on the work of the consumer advice offices. It gathers first hand information on consumer problems, including structural problems and market failure. It gives also the possibility to run lawsuits in case of structural problems. The final objectives are to influence policy makers. In particular, it helps to support lobbying in favour of independent advice, to inform consumers in advance in case of structural problems (early warning function), and provide information for supervisory authorities.

The project covers several areas: mortgages, investment/pensions, insurance, credit and also the grey market. It is based on several pillars working in synergy:

 Early Warning: special cases are collected from the consumer advice offices (e.g. new sales strategies, problematic terms and conditions, financial fraud). The cases are aggregated in a database and analysed by market segment.

In terms of action, an early warning notice is published on the website; the information is provided to the supervisory authority or the firm concerned. Depending on the issue, Market Watch may launch a deeper analysis (e.g. study).

- Statistics: data covering all consumers contacts in advice offices and key categories is analysed systematically: product/service, problem, firm. It allows trend and time-series analyses and quantitative verification of cases from the early warning system.
- Studies: the objective is to make a deeper analysis of specific problems. The
 methodology depends on the problem or question: data from consumer advice offices
 (questionnaire etc.), mystery shopping or surveys. Once finalised, the report is made
 public, in particular to the press, an early warning notice is published on the website,
 information is provided to the supervisory authority or the firm, or the watchdog may
 organise a roundtable to discuss the issues.
- Interactive website. This is still under construction.

The Market Watch financial services started in February 2015. First results are:

- Studies finding (a) that banks are not transparent about how interest rates work and change, but some sorts of banks are better than others, for example, in the study, private banks were better at disclosure than savings and cooperative banks; (b) that consumers seldom own investment products fitting their individual needs in terms of risk, costs and flexibility; and (c) that advertisement in the grey market is playing down the risks of investment while exaggerating profit opportunities.
- Early warnings in the insurance sector with respect to the cancelling of life insurance products: firms deny consumers' right to cancel a contract for policies bought between 1995 and 2007, but third party firms offer "help" to cancel such contracts for a large fee, up to 50% of the repayments.
- Countless corrections in terms and conditions of financial products by directly and silently addressing firms.

4. Consumer protection in the German capital market

Presentation by Daniela Bergdolt, lawyer at Bergdolt & Schubert and Vice President of DSW

The German system of consumer protection is a direct consequence of the basic economic principles embedded in the Constitution. The social market economy seeks to create a fair balance between risk and return. For investor protection this means that consumers/private investors need transparent information about the investment. To make a suitable investment decision, solid information is essential, whereas different investor profiles need different kinds of advice and information.

It is not the objective of the German system to protect the investor from any possible damage that awaits him when making decisions or engaging with financial service providers. The general principle is that the investor should be responsible for his decisions. All concepts and legal provisions are based on this model. The intention of lawmakers therefore is to provide the customer with all the information necessary to decide what's best for him and his investment. Accordingly, the German legal system distinguishes between investment advisors and investment brokers, whereby the investment broker is acting as a salesperson and the investment advisor in addition has to assess the suitability of a product for the investor. In short, the investment broker only has to adhere to the principle "know your product" whereas the investment advisor also needs to take account of "know your customer". From the perspective of lawyers representing investors the distinction between investment broker and advisor is difficult for the investor. Moreover, the investor must provide evidence in court of misbehaviour or incorrect advice by the investment broker or advisor. Placing the burden of proof with the investor, who has limited resources and no market power, provides inappdequate consumer protection.

5. Cyber-security - regulatory challenges for the financial services sector

Presentation by Lars Weimar, Executive Director, Ernst & Young

Financial services are undergoing profound transformation, along with many other sectors of the economy, due to disruptive factors such as digitalisation, the rise of entrepreneurship (micro-entrepreneurs. SMEs, the sharing economy), the global marketplace, urbanisation, regulation "density" (which affects cost-to-serve) and new business models (services such as a basic bank account being free, profits need to come from other services).

So-called "digital natives" or the "Millennials" are at the core of this revolution. They are open to new kinds of investments, like to get personalised information, and do not shy away from managing their investments by themselves on a daily basis.

Technologies enabling this shift include:

- Mobile computing which allow for access to online financial services from anywhere at any time:
- Social media which allow for direct interaction between businesses and consumers in terms of customer service but also designing new products,
- Advanced analytics to get a holistic overview of the consumer base.

Examples:

- An online investment platform where individual investors showcase their online transactions and their investment performance. Other users can "follow" these investors and emulate/copy their investment decisions to get the same performance.
- An online portal for taking out loans. A consumer asks for a loan, he receives a number of offers, he then selects the offers that interests him, then the offering banks ask for the consumers' username and password to access the consumer's account information; or password to their social networking account. The banks assess the

consumer's creditworthiness and adapt their offer to the information they find. For instance, they might offer a loan at 6% interest rate instead of 2% because the consumer hasn't saved any money in the past few years.

Security concerns emerged in parallel to the development of these technologies, with more and more incidents of data stolen from online service providers including financial information. Given these incidents, cybersecurity has shifted from being a question of infallible security to keeping key data safe. Most companies admit that they cannot successfully fight cyber threats and aren't very likely to detect a security breach. Furthermore, the current regulation as regards cybersecurity is not workable: boards of financial service providers widely ignore cybersecurity issues and the obligation to notify public bodies such as BaFin and the EBA will not help as these do not have the resources to follow up on the amount of security breaches. We need global regulation, not national.

Most breaches are linked to the loss or theft of user credentials or information, and firms do not do enough to protect consumers from, for example, using common passwords such as '123456'.

Fintechs are at the forefront of the disruption, taking advantage of their enhanced knowledge and use of technology to either carve out new markets or take over parts of the existing markets. Blockchain technology might help in addressing a number of security risks, trust issues, traceability, transparency and more.

6. Integration of financial services: New solutions through Fintechs

Presentation Hartmut Giesen, manager at SutorBank.

Some of the main characteristics of Fintech include:

- The unbundling traditional banking services by focusing on a single aspect of banking and increasing its efficiency (cost gains), ease of use (consumer experience, consumer centric models), and transparency.
- While in the US, investment in Fintech is nearly doubling each year, in Europe investment is relatively stable year on year. Investment in Europe is concentrated in the UK, where it reached \$1.08 billion in 2015, and \$197.8 million in Germany.
- The most important and lucrative sectors for Fintechs are retail (B2C) payment, investment, lending and account management, and, to a lesser extent, B2B payment and lending.
- As traditional banks come to realize the potential of Fintechs and the threat to their existing business models, they are likely to engage in either cooperating with Fintechs, acquiring Fintechs or incubating their own Fintech companies.
- GAFA (Google, Apple, Facebook and Amazon) have the biggest potential for development in the Fintech industry thanks to their readily available user base, which facilitates user acquisition as well as the data collected about users which enables them to tailor services more easily. All of them have a payment license and have entered the payment market to different degrees.
- Robo-advice (AI) is one big potential development for Fintech, especially for GAFA players, given the amount of data collected. An example could include chat-bots via Whatsapp, which assist users in financial decision making.

At the same time, many challenges emerge from the development of Fintechs:

- The security of user data and privacy of user data is at risk: Fintechs host user data on cloud services, which could make them vulnerable to data theft. Also, selling user data to third parties or processing user data may be an integral part of their business model and may go against privacy, data protection and proportionality of use of data.

PayPal for instance has the right (in their terms and conditions) to sell users' data to third parties for advertising/marketing purposes.

- Transparency may be no better. Information provided to consumers may not be clearer or more explicit than that provided by traditional banks. For investments, the costs and risks of the investment may be opaque. It may also not be clear where the liability lies, or if the consumer understands they may not have protection from inappropriate sales..
- Costs for consumers may not be lower. The benefits of lowering costs and financial inclusion can go both ways. In the case of payday loans, the costs are clearly at the disadvantage of consumers and while such a product "increases" the access to the financially excluded they do so by making them pay outrageous risk premiums greatly enhancing the risk of over-indebtedness.
- While Fintechs are supposed to disrupt the traditional banking models, there is a danger that by acquiring Fintechs, traditional banks prevent them from reaching their full potential in terms of benefits for consumers. The same dangers loom around GAFA and their willingness to integrate the Fintech market, which would simply replace one set of dominant market players (traditional banks) with other dominant market players (GAFA).

7. Conclusions

The FSUG observed the strong supervision model in Germany, notably BaFin's product intervention powers. We also considered the unique position in Europe of the vzbv and consumer watchdog. The financial guidance available through the advice offices was a very interesting model for the FSUG's work on this topic.

We were somewhat surprised at the continuing prevalence of cash as a method of payment in Germany, and the low degree of digitalisation of financial services in general.

We also noted the difficulty for German consumers of getting redress for poor investment advice. Consumers must take their case through the courts, and the burden of proof lies with the consumer, who must demonstrate to the court that the advice they received was 'unsuitable'. It is not surprising, therefore, that few cases succeed.

FSUG RESEARCH PROGRAMME

The FSUG has its own research budget which it can use to commission research on issues it thinks are important to users. For 2016 we decided to investigate areas in which the position of consumers is weak or there is a lack of transparency. After a prioritisation process, we selected research studies on financial guidance and pensions decumulation.

Financial guidance

While they have to make financial decisions, sometimes significant, at several key moments of their lives, the vast majority of households in the EU have no access to quality financial advice. In most cases, the recommendations they get are directly related to a financial transaction with a financial services provider. Very often the recommendations do not consider the overall situation of the households concerned, are biased by the way the 'advisors' are remunerated, and, finally, the recommended products do not really meet the needs of the individual or household.

To differentiate advice as issued by financial service providers from independent and quality advice based on a comprehensive approach of the financial situation of a specific household, the FSUG prefers to refer to the concept of financial guidance. This concept is used in some countries, and can be defined as "a process of determining an individual's financial goals, purposes in life and life's priorities, and after considering his resources, risk profile and current lifestyle, to detail a balanced and realistic plan to meet those goals". Financial guidance provides a detailed strategy tailored to a client's specific situation and goals, covering various aspects of personal finance including cash flow management, education planning, retirement planning, investment, risk management, tax planning, estate planning and succession planning. Importantly, it excludes the recommendation to purchase a particular financial product.

In order to identify best practices regarding the provision financial guidance services, the European Commission commissioned a study on the basis of a specification drawn up by the FSUG. A consortium led by the Observatoire de l'Epargne Européenne (OEE) was the successful bidder.

The study was based on desk research, a literature review, an on-line survey and interviews in seven countries: Australia, Belgium, Denmark, France, Germany, the Netherlands and the United Kingdom, between January and July 2016. The researchers investigated the following aspects of financial guidance services: the nature of current provision; business models and funding; how services are promoted and use is incentivised; effectiveness and quality of services; regulation, quality assurance and access to redress.

The report highlights that financial guidance as defined above is not yet widespread. While many players in the financial services claim to provide financial guidance to all their customers, only two bodies have been identified as fully meeting the definition: the German consumer association (VZBV) and a service set up by the British public authorities (Money Advice Service). Many Member States have made available to all consumers some tools on their websites that provide a first port of call for consumers, but they are insufficient in most cases to help them make a comprehensive and tailored decision in most cases.

The report also highlights that it seems there is no business case for financial guidance in the private sector at this stage, and that consequently public authorities are key to directly or indirectly encourage the development of financial guidance services, promote their use, share best practice within and across countries, encourage a regime of skills training and accreditation and provide oversight.

The FSUG considers that wider development of financial guidance is key to enable individuals and households to make the right financial decisions for them. This should be delivered by independent and gualified persons focused on personal needs. Such a

development would facilitate wider dissemination of simple financial products and better suited products to consumer needs. To achieve those objectives, the FSUG recommended:

- The need to adopt at EU level a unique and comprehensive legislative approach for financial advice, and to create a legal framework for financial guidance;
- A key role for the public authorities as catalysts and, optionally, as financial guidance providers;
- Financing of financial guidance from several sources of funding;
- Measures to incentive consumers to use financial guidance.

Pension decumulation: a study on the performance and adequacy of pension decumulation practices in four EU countries

Increasingly consumers are expected to take the risk and responsibility of managing their accumulated pension savings. The FSUG was therefore concerned to establish how well decumulation products deliver value for money for consumers, particularly those with small pension pots, and what support consumers have to take decisions about their savings.

The purpose of the study was to analyse aspects of decumulation not covered by the <u>EIOPA's Fact Finding Report on Decumulation Phase Practices</u> (Oct. 2014) and to look at decumulation from the point of view of the customer.

A team of E&Y researchers was the successful bidder in an open tender. The project was launched on 18 January 2016 and concluded in September 2016 with the publication of the final report available on FSUG website.

The contractors analysed the performance and adequacy of the most common pension decumulation products in four EU Member States (UK, DE, NL and PL), countries which have very different national practices and market maturity.

Through desk research and interviews of key stakeholders representing pension experts, pension providers and consumer organisations in all four countries, the researchers collected data to assess the money worth ratio (MWR) of the most common decumulation products, the guarantees they provide for the consumer and protection against longevity and inflation risks, in order to assess their real value for the consumers. Consumers' choice and behaviour were analysed also to identify factors behind these choices (information, financial advice, market structure and regulation).

The research team was asked both to do a backward analysis of the evolution of annuities and non-annuity products markets' performance over the last 10 years from the perspective of consumers, including comparison of the evolution of "highly regulated" and "low regulated" annuity markets as well as mandatory and voluntary annuitisation, and to take a forward looking approach and analyse the main issues debated at national level which might impact pension decumulation practices in the future.

As outlined in the final study report, the most common pension decumulation products are

 Annuities (lifetime, time-limited, guaranteed, deferred...): guaranteed fixed or variable benefit payments at regular intervals until the death of the annuitant or the end of a specified period of time.

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⁷https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-14-193 EIOPA s Fact Finding Report on Decumulation Phase Practices.pdf October 2014

- Drawdown products: the retiree is able to choose the amount to withdraw each year from the retirement capital (which can continue to be invested). Upon the death of the retiree, remaining amounts are paid to beneficiaries.
- Lump sums: a single payment at retirement that enables the beneficiary to use the money as he chooses.
- Hybrid products having both a drawdown component and an annuity component.

From the outcomes of study it appears very clear that:

- The situations of consumers and market offer vary a lot from country to country and cannot easily be compared;
- In most countries there is only limited comprehensive and comparable information available at national level on pension decumulation products to allow non-expert retiring workers to make the best choice for their long-term income plans;
- Cross border comparison is even more difficult given the differences between products and market maturity;
- Major reforms are being introduced in the field of 2nd and 3rd pillars pensions and it is difficult to assess the impact they will have in the future.

In some countries where there are many providers, pension decumulation products have become increasingly diverse and complex. However this may not always benefit the average consumers since most products are targeting consumers with an above average pension pot. This appears from the comparative analysis done on two consumer's profiles: consumers with an average pension pot and those with a small pension pot.

The FSUG also produced a position paper on pension decumulation building on the outcomes of this report. This position is published on the FSUG website. Our conclusions were that:

- Reforms to improve the long-term sustainability of pension schemes have resulted in shifting the longevity and inflation risk to the consumer.
- More and more pensioners will retire with an average and below average pension pot and will need to decide themselves how to decumulate it.
- Yet personal pensions are designed for consumers with an above average pension pot and are not always suitable for average and below average pension pots.
- Information currently available is not easy to access, nor easy to understand for consumers, especially those with an average or below average pension pot.

To address these issues, the FSU recommended:

- The current EU initiative to set a EU pillar of social rights should include measures to adequately protect consumers, including those with average and below average pension pots, to ensure they have access to suitable decumulation products for their profile.
- From the average and below average pot holder's perspective, mandatory statutory pension schemes should remain the main pension income sources. Policy makers should thus ensure that the mandatory statutory pension schemes guarantee an

adequate income in old age including for the average and below average pension pot holder.

- More research is needed to develop methodologies that would allow more reliable comparison between pension decumulation products to support informed choice among consumers with average and low pension pots. This would also support cross border purchase if consumers from other member states can access and compare information on pension decumulation offers in other countries.
- Regulators should ensure that simpler, more effective and sustainable annuity products are available and recommended as a priority to consumers with average and below average pension pots, while other types of decumulation products should be only open to those who already have enough income from annuities
- More research is needed on the impact of taxation and tax incentives during the accumulation and decumulation phase as well as the challenges that consumers willing to purchase decumulation products cross border might face.
- An analysis of the impact of the Test Achats ruling should be done to better assess how
 the market has coped with the introduction of mandatory unisex premiums and if
 consumers are benefiting from this change.
- The KID for PRIIPs principles should be extended to pension decumulation products, and to establish EU-wide transparent, competitive and standardised annuity markets.

FSUG PRIORITIES 2016

Enforcement

The aim of the FSUG's work was to assess the capacities of supervision and enforcement in the field of financial services in the EU at the national level in the light of consumer detriment taking place in the markets; and to make recommendations on improving the regimes of consumer protection by proposing an appropriate minimum level of enforcement in Member States.

The overall performance of retail financial markets has too often been very disappointing for EU's consumers, especially when compared to other of EU's goods and services markets. The underperformance persists, even though consumers are increasingly dependent on financial services, while general economic instabilities contribute to the riskiness of consumers' financial decisions. Besides this, it has become apparent that in many key financial market segments and in a considerable number of member states, the providers are not complying with EU legislation.

Widespread consumer detriment in retail finance shows a worrying gap between the mandates and the capacities of national market supervisors in charge of consumer protection and the tasks they face. It seems that national supervisors are frequently not able to ensure new consumer protection rules are being implemented, to prevent serious market failure from taking place or to intervene effectively once widespread consumer detriment has become obvious.

Since the global financial crisis consumer protection supervisory regimes have been strengthened. However, unlike in the field of prudential rules and systemic stability, this trend has not affected all member states, and there has been a notable lack of debate at the EU level on appropriate solutions.

With a paper "For better supervision and enforcement in retail finance" the FSUG addressed the lack of comparable information on the mandates and activities of national supervisors. We conducted a basic overview of the supervisory landscape in the member states. As it has become clear that the level of disclosure on activities and capacities in some member states is very low, the FSUG members have provided their qualitative assessments on supervision and enforcement in 13 member states, based on their experience as experts in respective national markets. The paper builds on previous FSUG work in this field, in particular on the paper "New Model Financial Regulation" from 2012.

The main findings of our research are:

1. Fragmentation of supervision of consumer protection and conflicts of interest

The FSUG has found that the institutional organization of business conduct supervision and its relation to other supervisory goals could be acting as a barrier to an efficient consumer protection regime in several member states. In three out of the 13 member states observed, the traditional sectoral regime still exists with three or more institutions having some responsibility for consumer protection. There is a problem with inter-institutional coordination in these regimes, resulting in gaps and regulatory arbitrage as well as the business conduct objective being subordinated to the objective of prudential supervision. While there are two market supervisors in four member states, as some unification of sectoral supervision has already taken place, unified institutions exist in six out of the 13 member states. Only three of the latter have the twin-peaks architecture that addresses conflicts between different mandates in a systematic way.

2. Non-existent or weak mandates in consumer protection

Differences in consumer protection mandates lead to widely differing supervisory outcomes, while the abundant evidence of market failures in retail finance in recent years calls for a

pro-active supervision, looking into how the providers and intermediaries in markets operate and to ensure that the business models and product regimes lead to fair outcomes for consumers. In five out of the 13 member states observed, there are market supervisors without an explicit mandate in consumer protection other than merely being designated as responsible institutions for implementation of consumer protection legislation. Also, the supervisors with a statutory mandate differ considerably in their scope for action. A proportion of these supervisors mainly sets checks on legal compliance or on transparent disclosure of information on financial products, while only a few of them are also looking into the quality and value of products and markets for consumers.

3. Insufficient supervisory capacities and lacking pro-activity

According to the evaluation of FSUG experts, in two-thirds of the member states observed the resources available and capacities of national supervisors for consumer protection are non-existent or insufficient. The absence of active financial supervision in some member states not only entails risks for consumers in those markets, but also potential risks for consumers in other markets as well via passporting. FSUG members from only four out of 13 member states have observed their national market supervisors to be pro-active in their supervisory operations.

4. Improvements needed in the field of enforcement

The FSUG experts have identified a need to introduce more concrete mandates and organizational measures that will make market supervisors less risk averse in using their enforcing powers. Furthermore, confidentiality of supervisory admonishments and penalties in eight out of 13 member states is a missed opportunity for improving the deterrent effect of sanctions.

5. Missing attention to consumer complaints and dialogue, low disclosure of activities

Several national supervisors are not paying enough attention to the input from consumer complaints in a systematic way, while efficient private enforcement mechanisms are non-existent or limited in the majority of observed member states. Also, the ability of the majority of national supervisors to receive early quality information on consumer detriment in the markets is limited due to unsatisfactory interaction with consumer groups is very limited, according to the FSUG experts. Finally, a significant number of national supervisors are clearly failing the accountability test by missing out on providing public with information on their supervisory and enforcement activities.

6. Cross-border spreading of consumer detriment

While it is still far from possible for consumers to reap the benefits of the single market for financial services, practices leading to consumer detriment can easily spread cross-border in the EU. The FSUG's paper concludes that although identical or ever more harmonized rules are applying for financial products across the EU, provider practices and market outcomes vary because providers adapt to the level of consumer protection in each member state. For example, whereas responsible agencies in some member states have already taken action against detrimental mis-selling practices of unit-linked life insurance, leading to more efficient market outcomes for consumers, the inactivity of enforcement in other member states still allows for product features and sales conduct that have been banned elsewhere years ago. Similarly, risky foreign currency loans were sold to finance property investment opportunities in Austria and France, while in the newer member states such loans were also sold to more vulnerable consumers to buy a home. A more harmonised level of enforcement across the national markets would reduce the incentive for providers to engage in detrimental market segmentation, while encouraging them to adapt more homogenous product development and sales procedures.

Consumer detriment and decrease of trust through diverging levels of enforcement are also possible through passporting. In such a case, a financial services provider establishes a

presence in the member state with the lowest level of supervision and carries out its activities cross-border, possibly also exporting its activities to its member states of origin.

FSUG's proposals for EU-level driven improvements of national supervision regimes

More consistency and coordination is needed in enforcement on the national level, but only by bringing the lowest performing regimes to a more sufficient enforcement level. EU institutions should play a central role in steering of this catching-up process. A systematic approach is needed by first formulating a strategic consumers and markets policy, in particular defining desired consumer and market outcomes, a methodology for measuring consumer detriment and developing a root cause analysis that will lead to understanding how markets fail consumers. On the basis of this, appropriate choices in policy interventions can be identified.

The FSUG is calling for the following supervisory outcomes to be fulfilled:

- 1. EU coordination and common standards of supervisory practice: ESAs need to receive a clear mandate to lead the work on convergence of consumer protection supervision across Member States and supervise market risks at the EU level, while a strong coordination network of national authorities, in particular in the field of cross-border enforcement, is required. Also, EU law should be consistent across all relevant products and ensure a sufficient minimum level of consumer protection.
- Independent national market supervisors: financial supervision should have a clearly defined goal of consumer protection, while this goal should not be subordinated to other supervisory goals. Supervision should cover the entire financial market without allowing for loopholes and supervisors should be equipped with sufficient resources to pro-actively fulfil their tasks.
- 3. The mandate of national market supervisors should be to ensure fair and appropriate treatment of consumers, protection from detriment and striving for efficient and competitive retail financial markets.
- 4. Market supervisors should be tasked with active monitoring of market performance on the basis of clearly defined desired market outcomes. Their monitoring should be based on systematic screening of product markets, supervision of inducement schemes and personnel training, as well as input from consumer complaints, ADR and consumer groups. Supervisors should intervene in case of risky products or market failure.
- 5. Enforcement regimes should be consistent and deter providers from detrimental behaviour. They should be backed up by efficient and supervised ADR private enforcement.
- 6. Market supervisors should ensure appropriate governance by balanced board compositions and channels for communication providing for advice and complaints from civil society groups.
- 7. Quality control procedures and annual reporting are needed to evaluate meeting of supervisory objectives and allow for public scrutiny.

Regulation and SMEs

Regulation of Financial Services in the EU: The case of the Smaller Business Entities.

The definition of 'consumer' is embedded in EU legislation: that is a natural person who is acting outside the scope of an economic activity (trade, business, craft and liberal professions)ⁱ. However, there are some inconsistencies and exceptions, for example, the EU Package Travel Directive, where the definition of 'consumer' extends to companies and business travellers. EU Directives may also explicitly give Member States the option to

widen the definition of consumer to particular business entities e.g. the Payments Directive which gives Member States the option to include micro entities within the definition of consumer to whom the Directive explicitly is directed. Additionally, within their own financial services supervisory structures Member States may also extend the definition of consumer to include smaller business entities e.g. the self-employed and micro entities.

The motive for the widening of the definition of consumer is that some smaller business entities can be disadvantaged within the law in accessing redress as compared to consumers and large companies. Smaller business entities tend not to have the bargaining power, the sophistication and the finances to successfully obtain redress through the legal system of the member state. In contrast, consumers can normally obtain redress through their member state's ADR mechanism, typically through a financial ombudsman. Therefore, effectively, smaller business entities will often lack the protection afforded to individual consumers.

However, there is inconsistency in the degree of protection of smaller business entities at EU Member State level. In particular, incorporated smaller businesses entities are often excluded. It appears there is an assumption that such entities are less vulnerable and do have the resources to access redress through the legal system of their member state as compared to unincorporated micro-business entities.

Often micro business entities are included in the widening definition of consumer as for example in the Payments Directive referred to earlier. The definition adopted for micro business entities tend to follow, not surprisingly, that adopted by the EUⁱⁱ. This definition relates to size of turnover, asset value and number of employees. This definition it may be argued does not necessarily capture entities' ability to access redress solutions economically. It may well be that a micro entity is sophisticated and has bargaining power to be able to obtain redress within the member states legislature rather than resorting to the financial ombudsman for example. The point here is the question as to whether the definition of micro entity is appropriate for this use.

The EU's expert group the Financial Services User Group proposes that to address these deficiencies:

- When an EU Directive gives Member States (MS) an option to widen the definition of consumer to smaller entities the MS should consider the vulnerability of smaller business entity in terms of the ability of the entity to obtain redress economically and efficiently.
- A Member State is designing a system of redress for those less protected in the financial services sector the European Commission should encourage and promote member states to consider:
 - o putting the emphasis on the provider of financial services to exercise a legal duty of care. Among other things, this would require providers of financial services to put their customers first and ensure all consumers understood the product or service they were buying. This duty of care would be most important for the more vulnerable groups in society.
 - the bargaining power of smaller business entities and their ability of the entity to obtain redress economically and efficiently.

Big Data

Financial services are undergoing a revolution triggered by the increased availability of Big Data, the improvement of algorithms or, more broadly, Artificial Intelligence (AI), and the gradual rise in the number of connected devices (the Internet of Things); all three reinforcing each other via the Internet.

While there may be a number of beneficial developments for consumers such as lower prices, more security, increased transaction speed or tailored products based on consumer data, it is important to assess whether these potential benefits are realised in practice and to assess the risks of potential detriment to consumers.

Some of these risks include the breakdown of mutualisation in insurance, credit and other financial products due to the increased possibility of assessing individual risk, overloading consumers with information and product choice, diluting consumer consent and control over personal data, trading privacy for profits/innovation and relying blindly on opaque algorithms, underestimating their human bias.

Consequently, the FSUG has called on the European Commission and the European Parliament to launch a formal policy process aimed at preventing the emergence of such consumer detriments.

There is a clear need for more studies and research to be carried out on the implications of algorithms and the use of more and more consumer data. Besides the contribution of these developments to growth, profits and innovation for innovation's sake, other issues deserve just as much attention. What would the impact be on different groups of consumers including implications for access/exclusion, on their behaviours and decision-making abilities, and therefore on markets? What are the implications for data protection, conduct, competition, and financial regulation? How fit-for-purpose is our system of regulation in this new environment? Does financial regulation and data protection regulation interact properly to protect consumers?

The involvement of stakeholders representing the interests of consumers and citizens at all levels of the policy process is essential to ensure that these risks are addressed properly. Decision-making bodies responsible for defining the extent of data used in financial services should include representatives from consumers and data protection authorities in order to ensure that key principles such as data minimisation are respected.

The FSUG will continue to monitor the innovations and developments of the financial services industry and will work in cooperation with Data Protection Authorities to ensure that the interests of consumers/citizens/users are adequately represented and respected.

EXTERNAL EVENTS

Event:	ESMA retail market intelligence meeting, Paris	
Date:	16 November 2015	
<u>Title</u> :	ESMA retail market intelligence meeting	
Key message:	Getting feedback from retail investor and consumer representatives	
FSUG member:	Mick McAteer, Sue Lewis, Guillaume Prache	

Event:	Public hearing on the Green paper on retail financial services	
Date:	2 March 2016	
<u>Title</u> :	Session 2: What about pan-European retail financial products?	
Key message:	Lack of enforcement of EU legislation is one of the main obstacles to development of a single market in financial services	
FSUG member:	Marcin Kawinski	

Event:	EUROFINAS legal committee meeting
Date:	18 May 2016
<u>Title</u> :	EUROFINAS legal committee meeting
Key message:	Presentation of paper on assessing the impact of credit data on preventing over-indebtedness, contributing to prudential regulation and facilitating access to affordable and quality credit
FSUG member:	Martin Schmalzried

Event:	EPFSF event
Date:	24 May 2016
Title:	Retail Financial services Action Plan
Key message:	Presentation of FSUG position
FSUG member:	Guillaume Prache

Event:	ESMA: Joint meeting of the Board of Supervisors and the Securities and Markets Stakeholder Group
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Date:	10 November 2016
<u>Title</u> :	National supervision and enforcement in retail financial services
Key message:	Presentation of FSUG paper on supervision and enforcement in the EU
FSUG member:	Bostjan Krisper

SPECIAL FEATURES

User Representation

Throughout the life of the FSUG and its predecessor FIN-USE the subject of user representation has been at the heart of its concern in the development of a financial system that benefits the entire EU community. Ensuring the interests of financial users are properly represented in EU policy making was one of the FSUG Strategic Priorities, described in our 2015 Annual Report. An modern financial system needs a financial industry that is efficient, effective and accountable. However, independent research on the finance industry has concluded that often this is not the case; for example, significant elements of the asset management industry have been shown not to meet the needs of users and sometimes to cause detriment. Any product developed by the industry should prioritise the needs of those who consume the product, but unfortunately that is far too often not the case. Products are frequently too complex for consumers to fully grasp what the implications are of buying and investing in them, often resulting in consumer detriment. The FSUG, with some success, has frequently made the case for the industry to produce simple, transparent, products that meet the needs of consumers.

Policy makers in the financial markets intervene more than in most other markets due to the complexity of the markets and products. Inevitably, in developing policy the policy maker will be lobbied. In the EU arena of financial services this is no exception. However, there is a significant imbalance of the differing parties in terms of resources and subsequently the capability to lobby. In a study published by the FSUG in March 2015 we reported the mismatch between industry and civil society at EU levels by citing a report 'The Firepower of Lobby: A survey of the size of the financial lobby at EU level.'iii The following cites briefly some of the evidence from the report that shows there is a ridiculous disparity between industry and consumer stakeholder groups in the lobbying process:

Post the financial crisis the industry had 2100 encounters with the EU policy makers, decision makers and regulators – seven times the number of civil society groups.

Industry lobby spends 120m euros a year influencing financial services policy compared to civil societies spend of 4m euros. Representing a ratio of 30 to 1.

Further the disparity due to resources is illustrated in specific consultation to the European Supervisory Authorities during 2012 -14; for example:

- ESMA MiFID consultation 165 industry to 10 civil society
- ESMA Remuneration policies consultation 32 industry 2 civil society

All the evidence points to the need for policy makers and regulators to ensure that consumer representatives and their stakeholders are represented in balanced way. This will inevitably mean money to finance the resources of these groups, but we believe the benefits of such funding would exceed the costs to civil society. The European Commission should be one of the parties to orchestrate the funding mechanism.

From FSUG studies and annual visits to EU member states it is obvious that consumer groups can benefit from cross border conversations about their experiences and supporting each other in the determination of a single market in financial services that is efficient and gives consumers a fair position in their bargaining power with industry interests. We believe it is critical that the European Commission acts as a catalyst in this process.

The real key to success to the essential future intervention in to the EU financial services markets is the maintenance of experts from the user perspective to give opinions and support the EC about the needs of users to ensure that products are those that are required in the demanding and vibrant financial services market.

Redress

From its inception, the FSUG has stressed the importance of an effective collective redress mechanism at EU level. Already in its first Annual Report six years ago, the FSUG urged policymakers to engage in the creation of a strong, coherent and binding Consumer

Collective Redress legislative framework proposal at EU level, not only to strengthen the enforcement of EU law, but also to provide consumers with strong procedural 'tools' in order to tackle the increasingly unfair commercial practices and gouging tactics emerging from the financial crisis. The FSUG have advocated for a binding legislative proposal to protect consumers and other financial users, and to provide them with better tools in order to tackle the inadequate application of consumer law in the retail financial services area. This is particularly important in the specific context of low economic growth, squeezed household incomes, high debt levels, low financial returns and squeezed revenues. All of this has been damaging millions of consumers in the post-financial crisis, and European financial services users have experienced major risks in the form of unfair market practices and financial industry gouging tactics to maintain profit margins.

Despite its consultation on collective redress in February – April 2011 ('Towards a coherent European approach to Collective Redress') and a 'Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States' of June 2013, the European Commission is still far removed from an adequate redress system for European consumers (including financial services users).

Settlement of trade barriers, open markets and fair competition all benefit European consumers. The reverse of such progress must be an adequate protection of the legal interests of these consumers. The more the European Union reaches its economic goals, the louder the voice for an adequate redress system in order to resolve mass claims.

Since the financial crisis the European Union invested heavily in the stabilization of the financial sector, the development of a capital markets union and adjustments of financial regulation. Such developments should be covered by an adequate protection mechanism for financial services consumers. The many examples of the struggle for adequate settlement of mass claims in the various member states, show FSUG that collective redress still does not have a high priority in the development of national law systems. Since the beginning of the financial crisis the call for a harmonized redress system is larger than ever. A basic comparison of opinions on efficiency of national systems of private redress in the countries of provenance of FSUG experts has shown that these systems were evaluated as relatively efficient in less than half of the countries. For every fifth country case, the experts evaluated the existing mechanisms as ineffective for consumers in dispute with their provider.

In 2013 The European Commission set out a series of common, non-binding principles for collective redress mechanisms in the member states so that citizens and companies could enforce the rights granted to them under EU law where these have been infringed. The Recommendation aimed to ensure a coherent horizontal approach to collective redress in the European Union without harmonising member states' systems. National redress mechanisms should be available in different areas where EU law grants rights to citizens and companies, notably in consumer protection, competition, environment protection and financial services. By recommending to member states to put in place national collective redress mechanisms the Commission wanted to improve access to justice, while ensuring appropriate procedural guarantees to avoid abusive litigation. The Recommendation complemented the proposal for a Directive on antitrust damages which should help the victims of violations of antitrust rules to obtain compensation through legal actions available in Member States. While the Recommendation calls on Member States to put in place collective redress mechanisms, the Directive leaves it to Member States whether or not to introduce collective redress actions in the context of private enforcement of competition law.

FSUG has clear doubts on the effectiveness of the 2013 Recommendation and the 2014 Directive on antitrust damages. The experiences of financial users throughout the European union show the lacking interest on national level to implement the 2013 Recommendation and the 2014 Directive by way of collective redress systems.

On the other hand, as a general rule, the Commission recommends opt-in systems of collective redress. Opt-out principles systems are the exception and should be duly justified by reasons of sound administration of justice. This recommendation could make more difficult the application of collective redress, at least in those Member States where consumer/financial user organisations are weak and low financed. Another principle which is questionable from the consumers point of view is the one which mentioned that "the collective redress mechanisms established at national level should be accompanied by important procedural safeguards aimed at protecting the procedural rights of the parties and avoiding incentives to abuse the collective redress systems. For instance it should be verified at the earliest possible stage of litigation that manifestly unfounded cases are not continued. Member States should also avoid lawyers' fees calculated as a percentage of the compensation awarded (contingency fees) and punitive damages (awarded in excess of actual damage or loss suffered by the claimants). The FSUG is of the opinion that this kind of limitations are not justified or could be tackled by introducing appropriate safeguards that prevent abuses and allow for the respect of legitimate interests of both parties.

In the meantime various Member States introduced 'light' versions of a collective redress system. These systems show substantial limitations in the extent of the proposed Recommendations. Furthermore this development bears the risk of diverging legal systems, which do not benefit consumers acting on a European market.

FSUG favours the introduction of a Directive on collective redress in order to guarantee European consumers the same level of protection by an effective settlement of mass claims in all Member States.

The FSUG reiterates what it has advocated from the start of its activities, i.e. that it is necessary that the envisaged legislations should be informed by the following principles:

- The availability of harmonised EU mechanisms of collective redress for both national and cross-border cases in order to enforce EU law based on a legally binding approach.
- Private collective redress should be independent of enforcement by public bodies.
- Main features of an efficient and effective system of collective redress should be defined at EU level.
- Group representative should act on behalf of identified or not yet identified victims, i.e. no mandate should be required as a prerequisite to bring the action.
- Victims should be properly informed about the progress of ongoing collective actions.
- Recourse to truly independent alternative means of dispute resolution before or in parallel to the formal introduction of the complaint should remain voluntary for consumers and other financial users, and free of cost.

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⁸ The FSUG refers to its response on the consultation "Towards a coherent European approach to collective redress " in which we explain, that the participation rate under opt-in systems is significantly lower than under opt-out regimes (see http://ec.europa.eu/finance/finservices-retail/docs/fsug/opinions/collective redress-2011_04_29_en.pdf)

 Efficient and appropriate mechanisms for financing collective redress should be foreseen.

In its recommended policy initiatives to the Commission, the FSUG has also stressed that the desirable legislation should also provide for:

- 1) An increase in information for consumers about their rights, and available conflict resolution systems;
- 2) the design and implementation of an out-of-court conflict resolution system (ADR) for consumers throughout the EU, with participation of consumer/financial user associations and characterised by the principles of independence, impartiality and effectiveness;
- 3) the improvement and strengthening of the role of consumer/financial user associations in collective defence;
- 4) specialised courts in charge of collective redress;
- 5) as regards the access to justice of small shareholders, in view that setting standards of good governance has not been successful, so it is needed to enhance the defence of small shareholders as consumers, i.e. by establishing different, more affordable requirements in order to challenge the agreements, or request to convene of managing boards, when these actions are undertaken by the qualified organisations;
- 6) the avoidance of any hindrance to consumer/financial users associations to initiate these collective actions, including the establishment of mechanisms for rapid and effective means to grant legal aid to them, and the weighing up of the amounts of bails required by procedural laws, which in many cases become an absolute obstacle to the proper access to justice.
- 7) the establishment of specific procedures for rapid resolution of collective legal proceedings;
- 8) the regulation of collective actions for all Member States, without endangering efficient existing national legislations, including mechanisms of how to exercise them when they have a cross-border outreach.

In 2015 the FSUG placed the effectiveness of local collective redress systems on its agenda for further research. Due to a substantial cut in its research budget FSUG wasn't able to agree to and to perform such research.

The Single Euro Payments Area

The Single Euro Payments Area (SEPA) is a logical consequence of the introduction of Euro notes and coins in 2002. Its aim is to replace the national electronic payment instruments with payment services to be used both at national and cross-border level in 32 European countries for all Euro payments.

The SEPA project was off to a bad start when only led by the banking industry through the European Payment Council (EPC): the credit transfer and direct debit schemes adopted by the EPC were not initially designed to come up to end-users' expectations.

In addition, there was no real consumer demand for a European direct debit: with or without SEPA, the bulk of their recurrent payments would remain as before within their national territory, and the lack of EU-wide direct debits had never been an issue for most consumers.

As the EPC was unable to offer SEPA payment services of sufficient quality to gain users' support, the end-users' representatives have therefore called for more involvement of the EU institutions in particular to change the SEPA governance rules so that end-users are really involved in the SEPA project, and propose an EU legislation in particular as regards consumer rights and safety rules which were not properly addressed through banking self-regulation.

With the creation by the European Central Bank in December 2013 of the Euro Retail Payments Board (ERPB), as successor of the SEPA Council established in 2010, which role is to foster the development of an integrated, innovative and competitive market for retail payments in euro in the European Union and the adoption of the SEPA Regulation in 2012, SEPA has finally became a general interest project.

With the SEPA Regulation, consumers have been granted better control over payments made from their accounts: for instance they can instruct their banks to limit a direct debit order to a specified amount, frequency and duration as well as only authorise direct debits coming from one or more specified creditors. Furthermore, the recently revised Directive on Payment Services granted consumers an unconditional refund right for direct debit transactions in euro.

Migration from national credit transfers to SEPA Credit Transfer posed very few problems for European consumers, as legacy credit transfer products were very similar. In addition, benefits of SEPA credit transfer to consumers are obvious: nowadays consumers can easily and at a low cost transfer money in euro from their bank account to any account across Europe.

On the other side, SEPA Direct Debit is still not fully operational. Although the migration to SEPA Direct Debit has been officially finalised everywhere in Europe, direct debit mandates initiated in different Member States are mostly still not recognised at cross-border level. This issue might be addressed through implementation of electronic signatures at the EU level.

What still needs to be done: Consumers who make online and offline payments and money transfers, locally and across borders need to have cost efficient, widely accepted, safe, and privacy-friendly means of payment at their disposal. Despite a great number of innovative solutions, several legislative and non-legislative initiatives, national and EU-wide payment markets still remain fragmented from a consumer's viewpoint. For example, different types of both remote and face-to-face mobile payment solutions are steadily increasing but have not really penetrated the market. Regulators must closely check that products put on the market respect the conditions mentioned above, particularly security, respect of data protection rights and interoperability.

SUMMARY OF MINUTES: FSUG MEETINGS FROM NOVEMBER 2015 TO OCTOBER 2016

09 and 10 December 2015

Update on research projects – financial guidance and pension decumulation.

Enforcement and better regulation – up-date on the survey and data gathering exercise; the first discussion about objectives and tasks for the contractor and preparation of the technical specification

2016 Research – discussion about the objectives and tasks for the 2016 research project and preparation of the technical specification

Presentation of the Green Paper on Retail Financial Services followed by a discussion.

Finalisation of the letter regarding the elimination of past performance disclosure of PRIIPs and their benchmark in the KID.

Decision about the 2016 external meeting of the FSUG

Call for evidence: EU regulatory framework for financial services

Presentation of the consumer testing study for PRIIPs

Reply to ongoing consultations:

EUVECA and **EUSEF**

Covered Bonds

Joint Consultation Paper on PRIIPs key information for EU retail investors

Reporting to the Commission

01 and 02 February 2016

Tour de table on Members' activities of FSUG interest, including participation in events on behalf of FSUG, update on identified consumers' risks or detriments as early warnings which could potentially be reported to the Commission and ESAs.

Enforcement and better regulation – up-date on the survey and data gathering exercise.

Green Paper on retail financial services: better products, more choice, and greater opportunities for consumers and businesses – discussion on the basis of draft replies

Integration of retail financial services – work on recommendations:

Big data – first discussion on the basis of the paper circulated by Martin.

Update on the research project on financial guidance; discussion about the Inception Report.

Update on the research project on pension decumulation

New consultation: Non-binding guidelines on methodology for reporting non-financial information (deadline 15.04.2016)

Presentation of findings of the CCD mystery shopping carried out in Slovakia

Presentation of ODR Platform, Olivier Micol, DG JUST

Reporting to the Commission

02 and 03 March 2016

Hearing on the Green paper on retail financial services

Discussion about further steps on the issue of the KID past performance disclosure.

Green Paper on retail financial services- finalisation of the replies to the Green Paper

Integration of retail financial services – finalisation of recommendations

Regulation and SMEs: Robin proposed to run a questionnaire about consumer protection regulation for SMEs, up-date followed by discussion.

Crowdfunding - Preliminary results of the pan-European survey on crowdfunding from the user's perspective".

Enforcement and better regulation – up-date on the survey and data gathering exercise; discussion about next steps.

Study on financial guidance – up-date on progress.

Discussion about possible actions to fight terrorism financing, presentation followed by discussions.

Reporting to the Commission

Inception report for the pension decumulation study – meeting with the contractor, discussion about the inception report.

18 and 19 April 2016

Tour de table on Members' activities of FSUG interest, including participation in events on behalf of FSUG, update on identified consumers' risks or detriments as early warnings which could potentially be reported to the Commission and ESAs.

Call for evidence – presentation of the FSUG contribution followed by discussion with the Commission representatives.

Discussion of the revised Inception report on the study on pension decumulation.

Enforcement and better regulation – up-date on the survey and data gathering exercise; discussion about next steps.

Discussion about a type of reaction to ACCIS letter.

Update about the organisation of Berlin meeting.

Up-date on the geo-blocking campaign launched by BEUC.

Discussion about the contribution to EIOPA consultation on development of an EU Single Market for Personal Pension Products

ESMA Discussion paper on UCITS share classes

ESMA Consultation on future Market Abuse Regulation list of information regarding commodity and spot markets

Regulation and SMEs: Robin proposed to run a questionnaire about consumer protection regulation for SMEs, up-date followed by discussion.

Green Paper on retail financial services: presentation of the FSUG position related to specific questions/issues of Green Paper: 11 (comparability, switching), 12 (fees for cross-border payments), 13 (currency conversion fees), 24 (e-ID and e-signatures), 30 (one-stop shop) followed by discussion with the Commission colleagues.

Up-date on a public consultation on insolvency (with references to small enterprises and personal insolvency)

Reporting to the Commission

06 and 07 June 2016

Supervision, enforcement in retail financial services

Trends and developments in the insurance/pension sector

Financial guidance and Financial Market Watchdog

Draft Interim report on pension decumulation - discussion with the contractor

Consumer protection in the German capital market – players & products

Enforcement and better regulation – discussion of the paper

Big Data - discussion of the paper

Type of reaction to ACCIS letter - discussion

Cyber-Security - Regulatory challenges for the financial services sector

Integration of financial services: New solutions through fintechs

Trends and current developments in investor/financial services user protection in Germany – the political view

Interim Report for the study on financial education – discussion with the contractor

14 and 15 July 2016

Discussion about the financial guidance study

Preparation of the FSUG Position paper on financial guidance – first discussion.

Preparation of the position paper on defining financial advice – first discussion.

Lessons Learnt from Berlin meeting – preparation of the document and Tour de table on Members' activities of FSUG interest, including participation in events on behalf of FSUG, update on identified consumers' risks or detriments as early warnings which could potentially be reported to the Commission and ESAs

Pillar 2 pension schemes and the Consumer Market Scoreboard - discussion with DG JUST

Presentation of the Big Data paper to the Commission services

Regulation and microenterprises: follow-up to the previous discussion

Draft final report for the Study on pension decumulation – discussion with the contractor

Preparation of the position paper on pension decumulation – first discussion

Presentation of the consultation on the evaluation of the financial conglomerate directive - followed by short discussion

Enforcement and better regulation – preparation of the presentation for the next meeting.

Annual Report – discussion about division of tasks.

Presentation of the consultation on cross-borders distribution of investment funds – followed by short discussion

Reporting to the Commission

14 and 15 September 2016

Presentation to the Commission staff of the FSUG findings related to the supervision and enforcement.

Preparation of the FSUG Position paper on financial guidance –discussion.

Preparation of the position paper on pension decumulation –discussion.

Regulation and microenterprises: follow-up to the previous discussion

Annual Report and special features: user representation, redress and SEPA – discussion and finalisation.

Tour de table

Public consultation on a potential EU personal pension framework-

Reply to the consultation on the evaluation of the financial conglomerate directive

Reply to the consultation on cross-borders distribution of investment funds

Reporting to the Commission services

27 and 28 October 2016

Finalisation of the FSUG position paper on financial guidance – discussion.

Presentation of the Better Finance 2016 research report on the real return of long term and pension savings

Presentation by the FSUG to the Commission staff

- · Which regulatory interventions work in financial markets
- Understanding the impact of big data/ fintech
- Understanding risk and consumer behaviours in a low interest rate/low return environment.

Finalisation of the position paper on pension decumulation – discussion.

Finalisation of the reply to the public consultation on a potential EU personal pension framework - introduction by DG FISMA followed by short discussion:

Presentation on the follow-up to the Green Paper on Retail Financial Services followed by discussion.

Tour de table

Finalisation of the FSUG paper on enforcement.

Finalisation of the Annual Report and special features - discussion

Preparation of the message to Directors of DG FISMA and DG JUST.

Summing up of the last year of work and reporting to the Commission.

FSUG MEMBERS

In 2016 FSUG had 19 members, who are individuals appointed to represent the interests of consumers, retail investors or micro-enterprises, and individual experts with expertise in financial services from the perspective of the financial services user.

Name	Nat	Title
McATEER Mick – Chairman	UK	Founder-Director, The Financial Inclusion Centre Non-executive Director FCA
PRACHE Guillaume – Vice Chair	FR	Managing Director, Better Finance
FILY Anne – Vice Chair	FR	Special Advisor to Special Advisor to BEUC, the European Consumer Organisation
BAYOT Bernard	BE	Managing Director, Réseau Financement Altérnatif
ANSELMO Paulo	IT	President of the Italian Business Angels Networks Association, member of INSME (International Network for SMEs) and ANIMA Investment Network
COENEN Paul	NL	Head of Legal Affairs, Dutch Investors Association VEB
DASKALAKIS Nikolaos	EL	Head of Market and Entrepreneurship Discipline, Hellenic Confederation of Professionals, Craftsmen and Merchants
FARRÉS ROSELLÓ Jofre	ES	Head of Savings and Investments, ADICAE (Spanish Association of Users of Banks, Savings Banks and Insurances)
FERRETTI Federico	IT	Lecturer in Law, Brunel Law School
HÖLZ Christiane	DE	Senior executive at Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW). Vice Chair of ESMA's Securities and Markets Stakeholder Group
IACOB Alin-Eugen	RO	Chairman - Association of Romanian Financial Services Users. Editor in Chief and Managing Partner – Conso.ro financial website
JARVIS Robin	UK	Professor, Brunel University. Special Adviser to the European Federation of Accountants and Auditors for SMEs (EFAA)
KAWIŃSKI Marcin	PL	Lecturer, Warsaw School of Economics
KRISPER Bostjan	SL	Head of Department for Financial Services, Slovene Consumers' Association
LEWIS Sue	UK	Chair, Financial Services Consumer Panel
PARENT Anne-Sophie	BE	Secretary General, AGE Platform Europe
SCHMALZRIED Martin	CZ	Policy Officer, Confederation of Family Organisation in the EU
ŠEBO Ján	SK	Associate Professor, Matej Bej University Consultant, Independent Traders Club



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http://ec.europa.eu/finance/finservices-retail/fsug/index_en.htm

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http://corporateeurope.org/sites/default/files/attacments/financial_lobby_report.pdf