



Minutes FSUG meeting of 18–19 October 2011

Tuesday 18 October

Adoption of the agenda, Rules of Procedure and approval of last meeting's minutes (20-21 September)

Tour de table:

- Members' activities of FSUG interest
- Update on identified consumers' risks or detriments as early warnings which could potentially be reported to ESAs

At the beginning of the meeting the Commission distributed the renewals of the contracts to the FSUG members. The new contracts signed by all the members of the group will last until the end of 2012.

The FSUG member from Ireland said that the austerity measures adopted in the country which had been imposed by the EU and ECB delivered first positive outcomes and that the situation of Irish consumers had slightly improved. On the contrary, the Greek representative informed that despite very severe measures undertaken by the government to reduce the deficit, it does not seem that the economic situation in the country was going to improve. He added that it continues to affect very seriously Greek consumers. In Italy, on the other hand, while austerity programme had also been implemented by the government, the luxury industry as well as the so called 'crisis economy' (second-hand stores) had been booming in the last months.

One FSUG member informed that the European Banking Authority, presumably in response to the complaint lodged by BEUC and Euroshareholders, had proposed to set up a stakeholders group representing consumers and investors. The group would be consulted by EBA and would liaise with other stakeholders' groups of the authority.

Another FSUG member proposed to arrange a meeting with MEP Lehne who is the rapporteur preparing the European Parliament opinion on collective redress in the JURI Committee. She said that MEP Lehne had a horizontal approach and in principle was in favour of the opt-in procedure at. The European Parliament opinion is supposed to be finalised before the end of the year.

One FSUG member reported on the Single Market Forum which had been held in October in Krakow, Poland, and which was attended by many stakeholders. Several interesting topics were discussed during the event, for instance: ADRs and ODRs, e-commerce, professional

qualifications, etc. He also informed about the meeting with the President of the Romanian Authority for Consumer Protection where he alerted him about dangerous financial products on the Romanian market.

Another FSUG representative criticised EBA for not paying sufficient attention to the work of stakeholders groups. They held three meetings and discussed about the process only, without properly concentrating on the objectives and the opinions they are supposed to deliver. Another FSUG member agreed with this point of view and added that the groups had hardly been consulted by EBA so far despite the fact that consultation was supposed to be their principal task.

The process of appointment of members of national bodies responsible for financial markets regulation and supervision was raised by two FSUG members. It is unacceptable to appoint politicians instead of competent experts to the management boards of these bodies. Relevant national legislation should be adopted to prevent such situations.

A representative of the group drew the attention of other members to the issue of insufficient capital held by banks in Western Europe. In order to obtain the necessary capital, the banks pull away the profits earned by their branches in Central Europe which results in higher interest rates, for instance on mortgages in Central European countries.

The Spanish member of the group informed about the critical situation in Spain of hundreds of thousands of consumers, who had benefited from excessive mortgage lending in the last years, and who then lost their houses through repossessions and are still obliged to continue paying their mortgages. In addition he reported that with the unemployment level of 22 %, the number of repossessions tripled in the last months.

Another FSUG member announced that he had been appointed the Chair of the Stakeholder group of the European Securities and Markets Authority (ESMA).

The problems of the Dexia were also discussed in the context of its bail-out by the Belgian government a couple of weeks earlier. The difficulties of the bank were not expected since it ranked very high in the stress test carried out by EBA last July.

Conclusions & lessons to be drawn from the meeting in Athens (20-21 September)

The FSUG members appreciated very much the opportunity to have held the meeting of the group in Athens in very critical times for the country and its citizens. In the opinion of the FSUG it was an important gesture of solidarity from the side of the EU Expert Group which defends the interests of financial consumers. It was also of great value for the FSUG to meet and discuss in person with the officials of the Greek government and of the organisations representing consumers and small enterprises. These meetings allowed for better understanding of the problems which consumers and users of financial services are facing due to financial crisis and austerity measures undertaken by Greek authorities. It was also useful to find out about the policy initiatives, like for instance the personal bankruptcy law, which the government had adopted in order to help indebted consumers.

In addition, it was interesting for the FSUG members to observe Greek consumers and learn how much their life had changed in the last months as well as what their expectations were for the future. Some FSUG members admitted that, even though they represent the interests of financial consumers in the EU, they actually know very little about the financial situation of consumers in other Member States, and therefore, the visit in Greece was very useful in this respect.

FSUG members agreed that the meeting in Athens helped to collect the information about the situation in the country which is often not reported in media. For the next external meeting of FSUG it was proposed to start the planning earlier in order to prepare the visit in the most possibly efficient way.

Update on the state of play of Solvency II implementing measures – presentation by Ms Kathrin Blanck-Putz (Internal Market and Services DG/H2)

Ms Blanck-Putz informed the group about the outcome of the consultation on the Solvency II level 2 implementing measures.

The purpose of the consultation was to obtain input on the impact of the implementing measures on insurance markets, insurance products and consumers, and on the wider social or economic environment. A total of 68 responses were received. They showed that the concerns of the stakeholders were related to a small number of key issues, namely the impact on long-term products, volatility and pro-cyclicality, limiting the reporting burden and the need for transitional measures in certain areas.

On this basis the Commission has set up working parties which will develop solutions to several of these issues, and the responses together with the results of the fifth quantitative impact study (QIS5) will serve as input when preparing the impact assessment, which will accompany the Commission's proposal.

Regarding the QIS5, Ms Blanck-Putz informed the group, that 2 500 undertakings = 2/3 of the undertakings falling under Solvency II had participated, and that the QIS5 report was published by EIOPA on 14 March 2011. The result of the QIS5 was, that based on 2009 data, around 85 % of the participating undertakings fulfilled the Solvency Capital Requirement (SCR). The QIS5 also revealed some technical shortcomings. There was a need for simplifications and changes with regard to transitional provisions and long term guarantees. In light of this, a specific working party chaired by the Commission including representatives from industry, the actuarial profession, supervisors and Member States has been set up and. The objective of the working party is to identify the necessary adjustments in order to ensure the continuous availability of these long-term products.

Regarding the Omnibus II draft proposal, Ms Blanck-Putz informed the group that the objective of the proposal was to align Solvency II with the new supervisory architecture, i.e. to 'lissabonise' some provisions and to include some transitional provisions which were deemed necessary following the outcome of the QIS5 exercise. The draft ECON report was published ultimo July. Further amendments followed in September – in total 472 amendments – and depending on the final outcome of Omnibus II this might have an impact on the overall timetable of Solvency II. The Commission is currently in the process of revising the implementing measures and intend to have another consolidated version ready by the end of October, which will then be sent to the European Parliament and the Member States. Once Omnibus II is adopted and published, the Commission can adopt the implementing measures. This will most likely not happen before ultimo May/primo June 2012 followed by an objection period of the Council and European Parliament (period to be determined by Omnibus II).

The deadline for transposition of Solvency II is 31 December 2012 and it should start to apply from 1 January 2014. In the transitional period, Solvency I will continue to apply, but undertakings will be requested to submit implementation plans to their supervisors to inform them on their level of preparedness. Pre-approval processes for e.g. internal models may start already in April 2013.

Update on the state of play of the Insurance Mediation Directive – presentation by Ms Aglika Tzvetanova (Internal Market and Services DG/H2)

Ms Tzvetanova informed the group about the ongoing revision of the Insurance Mediation Directive (IMD). She explained that the revision was necessary because the Directive in the current form does not provide sufficient consumer protection and does not cover all sales channels that offer insurance contracts (e.g. insurance companies selling directly their products, car rentals, travel agencies).

The consultation on the Insurance Mediation Directive with stakeholders was concluded in February 2011 and since then the impact assessment has been carried out and is supposed to be finalised in November this year. It is expected that the revised version of the Directive will start to be drafted still before the end of 2011 and it will tackle several issues which are not covered by the present IMD. Among others it will clarify what should be understood by advice as well as independent advice. It will also regulate professional competence requirements of insurance intermediaries and will revise the obligation of professional indemnity insurance on them. One of the chapters will be dedicated to selling practices of life insurance products with investment elements and will reflect the new MiFID provisions in this respect. IMD will have some Lamfalussy parts and will raise minimum harmonisation however leaving to the Member States the possibility to impose some even stricter rules where necessary.

OECD Conference on consumer financial protection – debrief by Mr Maciej Berestecki (Internal Market and Services DG/H3)

The High-level Seminar on Financial Consumer Protection was held at the OECD in Paris on 14 October. The Seminar was organised in view of the meeting of the G20 Ministers of Finance. The OECD taskforce, under the FSB mandate, had drafted High-level Principles on Financial Consumer Protection which were presented to the Ministers with the objective to give greater importance to financial consumer protection in the measures and policies implemented in response to the crisis.

The OECD Secretary-General underlined that ‘the Principles’ is just the first step and further work is required to make them more concrete and to implement them. It is a multilateral agreement and a result of compromise of many stakeholders which gathers core issues from national and international practices. The Principles were also strongly criticised during the Seminar by Consumers International for very weak wording (plenty of ‘where relevant’ and ‘as appropriate’) and for a non-binding character.

The discussions during the Seminar concentrated on the following matters:

Trilogy: consumer protection, consumer education and financial inclusion

- Trilogy is essential for stable and healthy financial system and should go hand in hand with prudential supervision. The challenge is to find the right balance between the two.
- Regulators should not only ensure prudential supervision but also dispose of the necessary powers to protect financial consumers. There is an important enforcement gap since financial authorities have no competences to tackle the problems of financial users.

Financial education and information

- Financial education is necessary because there is an increasing number of complex and sophisticated financial products. However, it will be useful only if both financial sector and consumers act responsibly and if regulators fight against frauds and abuses efficiently.
- NGOs and public-private partnerships have an important role to play in financial education.
- There are however limits of financial education. It has been proved that better educated consumers were taking much riskier decisions since they believed they had the necessary understanding. Therefore, let us not over-invest in financial education but instead develop independent financial advice and ensure simpler financial products.

Basic principles for consumer protection – discussion over FSUG draft paper

A member of the group had prepared a presentation on the basis of the submissions of the group members illustrating where there was more and less consensus as to some basic principles for consumer protection. It was agreed that the group should explore what the term 'financial consumer protection' should cover, and two members of the group agreed to do this on the basis of the presentation. The group will then be consulted.

Current advertising practices regarding consumer credits – presentation by Ms Maria Lissowska (Health and Consumers DG/B4)

Ms Lissowska informed the group that the Commission is currently in the process of drafting guidelines regarding the interpretation of the Consumer Credit Directive.

She in this context wanted to ask the group to respond to a series of questions regarding the current advertising practices with regard to consumer credit agreements based on the members' experience and data collected by their organisations.

The members of the group informed the Commission that there are currently hardly any adverts regarding consumer credit agreements in either Romania or Ireland. In Spain there were; as an example a case where banks had lent money to students of language schools was mentioned.

It was agreed that a questionnaire would subsequently be sent to the group members who will then submit their responses by 7 November.

Wednesday 19 October

Case study Spain: ADICAE 23 years of experience of financial services users' collective defence at courts – presentation by Mr Carlos J Zarco Pleguezuelos (member of the FSUG / member of the legal team of ADICAE)

Mr Carlos Zarco delivered a very extensive and complete presentation on the activity of ADICAE, and in particular on its involvement in a numerous class actions in the last 20 years where the organisation represented and defended in courts hundreds of thousands of consumers.

Mr Zarco reminded briefly the history of the organisation set up in 1988 which currently gathers thousands of members. He also presented main areas of the activity of ADICAE both on the national and European levels and briefly commented its prospects for the development in the near future.

He also presented several class actions initiated and completed by ADICAE in the more than last 20 years and explained the whole process from the moment when the organisation gathers affected consumers up to the court judgements and appeals of the organisation if they are necessary.

Some of the class actions which ADICAE carried out so far include: Opening language school, Gescartera, Afinsa and Forum Filatelico.

Social Business Initiative: Promoting social investment funds – findings of the public consultation – presentation by Mr Timothy Shakesby (Internal Market and Services DG/G4)

Mr. Shakesby informed the group about the outcome of the consultation on promoting Social Investment Funds which is part of the Social Business Initiative under the Single Market Act.

The consultation ended on 14 September 2011 and more than 100 responses were received from individuals practicing in the field, investors and authorities, and also the traditional investment management industry. The feedback was generally good and indicated that there is scope for steps to improve things for funds focusing on helping social businesses. Transparency and clarity for investors will be a main focus, but also steps might be needed to ensure the market can continue to grow, e.g. through cross-border fundraising.

The relationship between social investment funds and venture capital is also being looked into by the Commission. The Commission has committed itself to putting forward proposals by the end of 2011, so an impact assessment is now under way.

Mr. Shakesby underlined the importance of wider work also, highlighting the communications on the Social Business Initiative and CSR which are on the way in the coming weeks.

Impact of high debt, low growth, low interest rate, and higher inflation on EU citizens – discussion over FSUG draft paper

Mr Mick McAteer explained that the regulators did not understand the impact of the crisis on financial consumers and that the paper aims to identify three key issues which will be addressed to supervisory authorities.

One of the FSUG members said that excessive debt should be the main focus of the paper since it is a cause of all other problems (e.g. low growth). Other members argued that actually the paper does not make sufficient reference to real consumers' difficulties (e.g. impact of the crisis on pensions). In addition, since the paper had been drafted mostly from the UK perspective, it was proposed to collect views, examples and case studies from other countries which would provide a good illustration of problems.

Two FSUG members agreed that the title of the paper could be changed into: Impact of the crisis on financial consumers.

Mr McAteer agreed that the debt is a major issue but added that its impact on the situation of financial consumers would have a broader spectrum, for instance the access to credits would be significantly limited. Furthermore, since the financial institutions' margins will have to be squeezed, there might be more incentive for the industry to apply unfair commercial practices to a greater extent in order to compensate profits.

Mr McAteer proposed to restructure the paper and circulate it to FSUG members for comments. In principle, the first part will discuss the impact of the debt, the second one will present the consequences on financial consumers and the third will provide recommendations for supervisors. Once the structure and format of the paper is agreed, FSUG members will be requested to provide examples from their respective countries as an input to the paper. The final document would be sent to the European Supervisory Authorities and national regulators.

Discussion over FSUG's 2011 Annual Report – based on outline circulated by the Chairman

An outline for the structure of the Annual Report 2011 based on the structure used in the previous FIN-USE annual reports was circulated by the Chairman and discussed. The report will cover the period from January 2011 to October 2011, since this is the first time an annual report is being drawn up. Next year the report will cover the full year.

The following division of assignments was agreed upon by the members:

- The Chair will coordinate the work, will prepare the foreword and will put the final report together once all the contributions are provided.
- The Commission will prepare the summary of the minutes of the FSUG meetings up to the end of October 2011 and will supply the members with a list of the initiatives carried out by the group together with the responsible leaders who will prepare half a page summary of what has been delivered by each subgroup.
- The members will each supply the Commission with a list of the events they have attended in their capacity as FSUG members.

Two suggestions as to what the special feature should cover were put forward: the current situation in Greece based on the findings of the September meeting in Athens and collective redress. There was a vote and collective redress was chosen. Two members of the group will produce a draft using the paper on collective redress as inspiration.

Since the group does not have a charter, this point was removed from the draft outline.

The deadline for submission of contributions to the annual report was set to be by the end of October.

Findings of the public consultation on a new European regime for venture capital – presentation by Ms Gabriela Tschirkova (Internal Market and Services DG/G4)

Ms Tschirkova informed the group about the outcome of the consultation on a new European regime for venture capital which ended in August 2011.

The objective of the consultation was to find the best possible approach to achieve a real internal market for venture capital funds in the EU, hence the new rules will be trying to facilitate cross-border fundraising and investments by venture capital funds and improve access to finance for innovative SMEs.

The Commission received 50 replies, 2 of which were from citizens, 38 from organisations etc. and 8 from public authorities. The FSUG was not involved in the consultation. Some of the main questions were how you define what a typical venture fund is and what their strategies are. The replies indicated that the present scheme is too burdensome and that a more flexible regime is needed. They also indicated that the industry would prefer not to define the fund strategies themselves and how the financing happens.

With regard to what kind of approach the Commission will take, the Commission will have to choose between a stand alone approach and building on the existing legislation, and based on the replies received the stand alone approach seemed more popular. The Commission has not decided on the legal form yet.

The Commission is now finalising the draft impact assessment of the legislative proposal, and they intend to adopt the proposal by the end of the year. The Inter Service Consultation will be initiated within in a few weeks.

With regard to the differences between the US and EU approaches, Ms Tschirkova informed the group that in the US they do not have the same single market approach as in the EU, e.g. you have different bankruptcy laws depending on what state you are in. Furthermore, there are quite substantial cultural differences relating to entrepreneurship and risks in the sense that whereas in the EU failing with a business venture can be somewhat stigmatising this is not as much of an issue in the US.

Collective redress – discussion n over FSUG draft paper

A member of the group had prepared a draft paper on collective redress which is to be handed out to the MEPs. It was originally intended to be only two pages long, however, the final draft had become slightly longer.

The members of the group discussed whether the 'opt-out' approach or the 'opt-in' approach should be supported by the group.

It was in this context agreed that 'opt-out' is to be understood as the approach where the case can cover and benefit a group of consumers who have not necessarily yet been identified at the point in time where you initiate the proceedings, whereas 'opt-in' refers to the approach where only consumers who have specifically requested to become part of the proceedings, will be covered by and able to benefit from the final judgment.

The proponents of the 'opt-out' solution stressed that it is quite expensive and burdensome, because it requires time and money to locate the affected consumers. An example from the UK was mentioned, which involved a case regarding replica football t-shirts. The case had been tremendously costly because it was difficult to locate the consumers. A member of the group suggested that you could just ask the consumers to pay their part of the costs, but this approach had not been chosen because it was considered to be off-putting to the consumer, because the costs would often be disproportional to what they stood to gain.

The proponent of the 'opt-in' approach argued that the 'opt-out' approach does not work in most cases regarding financial services. If e.g. a case involves advice given by a supplier of a financial service to several consumers, you have to prove that in each individual situation the advice given to the consumer was wrong or misleading. The group member stressed

that, if you do not know who the consumers are at the point in time where you initiate the proceedings you do not have a case. Furthermore, the group member argued that it seems unfair that the consumers who have not been part of the original case and who have not paid part of the expenses or an entry fee, as it is customary in that member's Member State, benefits from the outcome.

Regarding specific countries, the group discussed the approach in Spain, where it is possible for the judge to make a judgment applicable to a larger group of consumers than the ones who originally started the case. The FSUG members also discussed the approach in the Netherlands, where the judge will normally allocate a part of the damages to the consumer organisation in order to ensure that it has sufficient funding. Furthermore, it was mentioned that Portugal was a good example of a Member State where the opt-out approach functions well and where it has not been abused in the way that it sometimes is in the US. Denmark was also mentioned, but here the opt-out approach only applies to cases involving small claims.

Since the group was unable to decide on which approach to support, it was decided that this will not be mentioned in the paper at this point in time. The paper will be finalised on the basis of the comments provided at the meeting.

The group intends to invite one or two MEPs to attend one of the meetings, however, this issue is postponed for now.

Brief presentation of the selection procedure of contractors of Internal Market and Services DG's framework contract – presentation by Ms Vanessa de Bruyn (Internal Market and Services DG/B2)

Ms de Bruyn explained the procedure of selection of contractors under the DG Internal Market and Services framework contract. She informed that three contractors had been recently selected and that they had been ranked according to the results of the tender evaluation. The framework contract was signed for two years with the possibility of extension for another two years. In the selection process the contractors had to demonstrate that they fulfil a number of criteria, e.g. poses sufficient experience as well as knowledge in market monitoring and surveys, dispose of appropriate methodological tools, etc.

The FSUG terms of reference for the three research studies would be sent to the first contractor from the list and he is supposed to come up with an offer for each study within 15 days. The offers will be presented to the group for consideration and it is also planned that they would be discussed with the contractor at the FSUG meeting in November.

If the group does not accept the offer(s) or the contractor does not have sufficient capacity to carry out the research study, the terms of reference will be sent to the second contractor from the list who will be supposed to prepare the offer(s).

The group proposed to include in the terms of reference, the 'supervision clause' which would allow a designated FSUG member to be involved and consulted by the contractor at all the stages of the study on a regular basis.

At the end of the meeting, one of the FSUG members proposed the group to monitor regularly a pre-selected list of websites for information of importance to financial consumers. This would allow FSUG to be up to date and would serve as an early warning on any policy initiatives or activities of financial institutions that could have an impact on financial consumers.