



## Minutes

### FSUG meeting of 23-24 April 2012

#### Monday 23 April

#### **Adoption of the agenda and approval of the minutes of the last meeting (13-14 March 2012)**

The meeting started with a welcome address delivered by the ADICAE President, Mr Manuel Pardos who welcomed the FSUG members, briefly presented the activity and experience of ADICAE and wished the FSUG members a successful and interesting meeting.

Since the FSUG minutes of the March meeting were provided later than usually and several FSUG members did not have time to read them, the FSUG Vice-chair proposed to discuss and approve them the following day.

An FSUG member reported that the austerity measures implemented by the Italian government significantly raised the prices of certain services (e.g. energy) which seriously affects financial capacity of consumers. He also informed about the legal obligation to have a bank account introduced recently in Italy.

Another FSUG member pointed to rapidly increasing interest rates for mortgage credits in the new Member States (EU12) which might be due to the new stability/capital requirements imposed on banks.

A member of FSUG informed about the Consumer Credit Study conducted in Austria which demonstrated that banks had been excessively increasing interest rates for both consumer and mortgage credits.

Another FSUG member highlighted the ongoing discussion about the poverty of households in the Netherlands and the launch of the national debt information scheme.

An FSUG member raised an issue which he supposes may jeopardise the stability of the banking system in the Czech Republic. While in the past the four big Czech banks which are daughters of big financial institutions established in other EU members used for ITC domestic service providers now they have to use ITC agencies established by their mothers. As a result, the prices of the services are now 2-3 times higher; it seems that the mothers can get from their daughters in this way money which legally should have been kept by the daughters to maintain and support their own operations. The member asked for experience of the other participants.

A member of FSUG mentioned that banks in Greece had noted a record of losses as a result of financial crisis, however, their further recapitalisation is still an open question.

An FSUG member reported that according to German banks there are only few thousands of consumers who do not have access to a bank account but in reality, there are many more since the method of calculation used by banks is not correct.

Another member of FSUG underlined the importance of credit unions in Ireland which account for 3 million members. He also referred to a training 'Money Skills for Life' provided by the Irish National Consumer Agency which efficiently educates people how to save money.

An FSUG member reported on the developments in the EBA Stakeholder Group which finally agreed to publish its policy papers and was split into four thematic subgroups.

A member of the group mentioned the UK government initiative to set up simple financial products for consumers in which major UK banks and consumer representatives participate. These products should be ready by July and they will be offered on the market.

Another member informed about the 'MiFID breakfast' organised by her organisation in the European Parliament to draw attention of MPs to the importance of better investor protection. Several FSUG members were present at the event, some of them as speakers.

An FSUG member informed about the impact of the Dexia recapitalisation on the Belgian state budget and invited colleagues to the Financial Inclusion conference to be held in May in Brussels.

A member of FSUG suggested writing a letter to the High-Level Working Group on bank restructuring advocating for efficient separation of retail banking from investment and trading business of banks. He also proposed to write the FSUG position paper/letter on MiFID 2 to MPs involved in this initiative.

**The reform of the Spanish financial system** (Mr Juan Luis Díez Gibson, Spanish Ministry of Economy and Competitiveness; Ms Ana Solanas, Vice-President of ADICAE)

Mr Juan Luis Díez Gibson presented the Spanish Government's action in response to the financial crisis introducing the different stages of the financial rescue and restructuring plan since 2008, starting with the setting up of the Financial Assets Acquisition Fund, (FAAF), the establishment of the Fund for Orderly Bank Restructuring (FROB) in 2009, the reform of the savings banks (2010) and bank restructuring (2011) until the process leading to recognition of bad assets and loans in 2012.

Bank restructuring involved a number of actions including the recognition of bad loans, consolidating the banking industry to reduce the number of banks and stepping up prudential requirements as well as strengthening disclosures of bank exposures.

The transition of savings banks to banks continued together with the consolidation of many savings banks into bigger banks. Meanwhile banks' preparation to meet capital requirements continued with only 4 banks relying on capital injections from FROB.

2012 marked the start of a process to write down bank exposures towards real estate and construction industry, which faced significant over-capacity and value losses throughout Spain. FROB will continue to divest its remaining majority holdings in banks.

Ms Ana Solanas followed with a presentation that focussed on the impact of the financial crises on bank customers, in particular borrowers and retail investors. The presentation highlighted a number of weaknesses in handling the effects on the financial crises on citizens in financial distress. A Royal Decree that aimed to set up the possibility for the unemployed to delay mortgage repayments while retaining ownership of their homes was not successful. In particular Ms Solanas criticised the use of preference shares created as part of the banks recapitalisation process that were sold to citizens as bank deposits, thus hiding the true investment risks associated with holding such products.

The presentation also pointed towards increasing concentration in the retail banking market and increasing risks of stifling competition as a result of the consolidation of savings banks. In addition it highlighted the burden both direct and indirect that bank restructuring has brought over public finances and ultimately Spanish citizens.

### **Causes and consequences of the financial crisis in Spain**

**Causes of the crisis and impact on Spanish citizens** (Mr Fernando Herrero, Secretary General of ADICAE; Ms Zulima Sánchez, Faculty of Law of the University of Salamanca)

Mr Fernando Herrero reported on the impact of the financial crisis on Spanish citizens and criticised an excessive number of new dwellings constructed in Spain compared to other EU Member States. In 2008 Spain had 1.55 homes per 1 family which was a much higher number than European average. In addition, the price of property had significantly increased from EUR 702 per square meter in 1997 to EUR 2 085 in 2008, together with an important growth of interest rates for mortgage credits.

As a result of the financial crisis and quickly growing unemployment, thousands of consumers every year stop paying their mortgage credit and face foreclosures of which there are ca. 165 per day nowadays in Spain. This provokes a huge increase in the number of overindebted and financially excluded consumers and has a very negative impact on the economy as a whole.

Responding to a question of an FSUG member, Mr Herrero clarified that the objective of the government and supervisors is in the first place financial stability and not the improvement of the situation of thousands of indebted consumers. He added that consumers who lost their houses still have to pay their mortgages while there are ca. 1 million of empty houses available on the market but without any governmental scheme to re-habit them. Banks are not in favour of settlements with consumers and they prefer to wait for foreclosures. Mr Herrero explained that one of the principal reasons for this situation was oversupply of properties before 2008 and irresponsible provision of credits by banks which increased the property prices even more.

However this extremely difficult economic situation of thousands of consumers has also led to the increased citizens' awareness of their rights and power in the democratic society which was presented by Ms Zulima Sánchez from the University of Salamanca. She explained that citizens understood that they have a right to be heard by policymakers and that they can set up associations to represent them and to come up with proposals. The main cause of their protest was the fact that they had to pay for the crisis which they had not provoked and which was due to insufficient state supervision and abuse of financial sector. This new movement was mostly formed by young people of which very many are unemployed and with little chances to find a job in Spain.

The FSUG members agreed that this presentation touches upon a fundamental issue of participatory democracy and the role of a citizen in the society.

An FSUG member asked how is it possible that Spain can afford so many levels of administration with overlapping responsibilities. Ms Sanchez explained that this phenomenon is deeply rooted in the Spanish history and culture and it is difficult to address it; nevertheless the new government is planning significant cuts in administration.

**Impact of the crisis on household savings** (Mr Julio Fernández Garrido, Complutense University; Mr Jorge Daniel Mora, legal services of ADICAE)

Mr Julio Fernández Garrido from Complutense University presented the results of the study about saving trends and behaviours of consumers in Spain. The study intended to respond to the following questions: who saves, how consumers save, why do they save, what saving products are the most popular and based on what information consumers make savings. The study provided that middle-aged and more educated consumers as well as women and

entrepreneurs in general save more than other groups. They also make more regular savings with the aim to ensure themselves an appropriate level of life when retired. In terms of the information sources as a basis for investment, elder consumers rely more on friends' or family advice and subjective opinions, while younger consumers would look for more objective and independent information. As a result, older and less educated Spanish consumers are more affected by financial fraud. Mr Fernández Garrido admitted that Spanish consumers often take decisions based on trust and feeling instead of objective analysis.

Mr Mora explained that Spanish consumers do not save sufficiently and in addition they usually buy toxic products issued by banks. There had been many financial scandals in Spain in relation to massive distribution of inadequate investment products and many thousands of consumers faced frauds. Current legal framework is not enforced properly (e.g. MiFID) and there is no sufficient control of supervisors over the activities and products offered by financial institutions. ADICAE advocates for enhanced control of regulators over investment products but regulators do not recognise it as a priority task. Mr Mora agreed that better financial education is needed but what is even more necessary is complete and fair information on products provided by banks.

Responding to a question made by an FSUG member concerning the savers reaction to the abuses of banks, Mr Mora explained that more and more people withdraw money from banks and simply keep it at home.

The objectives and tasks of **the European Banking Authority in the area of financial innovation and consumer protection** (Mr Carlos Zarco Pleguezuelos, European Banking Authority)

Mr Carlos Zarco Pleguezuelos gave a presentation of the role and duties of the Consumer Protection Unit within the EBA. He first recalled that consumer protection is one of the objectives set out in the Regulation establishing the EBA. The EBA pursues this objective by monitoring financial innovation from a consumer perspective and under certain circumstances, may exercise its power to constrain the distribution of financial products. The Consumer Protection unit reports directly to the Executive Director of the EBA in order to ensure its independence and proper functioning.

The EBA also operated a number of standing committees whose role is to support the attainment of the Authority's objectives. One such standing committee deals with consumer protection and financial innovation through two dedicated subgroups. The Consumer Protection unit supports the work of the standing committee.

The EBA has an ambitious consumer protection agenda for 2012, which covers issues such as the measurement of consumer detriment in the mortgage market, drafting technical standards and guidelines in a number of areas such as minimum professional indemnity insurance for financial institutions providing advice, post-sales requirements and complaints handling in the mortgage market as well as fulfilling the EBA's reporting requirements and issuing opinions.

Following the presentation, an FSUG member referred to a case of mis-selling in Spain and how/whether the EBA would react to it. The member also commented that resources dedicated to consumer protection appeared to be too low for the task at hand. Another member noted that further coordination with available resources within Member States competent authorities (e.g. Financial Services Authority in the UK), could address the lack of resources available within the EBA at least in part.

**Position of savers in private pension products** – kick-off meeting of the research study with Oxera

Representatives of Oxera presented the objectives, scope and conceptual framework of the study based on the terms of reference of the project. They outlined the questions which are supposed to be clarified through the study and proposed the methodology to be applied. They also consulted the FSUG members on the data sources which are going to be used and indicated potential stakeholders to be surveyed in the course of the research. Oxera

requested the FSUG assistance in identifying useful contacts in different institutions and organisations which they would like to ask for interviews. Finally they explained how the data will be collected, validated and presented in the report and proposed the next steps.

One FSUG member mentioned that the ideal situation would be to have as a result of the study a comparison of dominant products on a given market instead of only one product. There is however a question on whether the budget of the study will allow for this additional analysis.

It was underlined that it is important to look into a long-term performance of a pension product and to focus on its real cost since this has a crucial impact on the return. Marketing costs should also be taken into account in order to be able to see a real end-cost of the product.

Another FSUG member mentioned that pensions savers' associations should also be contacted for the purpose of the study.

Oxera concluded by saying that some data is not going to be available and that this is unavoidable.

### **Discussion on the FSUG response to the Commission's public consultations on the green paper on shadow banking**

The lead FSUG member briefly introduced the consultation document and made initial observations indicating that the group had some time to prepare a response to the consultation. Meanwhile, asked for some background and position points in preparation for a conference, in which he would represent the FSUG.

The lead FSUG member highlighted the importance of shadow banking which is estimated to represent EUR 46 000, worldwide. Thus the interest of the Commission in addressing shadow banking to ensure that regulatory requirements imposed on the banking sector would not capture such a significant part of the financial system.

An FSUG member pointed out the relationship between the banking system and transactions with intermediaries or activities making part of the shadow banking system which are often recorded off balance sheet in banks' reporting. He stressed the importance of proper disclosures about banks' sources of funding and areas of investment, giving as an example recent low interest loans from ECB to preserve liquidity in the banking system. The FSUG member highlighted the right to EU citizens to know how banks are making use of these funds, made available by the ECB.

The discussion focussed on interlinks between the banking sector and financial intermediaries/activities falling under the non-regulated shadow banking system. FSUG members pointed towards a number of structural avenues, such as the separation of investment banking from corporate banking as a means to mitigate risk.

### **The EU's citizens' initiative to propose new legislation to the European Commission – presentation by Mr Alin Iacob (member of FSUG)**

Mr Iacob presented the EU Citizens Initiative (ECI) which provides an opportunity for the FSUG to submit to the European Commission a legislative proposal aiming to improve financial consumer protection. He explained in detail the rules which have to be followed.

ECI has to be backed by at least 1 million of citizens coming from at least 7 out of the 27 Member States. Each country has a minimum number of required signatures that must be collected. In order to launch the initiative, citizens must form a 'committee' composed of at least 7 EU citizens – residents of at least 7 different Member States. The members of the citizens' committee must be old enough to be able to vote in the European Parliament

elections. The citizens' committee must register its initiative on a dedicated website before starting to collect statements of support from citizens. Once the registration is confirmed, organisers will have one year to collect signatures. When the citizens' initiative collects at least 1 million signatures, the European Commission needs to carefully examine it.

Mr Iacob also outlined the necessary procedural steps that must be taken and explained in what aspects the initiative can count on the Commission's assistance. He concluded by underlining the advantage of the FSUG where many Member States are represented by strong civil society organisations.

The Group agreed to further investigate what could be the target of the legislative proposal of the FSUG; it was however agreed that it must be simple enough so that its objectives and scope are clearly understood by 1 million citizens. Mr Iacob will chair a subgroup which will further work on this project.

## **Tuesday 24 April**

**The role of small shareholders in listed companies in Spain** (Mr Jofre Farrés, Consultative Board at the Spanish Share Markets Authority (CNMV) and the Payment Systems Market Expert Group of the European Commission)

Mr Jofre Farrés presented measures considered necessary to strengthen the rights of small shareholders in Spain. He highlighted a number of measures including the enforcement of measures that grant collective rights to shareholders and the need to facilitate the setting up of organisations representing the interests of small shareholders.

Collective rights cover a wide range of possible provisions, which mainly aim to strengthen the position of small shareholders by granting them specific rights and giving sufficient scale to their representation as shareholders. Possible rights include class actions against company directors as well as or exercising voting rights through proxies to representative organisations that would gather a large number of small stakeholders and carry more weight than individual shareholders.

Another important measure is to provide appropriate infrastructures that enable small shareholders to be sufficiently represented in the decision making process of listed companies. One issue relates to the legal definition of a small shareholder. The law defines a significant holding as one representing 5 % of shares. This assumes that holdings below 5 % would be categorised as small shareholders. The presentation called for more attention to this category of shareholders in a legal sense, the strengthening of corporate governance on boards of directors of listed companies to take minorities and small shareholders better into account. The presentation also made parallels with the banking systems and small depositors as lenders to banks and the financial system in general.

**Slow pace of justice in the resolution of consumer disputes in Spain** (Mr Miguel Ángel Andrés Llamas, legal services of ADICAE)

Mr Miguel Ángel Andrés Llamas presented Spanish judicial system and the possibilities it offers to consumers. According to the Spanish Constitution public authorities must protect consumers by taking 'effective measures'. However, the Spanish judicial system is very slow and costly, with for instance the first instance proceedings often exceeding one year. This overall inefficiency of justice affects consumers' decision on whether to submit a court case against unfair trader. Consumers compare the cost of a court case and the time needed for the claim to be solved with the value of the purchased product or service. In addition, the Spanish government has recently increased court fees for citizens which will further limit consumers' access to justice.

Collective justice is very important for consumers because it reduces the cost of claim and it allows to avoid contradictory judgments in a case concerning the same practice. However, collective claims are still limited in Spain because the country does not have the tradition of class actions. Another problem is very slow resolution of collective claims as courts are not prepared for these cases and have insufficient resources. Currently, a collective case in Spain takes from five to seven years. Despite that ADICAE is very much in favour of class actions which provide an opportunity for consumers to fight against unfair practices of financial institutions.

There is also the Consumer Arbitration System in Spain, which is quick and free of charge while its decisions are binding on traders. However it does not work efficiently in the area of financial services since the great majority of financial institutions refuse to participate in it.

Moreover, current legislation imposes on every financial institution an obligation to set up a special internal unit which deals with consumers' claims and complaints. However, since these units are not independent, in reality they rarely take decisions favourable to consumers.

Finally, also Spanish financial regulators run departments in charge of consumers' complaints. However, consumers can only submit their complaints once they have already used the complaint procedure offered by the concerned financial institution and they are not happy with its decision.

#### Discussion on the **FSUG response to the Commission's public consultations on bank accounts**

The FSUG member who coordinates the group's response to the consultation on bank accounts had prepared a first draft and sent it for comments to other FSUG members in advance to the meeting. There are three important elements of the consultation which the FSUG must refer to in its response:

- transparency and comparability of bank fees
- switching of banks accounts
- access to bank accounts.

Regarding the first point, the FSUG member underlined that it is the financial institutions' responsibility to provide consumers with complete and clear information on bank fees and that standardised fees' terminology could help in ensuring more transparency. He asked for FSUG members' opinion on whether the standardisation should be introduced on national or EU level and also asked for evidence in this respect from Member States. He added that other tools enhancing fees transparency could be considered, such as, comparison websites, and that in general these tools would need to be compulsory for banks to be efficient.

Regarding switching, the FSUG member made a reference to the recent report of BEUC prepared based on a mystery shopping exercise but he also invited other members to provide more evidence and input necessary for the response.

The group had already worked extensively on the issue of access to bank accounts in 2011, and this work will form part of the FSUG response but still more evidence on the difficulties of consumers in access to bank accounts as well as reasons for refusal have been requested by the FSUG member coordinating the input. He pointed out that consumers' right to a bank account regardless of circumstances should be introduced by a binding pan-European law in order to prevent financial exclusion.

The Italian member of FSUG recalled the recent Italian legislation where consumers have been obliged to have a bank account where the principal purpose of the law is to fight against black economy. He suggested using the same argument in the FSUG response.

Another FSUG member proposed to annex country fiches with examples of good measures to the response.

An FSUG member raised the difficulty of potential standardisation of bank fees since they can differ significantly from one institution to another. Nevertheless, he was of the opinion that it is better to regulate them on the EU, rather than national, level.

Another FSUG member argued that it is for the industry to provide evidence why bank accounts cannot be provided to everybody, and not for the consumer groups to provide the evidence advocating that everybody should have access to them.

It was also proposed to raise the issue of the portability of bank accounts in the response.

The FSUG coordinator of the response concluded by saying that another draft will be prepared based on the discussion and circulated to the group members shortly so that the response can be finalised at the FSUG meeting in May.

### **European Commission study on over-indebtedness** (Mr Francesco Gaetano DG Health and Consumers, European Commission)

Mr Gaetano opened his oral presentation by thanking the group for providing contacts of stakeholders for the purposes of the study. He informed the group about the outcome of the kick off meeting that was held a few days earlier and encouraged the group to submit further names of contact persons or organisations to feed the study sample. Mr Gaetano informed the group that he also awaited the contractor's proposed interviewee list.

The presentation provided a summary of the steps in the study in more detail than the presentation given to the group in a prior meeting. The presentation also highlighted exchanges between the FSUG and the Commission during the course of the study including; the provision of stakeholder contacts underway; updates during the coming months including on the study carried out by the FSUG on mortgages; the study interim report which may be submitted to broad consultation as well as a communication exchange on the final results at the end of the study.

A member of the FSUG commented on the need for the study to be forward looking and attempt to predict the impact of indebtedness in the current economic climate, rather than simply provide evidence of the current situation regarding over-indebtedness and its potential causes. This was considered more useful to future policy making though more ambitious. In practice the study could attempt to assess what share of the population could be considered vulnerable to the impact of lowering purchasing power and possibly lower saving buffers in the event of income shocks resulting from unemployment or other major life changes.

### **Selection of the FSUG priorities/own reports in 2012**

Following a discussion on the merits of topics proposed by members of the FSUG, the group decided to shortlist 3 topics from an initial list of 10 proposals from which, the group would select 2 topics to focus on during 2012. The group agreed to submit the selection to a vote. A summary of topics and corresponding votes is provided below:

- 'Financial supervision and sanctions' obtained 14 votes: FSUG 2012 priority topic.
- 'Alternative financial provision' obtained 9 votes: FSUG 2012 priority topic.



- 'Consumers' over-indebtedness and interlinks with the current economic crisis' obtained 5 votes: Topic discarded.

**Follow-up on the state of play of the 2012 FSUG research studies** (Mr Maciej Berestecki, DG Internal Market and Services, European Commission)

Mr Maciej Berestecki explained the state of play of the study on remuneration structures of financial intermediaries for which the documents necessary for the tender are being prepared by the Commission in cooperation with the responsible FSUG member. The tender is planned to be launched before summer.

In 2012, the FSUG had additional EUR 60 000 available in the research budget and therefore proposals for additional study had been collected in advance for the discussion at the meeting. There were two proposals submitted by the FSUG members:

- Study on the ownership of European-listed companies with the objective to investigate current share of retail investors vis-à-vis financial institutions, and also to demonstrate what was the evolution of this share in the last two decades.
- Study to investigate responsible lending practices applied by financial institutions and going beyond what is imposed on them by legal requirements.

As a result of the vote by the group, it was decided to contract the first study on the ownership of European listed companies.

**Conclusion**

In the conclusion of the meeting, the FSUG expressed its gratitude and thanked ADICAE for its immense help and assistance in the organisation of the meeting in Madrid.