Minutes of the meeting of the Financial Services User Group
3 - 4 April 2014

<u>Thursday 3 April</u>

Adoption of the agenda and approval of the minutes of the last FSUG meeting
The agenda and the minutes were adopted. In his introductory remarks, Erik Nooteboom informed that the Commission is organizing a conference in autumn on "Financial Services in the retail sector", where some of the topics of the FSUG work programme will feed into.
He noticed that the topics of the work programme are very much interlinked and the discussion focussed mainly on short –term deliverables, to see how to best benefit from FSUG expertise. Some members stressed the need to outsource some sub-topics but the decision for external research was postponed at the FSUG meeting in May.

A brief update on PAD was given by Maciej Berestecki: he referred to the success to ensure access to a basic bank account for every consumer, better transparency of bank account fees and improved switching of bank accounts. He also informed that the next year will be crucial to ensure adequate transposition via workshops with Member States.

Terms of Reference of the FSUG subgroup on Access to independent and qualified financial advice for consumers
The FSUG member noted that there is mounting evidence that consumers are not properly advised. The proposed work will focus on major financial decisions with a medium to long term impact e.g. retirement planning and will not cover consumer credit for instance. The discussion focused on how to assess difficulties faced by consumers when seeking independent and qualified financial advice, as well as to find the consumer needs, and collect information on the best practices available in the financial market and to identify the obstacles faced by NGO's when accessing the consumers advice market.
FSUG proposes to issue a position paper and recommendations required to achieve objectives. The exact approach and scope is still to be agreed e.g. is there a need to focus on a specific product. A key question is also how can consumers be encouraged to seek advice. The scope of the FSUG project could be to look at general advice to consumers and specific advice related to specific products alike. In parallel, the FSUG discussed the possibility of outsourcing some part of the project. Consequently, the objective will be to provide a recommendation to the Commission regarding access to independent and qualified advice. The Commission asked FSUG to take into account the changes that will be introduced by the revision of MiFID and IMD. It was also suggested to map what provisions on advice are already in place in EU legislation (Insurance Mediation Directive, PRIPs for retail products, IORP for occupational pension funds) and define the recommendations accordingly.
The FSUG subgroup agreed to present a draft position paper in September

Terms of Reference of the FSUG subgroup on Consumer data and practices of creditworthiness assessment
The objective is to investigate consumer concerns on privacy, access to mainstream servers, and market integration towards a competitive single market in credit services. The following areas were identified as possible focus: type of data in credit database; Assessment of creditworthiness; Fundamental rights of consumers on personal data; Interoperability among national systems exchange of data; Expanding use of personal data; Competition of marketing and consumer interests in financial industry data; Reliability of credit data; Transparency (are consumers fully aware of the use data); Data security (identity theft – how safe is consumers personal information).
The FSUG subgroup agreed to present a draft position paper in September.

Terms of Reference of the FSUG subgroups on over-indebtedness

The debate regarding the terms of reference on over-indebtedness focused on two perspectives, prevention and resolution of over-indebtedness. In terms of prevention, the group agreed that it is important to learn more about the reasons behind over-indebtedness, to which DG SANCO's study will be essential in terms of addressing this issue within the scope of intervention of the FSUG. The subsequent discussion will also focus on the banning of discriminatory practices, as well as the need of EU regulation on private debt collectors.

Concerning the resolution of over-indebtedness, the focus will be on the restructure of loan agreements and private insolvency.

Commission update on crowdfunding

Barbara Gabor gave an update on the publication of the outcome of the public consultation and the Commission Communication: in the latter, the Commission intends to promote a common understanding of the phenomenon. The Communication focuses, inter alia, on the difference between financial return crowd-funding and non-financial return crowd-funding: particular attention on consumer protection measures is to be paid in the profit-sharing model. The outcome of the public consultation showed a significant cross-EU regulatory fragmentation that prevent crowd-funding platform to acquire a cross border dimension. Some of them indicated also the challenge to comply with EU legislation (such as the recently adopted MiFid2 and the Prospectus Directive). Ms Gabor informed that in the short term the Commission is exploring the effectiveness of soft measures to increase consumer protection, on many aspects (e.g. charges): awareness raising, professional training to platforms, possible advantages of self-regulation and the launch of a call to experts who will compose the European Crowd-funding Stakeholders' Forum. The public consultation revealed also gap in information available on the use and benefits of crowd-funding from the users' side, mapping extensively the risks for the consumers and how existing rules address these risks.

One FSUG member wondered whether in some countries crowd-funding is prohibited: this seems not to be the case, although some national rules may require platform to have a bank licence, which could significantly limit the activity of pay-day lending.

One member noticed that crowd-funding is still a relatively small financial activity to pose a systemic risk and informed that in the UK there is a big concentration of interest in four /five players, detrimental to competition. Furthermore, the member remarked that comply with due diligence poses a significant cost to platforms.

Ms Gabor thanked the FSUG for their written contribution to the consultation and their ongoing work and informed that the Commission activities aim at gathering as more data as possible to monitor crowd-funding and to analyse what is the consumer's understanding of the phenomenon.

Terms of Reference of the FSUG subgroup on financial innovation: the case of crowd-funding

The reality of crowd-funding has prompted the FSUG to propose a study that will focus on regulating crowd-funding activities, and the crowd-funding system in itself. The FSUG decided to write a position paper focussing mainly on the principles for safe financial innovation – and then analyse the case of crowd-funding as a small case study. One part of the paper will focus on how to define innovation as "socially useful". The objective of this research would be to assess the purposes of ensuring a proper protection for investors, making markets work from the perspective of users – if they have adequate information about crowd-funding and possible risks associated with it. By identifying basic principles and a legal framework, the FSUG would be able to issue some advice to the Commission on how to ensure adequate user protection both in soft measures and eventually regulation. One member of the subgroup remarked that crowd-funding can work if set in a framework allowing consumer to collective redress, in case of frauds by platforms to consumers or in case platforms do not deliver on the projects for which they collected money.

Proposal for the revision of the Directive on Institutions for Occupational Retirement Provision–

Jung-Duk Lichtenberger (JDL) explained that the proposal was adopted on 27 March and has now been transmitted to Council, Parliament and ECON. The text has 81 articles and 3 delegated acts.

JDN noted that the EU needs to encourage long term investments; only 84 cross border pensions exist. The trend from defined benefit from defined contributions means many pensioners have had their pensions 'cut' and there is evidence of market failure.

Key features include new governance requirements on key functions, new provisions on remuneration policy, a self-assessment of the risk management system, requirement to use a depositary and enhanced powers for supervisors.

The Proposal also includes more information for the consumer via the Pension Benefit Statement; this will help consumers to think about pension adequacy and the suitability of their investment strategy. The Proposal also removes obstacles for the cross border provision of services.

FSUG members asked why the Key Information Document (KID) could not be used. JDN noted that the KID is for UCITS and has been extended to unit linked funds. As the information is different and the KID is retail focused, it is not the most suitable tool.

The FSUG member asked about governance provisions and noted that there does not seem to be any legislation capturing the advisers who advise on occupational schemes. In the UK, there has been a lot of unsuitable advice for occupational schemes and the governance is out of balance. Although trustees are expected to hold the necessary professional competence, it is not always the case.
FSUG members also asked about cross border transfers and if scheme assets could be transferred to a country with a lower level of protection? Are scheme members able to block such transfers?
JDN confirmed that he accepts FSUG point on the governance of schemes and the side practices that may exist relating to the quality of advice of occupational schemes. In relation to the transfers, JDN noted that members must be consulted and give consent before a transfer can take place.

Directive on Supplementary Pension Rights
Valdis Zagorski (VZ) presented the Directive on acquisition and preservation of supplementary pension rights. As described in the White Paper on Pensions (2012), the transferability of occupational pensions rights for mobile workers has acquired major importance and has played as a barrier to mobility. The risks for mobile workers are i) Long acquisition periods, ii) the non-transferable assets and iii) the erosion of dormant rights' value. After describing the legislative steps since the Commission Communication in 1991 and the report of the High-level Panel on the Free Movement of Persons in 1997, VZ focussed on the Council Directive 98/49/EC which brought the principle of equal treatment of workers moving across borders. The Directive provided that acquisition and preservation standards for workers moving across borders are no inferior to those moving within a Member State. He also mentioned that most risks for occupational pension rights (vesting periods, acquisition standards) equally apply to internal mobility.
The 2005 proposal for a 'Portability' directive foresaw the transfers of pension assets, a minimum standards for acquisition (e.g. a cap on waiting and vesting periods) and minimum standards for preservation (e.g. indexation). VZ then discussed the legislative process, started in 2007 until the second round of inter-institutional negotiations in 2012, concluded with the compromise agreement in the Council in June 2013 and the subsequent trilogue in September-November 2013. The adoption was scheduled for April 2014.
The acquisition standards agreed included a max of 3 years for waiting and vesting period, leading employee contributions to vest immediately. These standards included also the minimum age for vesting as max 21 years, but did not set any limit on minimum age for scheme membership.
In terms of preservation standards, the directive sets the right to retain dormant pension rights in former employer's pension scheme. The preservation may vary depending on the scheme (e.g. indexation, capital returns). A basic principle introduced is that dormant members shall be treated on par with active members.
VZ reported that the scope of the directive applies to the schemes linked to employment, except those covered by Regulation 883/04 and those closed or insolvent. Furthermore the directive applies to survivors and the workers moving across Member States. He concluded that the directive does not apply to employment periods prior to implementation and that the Members States will have 4 years to implement it.

Terms of Reference of the FSUG subgroup on private pensions (decumulation phase)
The market for annuities is not transparent and not enough consumer friendly, being private pensions a very complex products; the purchase of annuities may not be the best solution for consumers, as some of them c may rather benefit from a lump sum to repay mortgages/previous debts. Discussion touched upon also UK recent pension reform, and focused on the need to ensure both the freedom of consumers to use their pension rights to sustain consumptions or repay debts, as well as the need to ensure adequacy of living for pensioners. This trade-off is strongly linked to the need for users to benefit from quality financial advice.

FSUG agreed to compare countries performances, to gather quantitative data on users affected by the upcoming retirement of the baby boom generation. It was stressed the existence of many studies but not from the perspective of the impact on users' revenue. FSUG will identify risks connected to new products.

Friday 4 April

Report of the Commission Expert Group on European Insurance Contract Law
Dirk Staudenmayer (DS) explained that this work started with a green paper in 2010 which asked stakeholders about their interest in terms of scope. The suggestions were very heterogeneous except in the area of financial services, in particular insurance. As a result an expert group was set up.
In early 2013 this group started working on analysing the differences in contract law and where problems arise for cross border marketing of insurance products.
The resulting report is balanced and highlights differences in contract law. The study found that one or even several differences are not enough to deter insurances from conducting business cross border, however all the combined obstacles create legal uncertainty and increase the transaction costs. DS noted that tax law and contract law are the two major reasons or obstacles to cross border cover. Liability insurance and liability law is also a factor.

In the coming months the Commission will launch a consultation to find out the views of interested parties. DS is keen to get a first reaction from FSUG members. The consultation will be split into two parts: part 1 will summarise problems and part 2 will discuss possible solutions.
One member recommended that further work should include also problems with travel insurance for older people. She also noted that the culture of insurers means that they are not interested in tackling the issue of cross-border access. The portability of life insurance and health insurance was also discussed. The expert group focused on life, motor and liability insurances.
Another member commented that BEUC is not in favour of an optional instrument for insurance contracts because it is likely to result in lower standards overall. In addition, she noted that in France there are many insurers, the so-called 'Mutuelles d'assurances' who would not be able to compete with new cross border competitors; these insurers who represent 50% of the French market have lower costs, they sell directly to consumers who are also their members (no intermediaries, no shareholders) ,. Their premiums are lower for consumers and the contracts and practices are better (very few number of complaints). They are also well regulated.
FSUG members raised the issue of claims handling and stressed that this is something that makes cross-border cover challenging for insurers. Another member also noted that large insurance companies do not want harmonisation because they have the funds to set up in another MS and comply with the national laws. It is more difficult for a smaller provider to do this.
The Commission noted that some practical arrangements already exist e.g. through FINET cross border insurance disputes can be settled.
DS invited FSUG to contribute ideas and views prior to the official consultation period.

The FSUG showed interest to provide input into a consultation document on the European insurance contract law that the Commission will publish. FSUG members agree to list some obstacles to cross-border insurance contracts and will contribute to the work of the Commission in this subject.

Feedback statement on third-pillar retirement products

Francesco Gaetano recalled the context of the consultation of Dg Health and Consumers: action 13 of the White Paper "*An Agenda for Safe, Adequate and Sustainable Pensions*" indicated that by 2013 the Commission would present an initiative to increase the quality of third pillar pensions. The aim is improve transparency and increase protection standards in business practices
Mr Gaetano presented the process before publishing the outcome of the public consultation: the Commission went through a questionnaire to Stakeholders and Member States in autumns 2012, to gather knowledge on national markets and what protection measures were are already in place; based on the knowledge gathered though the questionnaire, the Commission published a consultative Document in spring 2013. 40 organizations provided qualitative answers. The main findings of the public consultation reveal a general consensus on the definition, while most respondents highlighted the advantages of a common terminology consistent between the three pillars. Respondents also showed consensus on the need to look at shortcomings stemming from information asymmetry but they showed different views on the most effective way to tackle it.
Self-regulatory codes gathered little support, while various opinions were expressed on EU certification scheme. The *advantages of the formers are that they m*eet consumers' risk profiles, they adapt to specific markets, are less burdensome for industry and they enhance business standards of conduct. Nevertheless, the major limit of self-regulation is about the uncertainty of the monitoring compliance. The main advantages listed by the respondents to the public consultation on certification schemes are the fact that they promote the comparability of fees and they enhance consumer confidence and competition if correctly enforced and supervised by independent body. Nevertheless, they pose the risk to induce excessive market standardisation (by reducing product choice for consumers), they may increase costs. Eventually, a quality certification should not be perceived as a financial guarantee *per se.*

Terms of Reference of the FSUG subgroups on the design of simple financial products

The main objective is to investigate the effectiveness of product design as an intervention in the way markets work, and to identify examples where product intervention could actually be helpful for the consumer, and therefore, able to foster higher levels of private saving.
The way financial markets regulate themselves is not always effective, and the acknowledgement of product intervention would work as a different approach to regulation.
Therefore, the purpose would be to create a benchmark product that would allow consumers to better navigate the financial market.
It was underlined the strong potential of simple financial products, also stressing that these products should be not only be simple, but also with no further obligations for the consumer.
Furthermore, he advised the FSUG to prioritize its focus on savings, and its importance. The FSUG decided that a draft position paper will be discussed in September.

Omnibus II and Solvency II

Andreas Viljoen (AV) explained that Solvency II address the shortcomings in Solvency I. For example market, credit or operational risks are not captured and there were few requirements on risk management or governance. The result was that insurers were not incentivised to manage risks adequately.

As Solvency I was a minimum harmonisation directive, many MS are operating to the minimum standard. Solvency II requires deeper integration and combines 14 separate directives into 1. Solvency II has taken a long time to progress through the legislation process; this is in part to ensure that the outcome does not damage the economic recovery of Europe.

Full application of the directive is expected in 2016.

AV summarised the main aspects of both Omnibus II and Solvency II, and the benefits to consumers. These include:

- Better policyholder protection
- Increased transparency
- Increased harmonisation
- Alignment of capital requirements and insurers' own risk management frameworks
- Guaranteed benefits can continue to be offered at affordable prices
- A more robust and stable financial system.

One member commented that Solvency II is important and complex but that as soon as it is implemented there will be a move away from equity investment because of the huge incentive for insurance companies to go into long term investments.

AV responded that equity doesn't provide a good match on a cash flow basis, bonds are better for this purpose as they provide a fixed cash flow.

One member asked if the Commission has any plans for research on accessibility. AV is not aware of any research, there are a number of reviews and a report must be sent to the Council and Parliament. This will provide an analysis of the impact on product offerings.

Study on asset management – presentation of the interim report

The contractor, Didier Davydoff (DD) from IODS provided FSUG with an update on the interim technical report. A word version will be sent to all members. The study aims to answer the question "*what is the added value of the asset management industry?"*

DD confirmed that there are 7 research questions being assessed. These include:

1. Investment performance: how well does the EU asset management sector perform compare against relevant benchmarks, before and after inflation (i.e. real returns)?
2. Charges: what are levels of charges in EU asset management sector?
3. Charges and performance correlation: do high charging funds produce better investment performance?
4. Resource allocation: how efficient is the investment industry at allocating resources to financial markets and the real economy?
5. Disclosure and transparency: how transparent is the asset management sector?
6. Confidence and trust: how confident are financial users in the asset management industry, do they trust the industry?
7. Market structure information: how is the market structured, what are the main changes?

One member asked if all charges are included. DD confirmed that all *disclosed* charges are included. One member commented that it doesn't matter if the management fee is 1% or 50% if the index fund tracks effectively. When disclosing to the customer the asset manager needs to state the ability of the fund to track, after the management fee. One member asked if FSUG members could see the methodology for how the active fund charges are calculated. Another member raised an issue with slide number 3. The result seemed surprising. The contractor will review this. DD commented that there is no correlation between performance and fees. To date the contractor has not looked into transparency and disclosure in detail. This will mainly be covered qualitatively and MiFID II will change many aspects.

DD confirmed that there is still a lot of work to be done. There is country by country data available and they will try to include hedge fund data (this may not be possible). The team will also look by industry sector and consider what would be necessary to improve the measurement of switching behaviours.

Another member asked that the contractor refers to a study by Princeton using blindfolded monkeys. FSUG members also requested the inclusion of cumulative graphs and commented that there may be criticism about the use of the MSCI index. DD explained that the team hesitated between using the stocks TMI and the stocks 600. The MSCI is narrower and is more used by US institutional investors.

Next steps:

DD confirmed that the report will be circulated to all members of FSUG who are invited to respond with their comments.

Study on how to promote access and use of appropriate savings products for all European financial services users, in particular vulnerable people

The contractor, ECORYS, in light of the on-going data gathering gave a brief preliminary updated on the study outlining the analytical framework used to conduct the research.

One of the aims is to find reasons why consumers do not save and the following reasons are being considered: environmental at country level (economic, cultural, political, regulatory reasons); the supply from the finance industry perspective (type and availability of products, approach to marketing); the demand from the consumers' perspective (cultural attitude, income expenditure). ECORYS informed that they are finalising the literature review, waiting for Eurostat's SILC micro-data and gathering data for the Zweite Sparkasse case study. They will sample between 150 and 250 bank accounts, with approximately 20 indicators per account to analyse. Furthermore, within the scope of the study, a survey has been designed, reviewed and was launched on 10 March 2014. 29 consumer organisations have already registered, and 16 of them already provided full answers while 13 of them gave partial answers. In regards with banking federation members, only one has participated in the survey, giving partial answers. ECORYS concluded by mentioning they estimate around 100 consumer organisation members, and 80 to 90 banking federation members to participate in the survey. The contractor will present the interim report in the FSUG meeting in May meeting and the final report will be discussed in September.

Reporting to the Commission about the development of the FSUG work programme 2014

The Chairs and Vice Chairs reported to Mr Nava, Director of "Financial Markets" in DG Internal Market and to Mr Micol, Head of Unit in DG Health and Consumers. The Commission welcomed the discussion and the terms of reference of the FSUG project on access to independent financial advice; consumer data and practices of creditworthiness assessment; financial innovation and the case of crowd funding; on private pensions and on simple financial product. Mario Nava also inquired about the project on savings products as it is important to incentive consumers to save and channel savings into the economy.

On *crowd-funding*, being it a very recent form of financial innovation, the risk to undergo immediately into surveys as part of research may lead to review mainly the crowd-funding enthusiasts and potentially neglect the risks. It would be also worth examining the potential of crowd funding for reaching new users and using different distribution channels. Therefore, the FSUG will focus mainly on the latter ones. Alternatively, it was suggested to develop a study focused on 4 or 5 countries outlining the best practices and how the product is sold, marketed and its main characteristics.

On *private pensions* (decumulation phase) the FSUG decided to summarize the main concerns on annuities and how the decumulation process is regulated in some EU counties. The work will address the need of support to consumers (financial advice). Since the FSUG already worked on the accumulation phase of private pensions with a study and a position paper, it was proposed to present both of them to different Commission services in the next meeting in May.

On *Consumer data and practices of creditworthiness assessment*, the group discussed about the competition dimension and decided to present a draft position paper in September.

On *Over-indebtedness*, the group decided to fine tune the terms of reference once the findings of SANCO study will be public. It was also remarked that the emphasis should be also on promoting savings to via educational programs to prevent over-indebtedness.

Administrative issues

Concerning the 2014 budget for external studies, the FSUG decided to discuss to outsource possible research at next meeting in May. The Commission informed about two options and the respective deadlines.

In relation to the meeting in Warsaw in June 2014, the group discussed some aspect of the logistical organization. The FSUG member who volunteered to host the meeting presented the draft agenda.

Follow-up to the previous meeting:

- It was agreed that reply to EIOPA needs to be prepared and sent out asap.
- The Group decided also to up-date the FSUG Risk Outlook: the members will send their contribution to the Chair.
- FSUG members were asked to provide their comments on the FSUG position paper for the "Study on the remuneration structures of financial services intermediaries" – so that it can be finalised and published together with the study.