



**Minutes of the meeting of the Financial Services User Group
15 – 16 May 2014**

Thursday 15 May 2014

Adoption of the agenda and approval of the minutes of the last FSUG meeting:

The agenda was adopted and minutes confirmed. Some members remarked the benefits of the information session about risks to consumers across Europe: therefore one member proposed to supply the Commission with a list of topics detrimental to consumers and users, few days before the future meetings.

Presentation of the pension study conducted by Oxera and FSUG position paper on pensions:

A representative of FSUG presented the main findings from the FSUG study on Private Pensions, conducted by Oxera and the related FSUG position paper. Representatives from DG Justice, Employment, Health and Consumers and Internal Market attended the session. The study focussed on private pension products.

The FSUG members have already used the findings of the study when replying to the European Commission public consultations on the IORP revisions, PRIPs and other legislative proposals, replying to EIOPA Discussion Paper on a possible EU-single market for personal pension products, as well as at national level - monitoring legislative initiatives and providing dedicated recommendations for improvement of the pension schemes (i.e. in Austria, Estonia, Slovakia in the case of costs).

The FSUG members expressed concerns about the general perception that public pensions are not sustainable at the same time when there is no evidence of sustainability of 2nd and 3rd pillar pensions and the attempt to transfer the risk and responsibility to consumers and citizens without properly explaining that. The study has showed that 3rd pillar pension schemes generate lower returns at higher costs. Discussion followed, some members provided examples of the same pension products sold as part of the mandatory 1B pillar and on voluntary basis, with the difference of charges being 4 times higher in case of voluntary products. Members raised questions about the role of the state and risks connected with DC schemes.

Discussion on FSUG draft paper on *simple financial product*

The FSUG members reported on the progress since the last meeting. The objectives and structure of the report on simple financial products will focus on the advantages of product intervention. While considering the need to have simple products (and positive impact for consumers choices), the paper will explain why simple products are needed and it will focus on why other products have failed in providing alternatives to consumers; in addition the paper will provide a summary on how product design is regulated in other areas (e.g. pharmaceutical sector) in order to deliver framework guidelines for simple products regulation.

In order to address the abovementioned objectives, the project will tackle a series of research questions, spanning from simple financial products as an effective tool to facilitate financial

inclusion, to the definition of what financial sectors are more suitable for simple products. The group discussed what could be defined as simple financial product, and the accurate criteria to establish such an operational definition. Furthermore, a point was raised on whether simple should mean universal in terms of how to characterize simple financial products. It was explained that the simple will be addressed as being universal, and a list of criteria that characterise a “simple product” will be developed (such as safe, consumer friendly, transparent, and easy to understand). The paper will also focus on already existent examples of product intervention, and its current framework, and if such examples can be useful for drawing a tentative framework for simple financial products. The group agreed on the structure of the work (methodology and scope and the division of tasks among the subgroup members). A first draft will be available in July, the final report in September/October.

Discussion on FSUG revised terms of reference on *consumer data and creditworthiness assessment*

The rapporteur presented the revised the terms of reference. While all the main points were already agreed at the previous meeting, discussion was on the competition aspect which was considered important due to the fact that EU national markets still have different systems to collect consumers' data. The group agreed on the terms of reference and on the timeline to discuss a draft version in July. He also reminded other sub-group members to verify the data available to the group for the different mapping exercises so that the actual work could start.

The final paper will present a recommendation to the Commission outlining arguments in favour and against of the establishment of public registers of consumers' data.

Discussion on FSUG draft paper on crowd-funding and the proposal for the research study.

The Commission updated the group on the activities on crowd-funding. Following the publication of the Communication on 27 March, the Commission launched a call for expression of interests to setup the European Crowd-funding Stakeholders Forum, which is expected to meet in autumn for the first time.

The FSUG rapporteur presented the progress on FSUG activities on crowdfunding (CF): the FSUG position paper on innovation and the terms of reference for external research. The former will focus will examine the CF as a sort of case study in financial innovation. The latter will complement the FSUG paper by exploring the risks of CF in Europe. The study methodology will be based on a questionnaire to be carried in some Member States. The number will be clarified once decision is take on the available budget. The questionnaire will focus on the knowledge of CF as, why have consumers used it, how much have they invested, if they expect losses, if they know the risks associated with CF. Members discussed the proposed questions.

The Commission services welcomed the ongoing activities..

Presentation of MiFID2 and IMD2 framework on financial advice

The DG MARKT representative presented MIFID 2 rules on investment advice – as already explained MIFID 2 regulates both "dependent" and independent financial advice in relation to investment products and structured deposits. In the reference to the proposed scope of the research project on independent financial advice many aspects that the proposed research project aims to investigate will be subject to new MiFID rules. MiFID2 introduces a ban on commissions for independent financial advice. Independent financial advisors will be obliged to: (i) assess a sufficient range of financial instruments and (ii) refrain from accepting or retaining inducements from third parties. ESMA guidelines will provide further clarifications with respect to requirements for professional qualifications for investment advisors.

Already today investment advisers will be required to assess the suitability of the product or service based on the assessment of clients' experience, knowledge, objectives and financial situation. Where

investment advice is provided on an on-going basis, the adviser will re-assess the situation of the client and the suitability of the product/service.

If, as a follow-up to generic advice/general financial planning, the consumer will ask for or is provided with a specific product recommendation, such financial planning will be considered to be part of the investment advice and will be subject to MiFID rules.

Another DG MARKT representative stressed that the text of IMD2 is still in negotiations and therefore proposed rules are still subject to change. Based on the Commission proposal the IMD2 would divide insurance products into 2 categories: insurance based investment products which will follow MiFID2 rules and simple insurance products with a lighter regime. It would be possible for intermediaries to sell non-life insurance products and insurance products without investment element without providing advice. However, even in case of the simple insurance products, the intermediary will need to assess needs and demands of the consumers and as well as explain key features of the product. Rules on professional qualifications will apply to insurance intermediaries and those selling insurance products on ancillary basis.

Enhanced requirements would apply to life insurance products with investment elements, covering sales standards, conflicts of interest and a ban on commission for independent advice, following MiFID 2 Directive.

Discussion on revised terms of reference on holistic independent financial advice and the proposal for the research study

The scope of the study was discussed. The FSUG agreed to focus on the needs of average consumers and key life events that require holistic financial advice like buying a home, planning for retirement, receiving unexpected money, etc. In the view of the implementation of new MiFID rules on the independent investment advice and ongoing negotiation on the similar rules for independent advice related to insurance products, it was stressed that the research project follows a holistic approach and focuses on the consumer's needs and therefore does not overlap with these new rules. FSUG members agreed on the need to carry out the study on the availability of generic financial advice/financial planning, which can help consumers understand their financial situation and needs, and, consequently, achieve better financial decisions. Therefore it was agreed that the study could focus on advice that could take the form of financial planning (or advice to do nothing), but not on advice including recommendation concerning specific financial products from specific providers...

It was also agreed that available studies and research should be used as a basis for specifying tasks for the contractor (see e.g. The 2011 SANCO study that provides a mapping of NGOs and other non-profit organisations providing general financial advice).

The study could also investigate the possible sources of financing of holistic advice, in particular if there is a business case for private financial planners, the level of fees acceptable for consumers, and if there is a need for public money support. The study could try to assess the demand for financial planning under different financing scenarios. Criteria and professional requirements, including the liability of financial planners could also be investigated throughout the study.

Meeting with Director-General Mr Jonathan Faull and Director Nava.

The Director General congratulated the Group on its pro-active behaviour and the improved interaction between the groups working priorities and the Commission's own work programme on financial services. He stressed that the group's voice is heard more and more and that the Commission is genuinely interested in FSUG advice.

He also explained that this really justifies the exceptional measure which was recently taken by the Commission to continue to pay the members of the FSUG a fair remuneration for the hard work you will do during the new mandate of the Group, whereas members of other similar Commission expert groups will no longer enjoy such privilege.

He stresses that the Commission services look forward to the active participation of the FSUG members in the DG MARKT Conference on retail financial services on 18 November and especially to the discussions on simpler financial products and possible future actions in the area of the EU mortgage credit.

The Director General explained that due to the change of the Commission DG MARKT is currently collecting inspiration and ideas for our future policy; welcome their work programme and engagement in informing the Commission about different problems that financial users are facing; we look forward to your position papers and recommendations on:

- simple financial products,
- appropriate savings products,
- crowdfunding,
- financial innovation,
- consumer data and creditworthiness assessment,
- pensions.

He also ensured members that in the years to come we want to put more efforts to make sure that the internal market for financial services works even better for consumers and the real economy.

The Director General recalled that the Commission's initiatives have already aimed at enhancing real growth and guarantee a high level of consumer protection. The Commission, this Directorate-General and co-legislators have been very busy in the last months to ensure that a number of files improving the consumer protection are adopted before the end of the mandate of the current EP. You have also contributed to a number of those files and we are very thankful for your substantial input. The list of legislative proposals adopted this year by co-legislators which will improve consumer protection is quite impressive:

- **Packaged Retail Investment Products (PRIIPs)** - promoting consumer's interest in the sales process,
- **UCITS V** - strengthening the level of protection offered to UCITS investors;
- **Markets in Financial Instruments Directive 2 (MiFID2)**, aiming to bring higher levels of investor protection in the area of investment services;
- **Mortgage Credit Directive** - improving consumers' protection in the sensitive area of mortgage lending.
- **Payment Account Directive** - ensuring access to a basic payment account, improving transparency about and switching of payment accounts. In the context of the PAD, he recalled that the FSUG provided valuable input not only to us, the Commission, but also to the rapporteurs of the European Parliament.
- The revised **Deposit Guarantee Schemes**.

He also stressed that in the recent months, the Commission has adopted a number of new proposals aiming at improving consumer protection, corporate governance and channelling funds to the real economy:

- Proposal for the revision of **Payment Services Directive (PSD2)** and the **Multilateral Interchange Fees Regulation**;
- A package of measures **on corporate governance**: a proposal to revise the Shareholder Rights Directive, a Recommendation on corporate governance and a proposal for a Directive on single-member private limited liability companies.
- A package of measures on **long-term financing** - a communication on the long-term financing of the economy, a legislative proposal for new rules for occupational pension funds and a communication on crowdfunding.

At the same time the Commission continues work on strengthening the EU regulatory and supervisory framework to address the shortcomings exposed by the financial crisis, by:

- complementing **the Banking Union** with a **Single Resolution Mechanism**;
- proposing structural separation of the commercial and investment banking **following the Liikanen report**;
- assessing the operation of the **European Supervisory Authorities (ESAs)** and **the European System of Financial Supervision (ESFS)**.

The Director General concluded that in the years to come we should renew and intensify our efforts to make sure that the internal market for financial services works better for citizens and the real economy.

Members enquired about the plans concerning strengthening of consumers' protection and possibility to create a European Consumer Protection authority. Members also referred to the lack of adequate representation of users in ESAs Stakeholders Committees. The Director-General explained that due to the financial crisis in recent years the most focus was on stabilising the financial system. In additions, ESAs are new and have been overwhelmed with a drafting of technical standards. During coming years focus would shift to growth, jobs and consumers. The new Commission will take decision concerning the operation of ESAs. He also acknowledged the composition of stakeholders groups was always controversial. Concerning problems stemming from inadequate enforcement of EU law, the Director General encouraged members to keep informing the Commission services.

Friday 16 May 2014

Decision on research studies to be contracted from 2014 research budget.

Members discussed the question of the division of 2014 research budget. Since the estimation of the budget for the study on financial advice was not known, the discussion was not conclusive.

Finalisation of the FSUG position paper on the remuneration and conflicts of interest.

The member in charge will provide the consolidated version of the FSUG position paper straight after the meeting, so that the FSUG position paper will be published together with the study.

Discussion on the update of the FSUG 2012 Risk Outlook – division of tasks

Following the earlier decision to up-date the FSUG Risk Outlook: the members will send their contribution to the Chair and it will be briefly presented to the Commission during the meeting in July.

The corporate governance package: a proposal to revise the Shareholder Rights Directive, a Recommendation on corporate governance and a proposal for a Directive on single-member private limited liability companies – presentation by Zsofia Kerecsen, Joanna Sikora-Wittnebel and Dorota Lyszkowska-Becher (DG MARKT F2), followed by discussion.

On 9 April 2014 the European Commission presented a proposal for the revision of the Shareholder Rights Directive, a Recommendation on corporate governance reporting and a proposal for a Directive on single-member private limited liability companies. The Shareholder Rights Directive would tackle certain corporate governance shortcomings relating to the behaviour of companies and their boards, shareholders (institutional investors and asset managers), intermediaries and proxy advisors (i.e. firms providing services to shareholders, notably voting advice). The Recommendation aimed at improving corporate governance reporting by listed companies. Finally, the Directive on single-member companies aimed to facilitate the creation of companies with a single shareholder across the EU; it should make it easier for businesses to establish subsidiaries in other Member States as, in most cases, subsidiaries tend to have only one shareholder – a parent company.

Key issues addressed by the proposal for the revision of the Shareholder Rights Directive:

- Insufficient engagement of institutional investors and asset managers
- Insufficient link between pay and performance of directors
- Lack of shareholder oversight on related party transactions
- Inadequate transparency of proxy advisors
- Difficult and costly exercise of rights flowing from securities for investors

Shareholder engagement is the key role played by the owners of companies to hold company boards accountable and to promote the success of companies in the long term. They can do so by:

- monitoring the company
- exercising their shareholder rights, such as voting or
- by establishing a dialogue with the company to constructively challenge boards and to promote better governance, risk management, etc.

A major part (in some Member States, more than half) of the shares of listed EU companies is owned by institutional investors (pension funds, insurance companies) and managed by their asset managers. Asset managers investing the assets of institutional investors also often have a short-term focus in their investment strategies. This seems to be rooted, at least in part, in an inappropriate alignment of interests in the investment chain: while the end beneficiaries of institutional investors have an interest in long-term performance, the performance of those who manage their assets – "asset managers" (typically external) is being evaluated on a short-term basis.

Lack of proper accountability and short-term pressure leads to suboptimal governance and prevents companies from creating long-term value and from generating growth.

A better focus on long-term performance by institutional investors and asset managers is likely to result in a more responsible approach to investments, taking the long-term interests of the company into account to increase the value of companies on the long term.

Members raised concerns about rights of individual investors e.g. in relation to costs of exercising of voting rights in cross-border cases. They pointed out other weaknesses in corporate management, e.g. controlling of behaviour of senior management, weaknesses of boards, not enough focus on long-term financing. The Commission services representative explained that as a follow-up to the Communication on long-term financing, the Commission will publish a consultation document. So far the proposal made looked only at transparency but there is much more to do.

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

The contractor gave a presentation of the draft interim report outlining the analytical framework used to conduct the research. The Interim Report findings were mainly based on a very limited number of replies to the online questionnaire. The members raised concerns about the lack of the relevant data, use of out-dated statistics: e.g. 2001 Eurobarometer or the European Commission study on financial exclusion published in 2008. In addition the 2008 study was contracted by the Commission and thus it was not the purpose of the new study to repeat the findings of the previous one.

Members pointed out that desk and literature research was still far from being at a satisfactory level. More recent statistics from different sources were needed. Important sources of information were missing, like the ECB, IMF World Bank, national central banks, OECD, l'Observatoire de l'Épargne Européenne to mention some of them. Members inquired how many stakeholders the contractor aimed to reach via online survey and were worried about very low number of replies. The Contractor explained that they could not force stakeholders to submit replies. It was surprising that the contractor contacted only umbrella organisations. Two FSUG members offered to help the contractor approach the stakeholders in the UK and Spain. The Commission representative reminded the contractor that he has offered a wide geographical coverage and ensured that if some stakeholders would not reply the contractor would then identify and reach other experts. The Commission representative inquired also why the Contractor has not used offices it has in various MS. It was stressed that results of the online survey were not sufficiently representative to be used for quantitative analysis.

It was stressed that ToR required the contractor to identify and describe regulatory, self-regulatory and best practises, available savings products per each of the 17 MS identified, which was missing in the IR. So far the contractor has not presented findings per each of the 17 MS and mentioned only some random products. The contractor was reminded to develop in-depth country reports.

Members also inquired about the methodology, pointed out lack of clear definitions, inquired for the evidence supporting contractors' hypothesis e.g. provide in table 4.1). Members also stressed that the supply side was not covered sufficiently.

Members also inquired about the organisation of the workshop aiming at validation of findings and raised concerns about limited progress.

In addition to the remarks presented during the meeting, the Contractor will receive written comments.

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

The Chair reported to Ms Spanou, Director of "Consumer Affairs" in DG Health and Consumers about the ongoing activities: a position paper is about to be adopted and published, following an FSUG study on the performance of the asset management industry; the FSUG risk outlook is being updated, with a possible presentation in the next meetings in summer; a paper on financial innovation and consumer protection is being drafted. The Commission welcomed the discussion and the progress on four out of the seven topics which compose the work programme: consumer data and practices of creditworthiness assessment, crowd-funding, design of simple financial products and holistic financial advice. Ms Spanou then introduced the next speakers from the Health and Consumers Directorate General, Mr Kiriazis and Ms Wiercx.

Report on Consumer Policy 2012-2013

Mr Georgios Kiriazis presented the second report on Consumer Policy, which covers the period from January 2012 to December 2013 and is structured along the lines of the Consumer Agenda: it informs about the state of play and progress achieved for the policies and measures announced under each of the four pillars of the European Consumer Agenda. The objective of the Report is to inform periodically the other European institutions, consumer organisations and policy makers on how consumer interests are integrated in the relevant areas of activity of the EU. Mr Kiriazis recalled the origin of the report, arisen from the request of the European Parliament Committee on Internal Market (2010): as first commission follow up, the first report covered the period 2010-2011.

While presenting the main domain of the consumer policy, Mr Kiriazis focussed on product and food safety, on the activities of market monitoring (consumer market scoreboards, market studies and behavioural studies), the need to enhance knowledge at European level (through awareness raising campaign, networks and capacity) and eventually on the enforcement and redress (via the package of alternative dispute resolution adopted in June 2013). He presented then the sectorial policies that the consumer policy report covers: financial services among digital economy, food, energy, travel and transport and sustainable products.

Some members showed interest in the consumer market scoreboard, in particular on what organizations use these data. Ms Spanou informed that many firms in Europe use it for market analysis, as well as the new Directorate in the European Parliament for impact assessment, and the Commission itself to supply data for the economic governance policy cycle coordination in the context of the European Semester. One member wondered about the usability of these data: Ms Spanou announced that the new edition of the scoreboard will allow the user to extract data via a searching tool and to select single sectors/markets/products.

One member indicated that in some countries in Eastern Europe national authorities lack real power to enforce consumer protection: this is often due to government instability, which leads to delays in the transposition of the Consumer Rights Directive. At this regard, Ms Spanou informed that dialogue is currently ongoing with the European Commission and the national authorities, also at the level of the Commissioner in charge of consumer protection who pay regular missions to some Eastern countries to debate on consumer protection standards.

Terms of Reference of the SANCO study on consumer vulnerability across key markets in the European Union

DG SANCO has been conducting a study on *consumer vulnerability across key markets in the EU*, (financial services among them) which covers EU 28, Iceland and Norway. This study investigates consumer vulnerability in the financial sector, energy and the online environment. Ms Wiercx explained that the study has three main objectives: i) to increase the understanding of the different causes of consumer vulnerability, ii) to identify the factors generating consumer vulnerability and the marketing practices impacting negatively on consumers and iii) exploring whether policy measures in place in Member States serve the purpose of alleviating consumer vulnerability. Data will be provided via literature review, in-depth stakeholder interviews, consumer surveys and in-depth interviews, and online behavioural experiments. Information will be then structured in a theoretical framework. The study is intended to supply the Commission also with recommendations.

In the context of the economic, social and technological changes of the society, some members pointed out that not all consumers diversities may be considered as vulnerabilities; therefore they showed interest in the definition of "vulnerability" in use, advising the contractor to focus also on the interlink with "diversity". The Commission informed that the definition in use by the study is intended to be operational and functional to policymakers and NGOs.

Administrative issues

The group endorsed the proposed answer to EIOPA drafted by the Chair.