



## Proposal for the EU financial supervisory reform Open letter

Brussels, 5 July 2018

To the Honorable Members of the European Parliament  
To the Presidency of the Council of the European Union

Dear Ms Pervenche Berès,  
Dear Mr Burkhard Balz,  
Dear Mr Hartwig Löger

We are writing to you in your capacity as Rapporteurs on the proposal for the review of the European Supervisory Authorities (EBA, ESMA and EIOPA – ESAs) and the current Presidency of the Council of the European Union. The Financial Services User Group (FSUG) advises the European Commission (EC) 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. For many years we have been drawing the Commission's attention to numerous cases of mis-selling often arising from misleading information and/or conflicts of interests in the distribution of financial products, instruments and services and calling for action against the fragmentation of supervision of consumer and investor protection<sup>1</sup>.

The FSUG very much supports that the operations of the ESAs, their governance and role are being reviewed and we believe that the European Union should not miss this opportunity to propose a reform that will truly deliver the protection that EU financial services users need. Since 2008, ESAs have prioritized the prudential supervision, while consumer protection and conduct of business have remained on the sidelines. Investor and consumer associations have pointed to an insufficient public enforcement due to the ESAs' failure to comply with their legal duty to take a leading role in promoting transparency, simplicity and fairness in the financial services user market<sup>2</sup>. Still today, consumers and individual investors continue to suffer from mis-selling and other abuses in the EU<sup>3,4</sup> and as a consequence financial services are constantly ranked as one of the worst consumer markets in the EC Consumer Markets Scoreboards.

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<sup>1</sup> Please see FSUG paper "For better supervision and enforcement in retail finance" [https://ec.europa.eu/info/sites/info/files/file\\_import/1610-supervision-enforcement-retail-finance\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/1610-supervision-enforcement-retail-finance_en_0.pdf)

<sup>2</sup> Article 9 of the ESAs Regulations

<sup>3</sup> BETTER FINANCE's Briefing Paper on Mis-selling of financial products:

[http://betterfinance.eu/fileadmin/user\\_upload/documents/Research\\_Reports/en/Misselling\\_of\\_Financial\\_Products\\_in\\_the\\_EU\\_-\\_Briefing\\_Paper\\_2017.pdf](http://betterfinance.eu/fileadmin/user_upload/documents/Research_Reports/en/Misselling_of_Financial_Products_in_the_EU_-_Briefing_Paper_2017.pdf) and BEUC's campaign "The price of bad advice" <https://www.thepriceofbadadvice.eu/>

Moreover, a recent EC study<sup>5</sup> confirmed that an average individual investor is overwhelmed by the sheer complexity of, and uncertainty associated with, the investment products available. The information on distributors' websites is neither sufficiently transparent nor adequately standardised across products and countries. Therefore, it is difficult for individual investors who are not financially savvy to find, understand and compare this information in order to make an informed investment decision and choose a suitable product.

The EC's proposal includes improvements to the governance of ESAs, such as permanent members on the Executive Boards, but on the whole it is not ambitious enough as regards consumer and investor protection. In the context of ubiquitous cases of mis-selling of financial products we consider that in terms of public enforcement, there is room for improvement especially as far as the ESAs' scope, their governance and an effective supervision and enforcement is concerned. FSUG would like to use the opportunity of the ongoing reform to at least ring-fence the investor and consumer protection objective from the prudential one within the existing ESAs to enable them to fulfill their duties towards consumer protection, without changing the architecture as such.

## MANDATE AND POWERS

### **Effective enforcement and an equally high level of consumer protection and redress**

Despite the fact that the bulk of retail finance legislation across Europe originates from EU level, Member States have a lot of discretion over how to enforce it at national level. Sectoral EU regulations and directives only require Member States to designate a competent authority responsible for implementation and oversight, and leave it to them to apply dissuasive sanctions in case of law infringement. However, in some Member States, no authority has a proper mandate of financial consumer protection. Many national authorities, are under-staffed, have little on-site inspection capacity or have limited legal powers to make binding decisions or to impose sanction. We refer to our paper "For better supervision and enforcement in retail finance" in which the FSUG has been calling for better supervision and enforcement that would make the existing rules a reality for EU consumers, individual investors and other users of financial services. In light of the supervisory failures at the national level it is evident that ESAs need an effective **mechanism for holding national supervisory authorities accountable**<sup>6</sup>.

Effective enforcement and an equally high level of consumer protection and redress everywhere across Europe are preconditions for a successful single retail financial market and a true Capital Markets Union. We believe that harmonization of supervisory practices across Member States can only be coordinated at EU level (the subsidiarity principle would be complied with). Therefore, the ESAs should have an **explicit mandate to work on convergence of conduct of business supervision practices across the EU** to ensure that all consumers and other users of financial services are treated fairly by financial institutions<sup>7</sup>. This could be fostered by developing a 'Single Rulebook for Conduct of Business'.

The ESAs' powers to ban certain financial products/activities when these cause or may cause significant investors and consumer protection concern across several Member States should be straightforward, and not be conditional on a specific mandate granted by sectoral legislation e.g. MiFID, MiFIR and PRIIPs , IDD,

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<sup>5</sup>The EC Study on the distribution systems of retail investment products [https://ec.europa.eu/info/publications/180425-retail-investment-products-distribution-systems\\_en](https://ec.europa.eu/info/publications/180425-retail-investment-products-distribution-systems_en)

<sup>6</sup> Please see FSUG paper "For better supervision and enforcement in retail finance"  
[https://ec.europa.eu/info/sites/info/files/file\\_import/1610-supervision-enforcement-retail-finance\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/file_import/1610-supervision-enforcement-retail-finance_en_0.pdf)

<sup>7</sup> Also, a permanent committee composed of national competent authorities responsible for the enforcement of consumer protection rules within each BoS would be helpful to set the direction for the ESAs work on conduct of business/consumer protection. Moreover, in order to finance the consumer protection activities of the ESAs appropriately we would call for a minimum of 20% of the budget to be dedicated to these activities.

which restricts the ESAs' leeway to take action where needed. This would ensure better prevention of consumer detriment caused by toxic, overly risky products and business models.

## GOVERNANCE

FSUG strongly supports the Commission's proposal to **bring a pan-EU vision to the ESAs**. EU market integration and fair treatment of all financial service consumers cannot be achieved without a pan-EU vision and strong coordination, while at the same time this should not come to the detriment of national competencies. A balance therefore needs to be found between the Executive Board and the Board of Supervisors (BoS).

Moreover, since the ESAs Boards of Supervisors are mostly composed of national supervisory authorities, hence, it is politically very difficult for the ESAs to increase the effectiveness of their supervisory activities, as the institutions that ESAs have to control are their board members. The FSUG points to the fact that there has never been an investigation of potential breaches of EU Law or of non-implementation of EU Law (article 17 of the ESAs Regulations) by one or several of the board members as far as investor and consumer protection is concerned. Again, this shows the dire need of the ESAs of an effective mechanism for holding national supervisors accountable.

The way how the ESAs governance functions is key for ensuring their independence and in prioritizing their activities, e.g. resulting from their consumer protection mandate. The FSUG therefore favors the introduction of an Executive Board. In order to ensure for its **independence**, at least 50% of its members should fulfil the requirement of a minimum two year cooling-off period after having working for or having received receiving remuneration from a National Competent Authority.

## STAKEHOLDER GROUPS

The four stakeholder groups (SGs) of the ESAs are established in order to facilitate consultation with stakeholders in areas relevant to the tasks of each ESA and, in the FSUG opinion, are a much needed element within the ESAs structure. However, also there we see room for improvement, especially as regards a **balanced composition** of the SGs. For example, there is a glaring disparity in the number of representatives of providers and users of pension services in the Occupational Pensions Stakeholder Group at EIOPA. For example, the OPSG counts only three consumer representatives at best, while at least 20 of its members defend the interests of the financial industry, of its providers and of its employees.

Moreover, the existing rule that "**adequate compensation** shall be provided to members of the SGs representing non-profit organisations, excluding industry representatives" needs to be enforced. Those members receive an allowance of € 150 per meeting day and € 150 for preparing the meeting, i.e. € 18.75 per hour (gross of social contributions and income tax) which is obviously not "adequate" for international financial user-side experts, when one compares it for example to the hourly rate of senior commercial consultants hired by European Public Authorities. This also obviously contributes to the imbalance in the representation of retail financial user interests versus those of the financial industry. Here, the FSUG points to certain national authorities that could be seen as exemplary in the way they value user-side expertise (e.g. the UK Financial Conduct Authority<sup>8</sup>) and provide adequate compensation to the non-industry experts.

Additionally, we strongly support the Commission's proposal to **extend the mandate** of Stakeholder Groups' members to four years as it will ensure even more effective work of the Stakeholder Groups' especially with view to long-term projects. We believe that members of the Stakeholder Groups should be

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<sup>8</sup> These members currently receive a compensation of 150 € per day of work; for example the ordinary members of the UK FCA Consumer Panel receive a compensation of 400 £ per day.

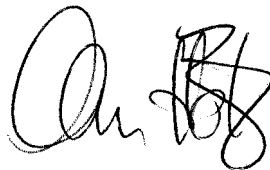
appointed by an independent Executive Board, following proposals from the relevant stakeholders. The Executive Board should take its decision independently from any internal or external influence and the selection process should be transparent.

Moreover, the FSUG warns strongly against implementing the Commission's proposal granting Stakeholder Groups new powers that would enable them to challenge the ESAs guidelines or recommendations. This proposal it would interfere with the SGs core advisory function. This new power may not only create unrealistic expectations of the ability of the SGs to perform this role but also raises concerns due to the technical and legal nature of the test that the SGs are asked to apply ("exceeded its competence") as it is not clear that the SGs would be well placed to form the view as to whether this test had in fact been met. Moreover, the EC's proposal goes beyond the Stakeholder Groups' mandate and it would in fact undemocratically empower the industry (accounting for the majority of the SGs members) to challenge the ESAs guidelines and recommendations more easily and reserve itself the right to propose the withdrawal of guidelines issued by the ESAs.

We are happy to provide more detail if required and remain at your disposal for any further exchange with you.



Chair of the FSUG  
Anne-Sophie Parent



Vice-Chair of the FSUG  
Christiane Hölz



Vice-Chair of the FSUG  
Farid Aliyev

CC:

MEP Markus Ferber; MEP Jens Geier; MEP Sven Giegold; MEP Brian Hayes; MEP Wolf Klinz; MEP Werner Langen; MEP Kay Swinburne; Mr Andreas Pink (Austrian Ministry of Finance); Commissioner Valdis Dombrovskis; Mr Olivier Guersent (Director General, DG FISMA), Mr Martin Merlin (Director of Directorate D, DG FISMA), Mr Ralf Jacob (Head of Unit D.3, DG FISMA); Mr Renatas Mazeika (Head of Unit E.3, DG JUST)