



## **Minutes of the meeting of the Financial Services User Group 11 – 12 September 2014**

### **Thursday 11 September**

#### **Adoption of the agenda and approval of the minutes of the FSUG meeting on 7 – 8 July 2014.**

The agenda was adopted and comments on the minutes will be included via written procedures.

**Tour de table** on Members' activities of FSUG interest, participation in events on behalf of FSUG, update on identified consumers' risks or detriments as early warnings to the Commission and ESAs

In Belgium, a major car producer in Europe developed a credit line for consumers to foster the purchase of cars, without these bank accounts to provide enough guarantees. In Poland 10 % of the citizens opted out from the Government proposal to transfer the pension's rights from the funded pensions systems (I pillar-bis) to the pay-as-you-go system. In Romania the balance sheets of insurances covering 80% of the market are currently under review, posing a possible challenge to stability of the system; a local court ruled in favour of consumers who contracted loan sin foreign currency: after the appreciation of the lev, the conditions for consumers improved and they should get reimbursed. In Slovenia and other EU countries financial institutions seem active in reducing competition, taking advantage of the low interest rate environment, preventing consumers to shop around and reducing incentives for families to save. In Italy saving capacity for households is deteriorating and austerity measures worsened the economic outlook. In UK credits spreads are broadening and consumers could benefit from a cap in credit cards which would make their level of indebtedness sustainable; in addition, the reform in the pension system and the annuities may transfer the risks of financial innovation to consumers: the variety of choice of complex products is associated to information asymmetry. In Germany a consumer organization reported that a significant number of consumer repaying earlier their mortgage face the risk not to receive loans in the future by other banks. In the Netherlands the issue of access to pension funds during unemployment periods is currently discussed: this may generate challenges because it would go against the objective of saving money for pension funds. Across Europe policy makers should adopt measures to create a way to contribute more effectively to social care and long term needs: some Members States have already in place private mechanisms, some Member States have public and managed by mutual societies to prevent vulnerable groups who are subject to high insurances costs to be financially excluded or uncovered by private insurers.

In general the members drew attention on the un-intended consequences of regulations, such as: i) the difficulty in access mortgages because of the high affordability criteria, and ii) the tightening of the credit market. Some members also reported about the increasing trend of

brokers and credit companies moving abroad from because of a n increase in the costs of their structure and possibly compliance cost with new legislation; then they try to get a passport for their products so that they can operate back in the their origin country.

### **Finalisation of the 2014 Risk Outlook**

The adoption has been postponed to next meeting (23-24 October); dissemination to EU policymakers will be done by FSUG at the end of October. MARKT and SANCO propose to organise a session in January 2015 to different inter-service colleagues on the consumer detriments.

The risk outlook updates and further expands the 2012 edition: it contains a description of the specific risks (such as data profiling) for consumers in specific sectors such as: banking, mortgages and credit, private pensions, insurance, savings and asset management.

I will contain a feature on enforcement, explore the gap in consumer redress and it will relate over-indebtedness mainly to mortgages and private pensions.

### **Presentation of UCITS V**

Rostislav Rozsypal presented the UCITS V directive. He briefly recalled that the Directives was adopted in reply to the fact that financial instruments were 'lost' due to a lack of depositary oversight in the so-called "Madoff scandal". The new provisions on the tasks and the liability of depositaries (banks or other entities that safe-keep financial instruments that belong to a UCITS fund) improve and harmonise the legal framework governing depositaries across the EU.

The Directive sets out common detailed rules on the tasks of depositaries. These clarify the assets that the depositary must keep in custody and the liability of depositaries in relation to such custodial assets. Harmonisation is also provided for tasks in relation to other fund assets that cannot be kept in custody.

The detailed rules also clarify how and when depositaries can delegate activities to third parties, and the fact that this does affect their relevant duties of care and liability vis-à-vis the investment fund. The rules make clear that if something should go wrong and assets held by the depositary are lost, the depositary must replace them as soon as possible with assets of the same type or value. The only limitation to this duty to return assets is when the loss is due to an external event which is beyond the control of the depositary.

UCITS V also ensures that remuneration policies of fund managers do not encourage their staff to undertake excessive risk to the detriment of investors.

The Directive includes also minimum administrative sanctions applying to certain key violations of the UCITS Directive.

Mr. Rozsypal informed members that ESMA is about to publish a consultation document on delegated acts required by UCITS V Directive and encouraged members to submit their opinions

### **Discussion on the paper on consumer data and practices of creditworthiness assessment.**

The FSUG discussed the draft paper that had been presented in detail at the previous meeting. The paper was planned to be presented at the upcoming Conference on Consumer Protection in Retail Finances of November, subject to the endorsement of the group.

The Commission indicated that it would have been interested in seeing at least a partial mapping of the situation of credit data in the Member States represented in the group, acknowledging the difficulties (and costs) that a broader exercise would have entailed. The Commission further clarified that it was still in the process of seeking to have a clearer view

on the role credit data bureaus could play in the framework of the assessment of creditworthiness and, directly related to this, what consumer data would be useful to have in this framework. This would then allow, in a second step, to assess whether and how to best address the issues raised by the current practices of credit bureaus outlined in the draft paper.

The exchange of views revealed different views within the FSUG on the paper. The general understanding reached was that the objective of the paper was to analyse the use of credit data against the following three policy objectives: i) facilitate consumers' access to credit, ii) promote 'responsible lending' via assessment of consumers' ability to repay debts, and iii) promote a better risk management as part of prudential supervision (to ensure financial stability).

Given the proximity of the conference and the fact that further work was needed to finalise the paper, the FSUG decided to convert the paper into an "issues paper" that could be used in the discussion at the November Conference. A decision on what would be the FSUG recommendations in this area would be taken at a later stage.

### ***Lessons learnt from the Warsaw meeting***

The paper was finalised and publication is scheduled straight after the meeting.

### **Update on the retail conference on 18 November**

Maciej Berestecki updated on the development of the conference: the Commission opened the registration to the sessions few days before the meeting. A considerable number of consumer and users organizations is expected to attend.

### **Access to comprehensive financial guidance for consumers: adoption of the terms of reference**

The subgroup members decided to discuss this point in a Sub-group meeting, where they self-organized the discussion to develop a common approach in view of the next meeting in October.

Concerning the proposed study on financial guidance, following final amendments concerning mainly administrative issues it was agreed to launch the call for proposals using DG MARKT framework contract.

### **12 September**

The FSUG decided to contribute to 4 on-going consultations:

1. ESMA public consultation on Market Abuse Regulation (deadline: 15.10.2014).
2. Consultation on International Financial Reporting Standards (deadline: 01.11.2014)
3. Consultation on the Review of the Insurance Block Exemption Regulation (deadline: 4.11.2014).
4. ESMA consultation on UCITS

### **Crowd-funding**

One Member gave an outline of his forthcoming presentation to the European Crowd-funding Stakeholder Forum (ECSF) of the proposed FSUG study "*Exploring the area of crowd-funding from users' perspectives: Current situation and future prospects*".

The proposal for the study aims at measuring the awareness about the crowd-funding industry in general whereas the online survey aims at exploring the risk awareness for active users of crowd-funding. Two work streams have two separate objectives: focus on general awareness about crowdfunding (study) and focus on active investors (not fundraisers) - online survey.

From the methodological point of view, data concerning the investors will be collected via the EU survey study and the analysis will be conducted in-house, by FSUG with the help of the ECSF.

The contractor will be asked to conduct desk research to describe all existing knowledge by surveys and interviews to platform holders and to potential or existing funders in platforms with financial returns. Six countries are currently foreseen to be under analysis: Germany, UK, Spain, Poland, the Netherlands, and Estonia.

The ECSF will be the source of expertise to strengthen the knowledge: a series of discussion already started with some platform representatives who provided comments to improve the usability of the questionnaire, which will be circulated via online survey. It followed then a discussion among the FSUG members; the Commission warmly welcomed the fact that an effective cooperation is in place between the FSUG and the ECSF so that the necessary expertise on the phenomenon of crowd-funding is being built in-house via the Commission networks.

### **Position paper on Simple financial products**

The Rapporteur presented a progress version of the paper which is part of the FSUG annual work program and feeds into the conference in November, in the *session "Safer and simpler financial products"*.

The paper builds on *product intervention*, defined as regulatory intervention focused on product governance: product intervention includes greater supervision in the creation-phase of the product, establishes clear rules on product features and specific conditions of sale. An assumption is that *ex-ante* regulation (early intervention) is more effective than *ex post* (corrective) intervention.

The paper shows how regulation can promote "*safe*" and "*socially useful*" financial innovation; it also brings arguments on the fact that safe innovation does not stifle financial innovation and that competition among different service providers in the financial sector does not always bring advantages to the final consumers in terms of better transparency, cost reduction and returns of the investment.

The members discussed about the main elements of an operational definition of "simple product" and on specific areas where consumer-friendly products can foster financial inclusion, promote better financial decisions, higher savings and reduce the costs of advice.

The final version of the paper will be presented in the October meeting; as it will be presented in the conference in November, it will be published before the conference date.

### **FSUG Annual Report – division of tasks.**

The members agreed on the division of tasks. The members will provide the Chair with their input summarizing their contribution during the year 2014 by 1 October so that the report will be presented at the next meeting (23–24 October). The deadline for the submission of the Annual Report is 30.10.2014. One member volunteered to coordinate the part concerning the other outputs and external events.

### **Research budget: lessons learnt from studies carried out in 2014, planning for 2015**

The Commission informed members about the outcome of the meeting, which followed-up the discussion with the contractor during the July meeting. As announced, the meeting took place between the contractor, the FSUG representatives and the Commission representatives. The contractor explained what problems he encountered during the execution of the study and the Commission services explained what possibilities are provided by the contract: continuation with or without the interim payment, liquidated damages, reduction of the final payment and the termination of the contract.

Following that meeting the contractor submitted 3rd revised Interim Report, which, upon the consultation with the FSUG representative, was accepted.

One member agreed to draft a series of "*lessons learnt*" from conducting research studies with external contractors.

The members agreed to provide a short description of possible topics that could be further explored by using the Commission budget for FSUG external research in 2015. Short descriptions of these proposals should reach the Commission by 29 September.

### **Council Regulation on the Statute for a European Cooperative Society and possible proposal for a European Mutual Society**

Apostolos Ioakimidis from the Directorate-General Enterprise and Industry described the initiative on cooperatives and mutuals in the context of the Social Business Initiative a Communication to promote Social Businesses, issued in 2011 by the European Commission. The text contains three key elements: it aims at facilitating access to finance, at raising the visibility of social enterprises and at improving the legal framework. As such, it re-examines the regime for State subsidies and the provisions for social clauses in the new public procurement rules.

The financial aspects include the programme for Social Change and Innovation to support the development of social enterprises; the funds accounts for 86 million of EUR and the funding are hybrid, and they foresee equity, quasi-equity, risk-sharing instruments and grants.

Another instrument is the Regulation on European social entrepreneurship funds adopted in December 2013, including rules on private risk capital investments.

A draft Regulation for a European Mutual has not been adopted by the Commission.

### **FSUG reporting to the Commission and discussion**

Ms Despina Spanou, Director "Consumer Affairs", Health and Consumers Directorate-General, and Mr Erik Nooteboom, Head of Unit "Retail financial services and consumer policy" Internal Market and Services welcomed the progress on the FSUG annual work program and the usefulness of the topics which will feed into the conference on emerging challenges in the retail financial sector on 18 November. Moreover, the major elements from the expert group provide the Commission with enough evidence to tackle the risks for users and consumers and to reflect on possible initiatives over the next Commission mandate.

Director Spanou presented the changes in the consumer portfolio that the announced new structure of the Commission: the Directorate for Consumers, currently in DG Health and Consumers, will be part of the Directorate-General for Justice, Consumers and Gender

Equality. She also described the inter-institutional process for the Commissioners-designated to be appointed: the parliamentary hearings will run from 29 September to 12 October.

Mr Nootboom informed that on 30 September the Director General on Internal Market and Services is organizing a chat with citizens on the Payment Account Directive and Mortgage Credit Directive in five languages. This initiative can be considered a follow-up to the previous year success of the Single Market Month, when citizens could interact directly with the Commission Services.

The Commission was also reported about preliminary ideas for further research and work in 2015: a deep analysis of the risks and protection measures in the decumulation phase in private pensions, risks of unit-linked products and of loans in foreign currencies, creditworthiness assessment of consumers, and what impact competition has on consumer protection.