



# **FSUG Annual Report 2011**

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## FOREWORD

I have the privilege of introducing the first report of the Financial Services User Group (FSUG). The FSUG was set up by the European Commission to improve the level of user representation at the heart of the EU policymaking process. This report describes the activities of the FSUG from January 2011 to October 2011.

As the report shows, the FSUG has had a very busy year to date producing 14 opinions in response to the Commission's request for advice as well as a range of own proactive opinions and initiatives.

The FSUG has covered a wide range of issues across the whole spectrum of financial services including: prudential regulation matters such as sanctions in financial services, bank recovery and resolution schemes, and Solvency II; and critical consumer and investor protection issues such as reviews of important policies including MiFiD, IMD, UCITS, corporate governance, securities and settlement, and treatment of dividends. Redress has also been a priority for FSUG producing opinions on alternative dispute resolution (ADR) and collective redress. Nor has FSUG forgotten the interests of the most vulnerable EU citizens who are financially excluded, producing opinions on the use of interest rate restrictions to protect borrowers, and making clear our serious concern about the decision by the Commission not to legislate to ensure consumers have a legal right of access to a basic bank account.

We have also commissioned three new major research projects on pensions, protecting financially vulnerable consumers in the mortgage market, and the impact of remuneration practices in financial services; and instigated work on three priorities, improving financial services regulation and consumer and investor protection, protecting financial users in a post-financial crisis world, and collective redress (see Special Feature, p. 40).

The other main priority area for FSUG is effective user representation. We have engaged with the European Supervisory Authorities (ESAs) to improve user representation in the policymaking and regulatory system to counter the over-representation and influence of powerful industry interests.

The fact that we have been able to contribute so effectively to such a wide range of critical, complex issues is a testament to the skills and expertise of the FSUG members who come from a wide range of backgrounds including: respected lawyers and academics, well-known consumer and investor representatives and campaigners, and experts in areas such as SMEs and micro-finance.

However, they all share one thing: a desire and commitment to ensure that EU financial markets work for the citizens of the EU. We hope readers find this report interesting. As a group, we are very keen to engage with stakeholders and interested parties to ensure the user voice is heard in Europe.

Finally, we would like to thank Anita Varga and Maciej Berestecki from Internal Market and Services DG and responsible colleagues from DG Health and Consumers for their invaluable guidance and support throughout the year.

Mick McAteer  
Chair, FSUG

### ABOUT THE FSUG

In its White Paper on Financial Services Policy 2005–2010, the Commission stated that it attached great importance to ensuring proportionate user representation in the policy making. In the Communication for the European Council – *Driving European Recovery* – the Commission put the interests of European investors, consumers and SMEs at the centre of the financial market reform.

As a measure to achieve these targets, the Commission set up a Financial Services User Group (FSUG). The Group's task is to:

- advise the Commission in the preparation of legislation and policy initiatives which affect the users of financial services
- provide insight, opinion and advice concerning the practical implementation of such policies
- proactively seek to identify key financial services issues which affect users of financial services
- liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level.

FSUG has 20 members, who are individuals appointed to represent the interests of consumers, retail investors or micro enterprises, and individual experts with expertise in financial services from the perspective of the financial services user.

FSUG meets eight times a year in Brussels and its Chair is elected from amongst the group members. The Commission (jointly Internal Market and Services DG and DG Health and Consumers) provides secretarial services for the Group.

The Group works on a consensus basis and tries to ensure that it arrives at a collective opinion on issues it considers. However, from time to time, individual members may register a minority opinion.

## FSUG RESPONSES TO EUROPEAN COMMISSION REQUESTS FOR OPINIONS

From the start of the year to the end of October, FSUG produced 14 responses to Commission requests for opinions plus a range of own opinions and communications.

### ***Public consultation on PRIIPS***

The FSUG strongly supports the horizontal approach taken by the European Commission for its PRIIPS initiative, which is the right way to harmonise the selling practices of retail investment products, as most of them are substitutable for each other, and most of them are or can be sold by the same intermediaries. We do recognise it is innovative and challenging for the EC to cut through existing 'silo' organ charts and directives.

FSUG also supports the proposals aimed at using the UCITS 'KIID' (Key Investor Information Document) as much as possible as a benchmark for the summarised mandatory pre-contractual information of other retail investment products. This is the only way to make the comparison of retail investment products easier for the consumer.

FSUG nevertheless regret that the retail investor's perspective is not fully taken into account.

The current definition and scope of PRIIPS does not reflect the reality at the point of sale. A lot of retail investment products would not qualify as PRIIPS under the European Commission's proposed definition. Bank saving accounts, traditional life insurance contracts, equities, bonds and all long-term savings and personal pension products, that can be subscribed on a voluntary basis, nevertheless, constitute a very large portion of retail investments offered to the public by financial intermediaries in Europe.

The FSUG also believes the definition of PRIIPS should not focus only on nominal 'fluctuations in investment values', but also on:

- fluctuations in real investment values (net of inflation) and
- fluctuations in income values.

This is because, at the end of the day, the performance of an investment product for the consumer does not only result from its nominal terminal value, but more from its real terminal value including accumulated income.

Lastly, the FSUG regrets that the proposal does not include any provisions regarding selling practices, advice and conduct of business. The FSUG understands this will be done by amending the MiFID on the one hand, and amending the IMD (insurance mediation) on the other hand. A high level of harmonisation of all retail investors' protection rules at the European level would be much better ensured by one single omnibus directive covering all retail investment products.

### ***Public consultation on the Review of MiFID***

FSUG supports the overall aims of the MiFID review which, if implemented successfully, should bring significant benefits to millions of ordinary investors in the EU. This submission should be read in conjunction with our submissions on PRIIPS, UCITS, IMD and Sanctions. The recommendations set out in our responses constitute *A New Investor Protection Framework* designed to create investment markets that:

- investors have justified confidence in
- are secure and stable
- operate fairly, transparently and with integrity
- are competitive and efficient, and provide access to value-for-money, socially useful products and services.

FSUG considers that all investment-based products and services (regardless of legal or corporate structure) should be covered by a coherent, consistent regulatory regime for investment services. This regime should apply to all parts of the investment 'supply chain', not just those parts which deal directly with investors.

The full response can be found at: [http://ec.europa.eu/internal\\_market/finances-retail/docs/fsug/opinions/mifid-2011\\_03\\_15\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/fsug/opinions/mifid-2011_03_15_en.pdf).

### ***Public consultation on UCITS***

FSUG generally agrees with the proposed measures set out in the Commission document. UCITS are one of the most important retail investment products for consumers. Savers invest their money directly in UCITS and indirectly by purchasing unit-linked life insurance policies. UCITS regulation comprises provisions that are important to retail investors, such as diversification of assets, pre-contractual information (prospectus agreement, KIID), periodic information and depositary functions.

It is encouraging, that policymakers are paying attention to the legal security and basic safekeeping of assets. This is just as critical to investor protection as the more obvious point of sale requirements, such as conduct of business, marketing and promotion of products. It is critical, that risks, such as fraud, mismanagement, negligence, default of investment firm and so on, are managed by strong regulation. Therefore, the safe-keeping and oversight functions of the depositary are very important. We also emphasised that it is critical to address conflicts of interests that exist between UCITS managers and UCITS depositaries belonging to the same group.

On the issue of UCITS managers' remuneration policies, FSUG strongly agrees with the view that remuneration and incentive schemes within financial institutions have been one of the key factors that contributed to the financial crisis that erupted in 2008. Aggressive remuneration policies introduce conflicts of interest that undermine duties of care to clients and due diligence and contribute significantly to excessive risk-taking by incentivising an expansion of the volume of trades aimed at maximising short-term returns over longer-term value creation. This undermines the allocation of capital and other financial resources to the most productive and socially useful economic activities. Focusing on dysfunctional reward systems would allow policymakers and regulators to intervene and prevent detriment from occurring in the first place. Therefore, we fully support the aims of the EU to address this issue across the financial system and specifically within the UCITS regime. However, we

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emphasise that it is important that these reforms are applied coherently and consistently across all investment services and to all parts of the financial system.

The full response can be found at: [http://ec.europa.eu/internal\\_market/finances-retail/docs/fsug/opinions/ucits-2011\\_03\\_15\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/fsug/opinions/ucits-2011_03_15_en.pdf).

### ***Public consultation on IMD***

FSUG underlined the importance of IMD for consumers, as intermediation is a channel that is most frequently used and insurance products are very complex and require assistance. The present rules do not offer a high level of protection, especially compared with other regulations, such as MiFID and the proposal for PRIPs.

As with MiFID, it should be possible to distinguish between information, advertising and personalised advice within IMD. FSUG supports the implementation of MiFID's definition of advice for the revised version of IMD. If a product is sold without advice, there has to be a specific warning that the product may not match an appropriateness check.

Insurance premiums should not include commission, as this service must be priced independently, and information about commission could help managing conflict of interest. FSUG proposes a cap on the commission in life and private health insurance; the banning of commission when cover is transferred (underwriters are changed), and banning up-front fees in life insurance, which should be distributed over the whole lifetime of the product. The status of intermediaries should be clearly identified, especially when not to do so results in narrowing the scope of products offered or results in relying on one provider.

To guarantee a level-playing field, all participants involved in the selling of insurance products should meet minimal requirements:

- The intermediary must act honestly, professionally and in line with the best interests of the customer.
- The advice given must be adequate to the customer's needs (suitability test) and documented in all cases.
- If a product is sold without advice, its appropriateness in relation to the customer's needs must be checked.
- Remuneration structures cannot work contrary to the obligation to act honestly, professionally and in line with the best interests of the customer.

FSUG proposes that central elements of the training for intermediaries must be the methods and knowledge on how consumer needs are identified and building on this how an ideal solution/recommendation can be developed. An independent body has to certify that qualification. Every natural person has to fulfil the qualification requirements.

FSUG supports the Commission believing that professional conduct of business, inducements and conflicts of interest rules should apply to everyone selling PRIPs products be it an intermediary or a product originator. The main principle however should not be limited to the distribution of PRIPs. The duty to act honestly, fairly and professionally in accordance with the best interests of their clients should always be applicable. The suggested measures concerning conflicts of interest should be more precise; first of all conflicts of interest must be prevented. They must be identified, avoided whenever possible, otherwise reduced and disclosed. Information on the remuneration must be more than just the difference between the total premium and the invested part of the premium. Kickbacks, soft inducements and other advantages must also be disclosed.

### ***Public consultation on Solvency II implementing measures***

The risk-based approach which is the basis of Solvency II is challenging for both, industry and supervisors, but is unavoidable due to the present condition of the financial market. However, FSUG would like to point out a potential conflict of objectives between the solvency of insurers and the protection of policy holders that has recently been identified by the US, UK and Belgium, who are adopting the 'twin peaks' approach.

FSUG asks for long-term impact studies to be launched as soon as possible on European equity markets and on individual investors, especially in respect of long-term savings and pension products' value and performance. In our opinion there is a real danger that the access to long-term savings products and annuities would be heavily affected. Within the implementation process of Solvency II the balance between security and accessibility is to be reached by regulators and supervisory authorities and FSUG is especially concerned that the position of low-income households and SMEs is protected.

The risk-free interest rate has changed its benchmark, and in the last period long-dated swap spread anomalies could be observed (such as negative value of swap spread), and it is clear now that government bonds do incorporate credit risk, at least from the market perspective. That is why FSUG supports usage of the swaps curve with an adjustment as risk-free interest rate curve. We would like also to underline the importance of a method of extrapolation that influences long-term interest rate, especially on less developed and illiquid markets.

According to the degree of diversification that should be reflected in the SCR (Solvency Capital Requirement) needed to support the insurance obligations within the calculation of the risk margin, FSUG backs diversification within, but not across, the lines of business. In a national market different business models are implemented and the possible effect would be marginal with little or no impact for small and medium insurance companies. FSUG also supports the Commission's current approach to avoid procyclicality.

Disclosure of solvency and financial information arises as a very important issue. However, it should be acknowledged that although this information to some extent is dedicated to consumers, it will be processed by financial advisers and consumer organisations. That is why limitation of the information provided to the public cannot be based on the level of complexity but on criteria of usefulness. The scope of the information should consist of basic financial ratios and figure (including capital adequacy, coverage of technical provision, loss ratio in certain business lines, profitability of investments etc.).

Insurance markets remain essentially national and Solvency II regulation will probably not change a lot in this respect, if not even lessens the cross-border competition. From the consumer perspective the mechanisms that would encourage buying insurance products cross-border are fast and accessible Alternative Dispute Resolution and at least minimum security provided by Insurance Guarantee Schemes. Solvency II is a very wide and complex directive. However, it is not a panacea for all problems. Without effective and efficient ADR and IGS hardly any regulation would affect competition.



### ***Sanctioning regimes in the financial sector***

FSUG welcomed the Commission's initiative on reinforcing sanctioning regimes in the financial services sector as part of the financial sector reform and as another step to the single market for financial services. This initiative complements and completes other measures taken for ensuring the soundness and stability of the financial system, such as the recent reform of the supervisory architecture. Efficient and sufficiently convergent sanctioning regimes are indeed the necessary corollary to the new supervisory system.

Sanctions are an important part of the financial regulatory system and robust sanctions should be part of a credible deterrence package of interventions deployed to promote positive behaviours and discourage detrimental behaviours. A robust sanctioning regime means that sanctions have to be effective (efficient measures in ensuring the compliance with the law), proportionate to the gravity of the breach of the law and dissuasive, in order to prevent the future occurrence of the law violations.

Convergence of sanctioning regimes in EU Member States would be beneficial to the safety and soundness of the financial markets, would contribute to ensuring the same level of consumer protection, would raise the level of awareness among the regulators and the regulated parties and would help to creating the level playing field for financial service providers. FSUG believes that, in setting up the standards for national regulators there should be a minimum level of sanction that should be in place in each Member State, while at the same time, the national legal systems should have the opportunity to keep in place above minimum level of sanctions.

FSUG believes that sanctions should be set up based on the damage produced to the claiming consumers and/or on the size of additional gains produced by the law violation to the entire portfolio of clients and to the size of the firm involved and that the level of sanctions should be tough, meaningful and relevant.

Sanctions should be recurrence-related, with rapidly increasing levels for repeated offences of the same nature. Fines for individuals should not refer only to the ban on the bonuses, but to their remuneration and fines for firms should be recovered out of profits, not to be included in the costs of products and services.

FSUG believes that publication of sanctions will alert the consumer that serious breaches of rules have occurred and that it might not be in the consumer's best interests to commence or continue to conduct business with such an entity. Publication of sanctions could have an important impact for the institution in cause and for the entire sector, through the multiplication effect; other institutions could use this as an opportunity to revise their activities and procedures and to ensure the adequate implementation of regulations.

### ***Public consultation on interest rate restrictions***

FSUG is attentive of the intrinsic value of interest rate restrictions (hereinafter: IRR) provided such regulatory techniques takes into account the different levels of consumer sophistication, the fair price of credit, protect unsophisticated and vulnerable consumers (i.e. households with low income, low wealth or already high debt income ratio). Such techniques should also help keep consumers out of potentially hazardous credit products, address the risks of supplier insolvency, the high-cost credit, fraud and stimulate competitive market force conditions.

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FSUG believe that IRR policies are especially justified in terms of consumer protection and financial inclusion promotion. Unsurprisingly, high-cost credit (payday loan) has mostly developed in countries with no IRR or high interest rate ceiling (e.g. the UK, Sweden, Slovenia), meaning that loopholes in legislation are immediately exploited by market players.

The most appropriate/effective system/type of IRR to prevent potential consumer over-indebtedness seems to be the Annual Percentage Rate of Charge (APRC) taking into account all cost elements from ancillary services such as payment protection insurance, fees charged for brokerage, fees for cash withdrawal or small amounts of card credit.

Finally, FSUG stresses that an important step in the analysis of IRR impact is to compare the results of the introduction of IRR with results of an alternative and more targeted intervention, such as default risk based re-pricing in connection with vulnerable consumers in financial difficulties.

### ***Public consultation on ADR***

FSUG strongly supports the Commission activities for a Framework Directive and regulation for ADR and ODR schemes. The existing recommendations are non-binding and too weak to provide for a solution.

In a modern economy consumer confidence in functioning markets is vital. In this context it is important to have effective solutions to resolve individual and collective disputes related to commercial transactions and practices in the EU. The existing non-binding recommendations have been too weak to provide for such effective solutions throughout the EU and should be replaced by binding mechanisms to help the consumer. This also applies to ODR schemes that can quickly gain relevance as distance selling, especially by internet, is a more and more accepted way of contracting with providers.

FSUG is in favour of EU measures that take the form of a binding instrument. ADR mechanisms should be available for every European consumer for both national and cross border cases irrespective of the provider and of the value of the claim.

FSUG main demands in the area of ADR and ODR schemes in financial services are the following:

- A legally binding approach is needed; FIN-NET principles must be adapted accordingly.
- Independence, neutrality, transparency and quality of schemes is vital.
- Consumers should be adequately informed about the complaint possibilities and procedures.
- It should be mandatory for providers to take part in a regulated ADR scheme.
- Especially in banking issues a concentration on as few ADR schemes as possible is important.
- Consumer involvement in the schemes is indispensable (there are several ways to realise it).
- Decisions must be – at least to a certain sum of money – binding on providers (not on consumers). Complaints must be decided without undue delay.
- Consumers must be able to choose court action at any time.
- As in some market segments SME can have similar problems and schemes should be open to them too.
- During the time of the dispute resolution the limitation period has to be suspended.

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- No ADR scheme without evaluation, independent monitoring, a periodical report and sanctions in cases of misconduct.
- Preferably ADR should be free of costs to consumers.
- There should also be binding ODR complaint procedures, e.g. having a European platform as a single entry point.
- The Commission approach should also contain work on collectives redress; ADR and collectives redress cannot be mixed or exchanged in many cases as claims can be very different.

### ***Public consultation on Collective Redress***

Consumers, retail savers/investors and all users of financial services including small business owners are often faced with mass detriment situations, and while recognising that the performance of existing EU enforcement tools in those situations is not satisfactory, the European Commission has not yet taken any concrete measure but chose to engage again in a consultation.

Collective redress covers a specific situation where the (same) illegal behaviour (fraudulent or not) by a provider or an issuer harms several individuals. As stated in studies commissioned by the European Commission, the most relevant sector concerned by mass claims/issues is the financial services sector. In the absence of efficient redress mechanism, most victims are not compensated for the damages they have suffered. Furthermore, lack of compensation is a major deficiency in a legal system and allows for illegal profit to be retained by business.

This is the reason why the FSUG is in favour of an EU initiative which should take the form of a binding instrument. A collective redress mechanism should be available to every European consumer for both national and cross-border cases irrespective of the value of the claim.

The FSUG main demands are the following:

- Introduction of EU mechanisms of collective redress in order to enforce EU law based on a legally binding approach.
- Private collective redress should be independent of enforcement by public bodies.
- Main features of an efficient and effective system of collective redress should be defined at EU level.
- Group representative should act on behalf of identified or not yet identified victims.
- Victims should be kept informed about ongoing collective actions.
- Recourse to alternative means of dispute resolution before or in parallel to the formal introduction of the complaint should remain free.
- Reasonable safeguards against possible abusive actions should be adopted.
- Efficient and appropriate mechanisms for financing collective redress should be foreseen.

### ***Public consultation on Technical details of a possible EU framework for bank recovery and resolution***

FSUG fully supports the main scope of such a framework that seeks to provide a harmonised EU regime for crisis prevention and bank recovery and resolution, that will ensure that market exit remains a credible option, not only a theoretical possibility.

However, we believe that the current framework should be viewed as a necessary part of several different measures to be taken in a new integrated EU crisis management framework whose main objective is to prevent a future financial crisis or at least minimise the burden on financial services users and on taxpayers, should such a crisis occur. Otherwise, the current framework faces the risk to be restricted to deal with isolated situations of at most average-sized troubled and failing credit institutions.

Therefore, we draw the Commission's attention into the following aspects:

- 'too big to fail issue'
- high level of interconnectedness
- nature of business (the 'universal banking' approach)
- saving very large financial institutions should not be done at the expense of financial services users.

It is necessary that the final framework is accompanied with further initiatives to deal with the above mentioned problems, so that an integrated EU crisis management framework will be efficient, realistic and fair to EU citizens as well.

FSUG suggests that an EU managed Resolution Fund be established contributed to by the banking industry on a basis to be determined- transactions, turnover or assets. However, it should be underlined that the role of the EU managed fund should be distinct and the fund should not affect or be related in any way with national funds of each Member State intended to cover specific financial elements (i.e. the Deposit Guarantee Schemes).

### ***Public consultation on a Corporate Governance Framework***

FSUG supports the stakeholder approach to Corporate Governance which includes consideration of the needs of shareholders, employees, creditors and other stakeholders. This stakeholder approach underpins the objectives of long-term survival, growth and stability of the entity.

The following are some of the main issues addressed in the FSUG response to the Green Paper:

Corporate Governance is relevant to all companies what ever their size. However, FSUG recognises that the adoption of Corporate Governance must not be over burdensome and that different principles and rules should therefore apply to companies of different sizes.

Unfortunately the Green Paper focuses on institutional shareholders and ignores individual shareholders. Recent EU policies have further marginalised individual stakeholders by pushing them out of equity markets into packaged products. These tend to embrace short term investment policies.

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FSUG supports a broad diversity of boards. There is overriding evidence that well diversified boards have a positive effect on financial performance and the sustainability of companies. Recruitment policies of boards should ensure that there is sufficient diversity to capture the right skills of directors to effectively promote the stakeholders' objectives.

Independence is an important characteristic to avoid conflicts of interest. It is important, for example, to prevent concentration of management powers where the chairperson is also the CEO. Remuneration policies should be transparent and exclusively in the hands of non-executive directors. Risk policies should be formulated by the directors and conveyed to stakeholders.

FSUG supports Employee Financial Participation (EFP) which provides a natural route towards a model where labour and capital are more closely linked. Shareholding encourages long-term employee interest in the company's progress, performance and enhances governance.

### ***Commission consultation on Central Securities Depositories (CSDs) and Securities Settlement in the EU***

FSUG, recognising the increasingly important role and contribution that Central Securities Depositories play and can make to financial stability and ultimately in reducing the risk of costs to the European taxpayer, supports the Commission's initiative to achieve a common regulatory framework within which all CSDs should function.

It also welcomes the gradual evolution that has occurred in recent years from a contractual to an institutional framework so as to regulate and oversee all standardised OTC derivative trading contracts and supports the Commission's endeavours to put in place suitable legislative requirements that they be traded on exchanges or electronic platforms, as appropriate, and cleared through central counterparties by the end of 2012.

Functional definition of CSDs seems to be the most appropriate as it should cover all required institutions. However, it must be noticed that potential exemptions should be monitored to assure proper coverage of the legislation. That is why future review of the directive should pay special attention to this issue.

From the consumers' point of view, the definition of the notary function should be clearly worked out, in particular referring to the ascertaining of the validity of securities. Within the Member States there are differences as far as the depth of assessment of the validity of securities is concerned. A precise definition of ascertaining the validity of securities is currently missing but would be useful.

In addition, FSUG respectfully asks the European Commission to consider making a clear distinction of the notary functions services to the others performed by CSDs, and to facilitate the decoupling of these services to enable professional providers to compete in this area.

We think that the approach to capital requirements of CSDs is appropriate. As CSDs play an important role in the capital markets, they should be obliged to keep minimum capital. We support the concept that since risks may vary considerably depending of the nature of services and of securities covered by CSDs, it would be better not to consider a lump sum capital requirement but instead provide for a calculation method of capital requirement, depending on the nature of the risks involved in each CSDs activity. In addition, different kind of guarantees could be included in the value of required capital, provided that the quality of the said guarantees is outstanding and, of course, they are properly supervised by the competent EU authorities.

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FSUG strongly believes that including provisions addressing price transparency and service unbundling from the existing Code of Conduct into the future legislation will foster competition between CSDs and will help final investors to be better informed.

### ***Public consultation on Taxation Regimes***

The Financial Services User Group (FSUG) believes that double taxation of dividends represents an increasingly greater and more important impediment to the accomplishment of the Single Market.

Juridical and economic double taxation of cross-border dividends continues to be a reality for EU individuals. Procedures are too complex, too costly and often subject to a lengthy process. Such situations are unfair and increasingly detrimental to individual investors not only of themselves but also in a context of more frequent cross-border corporate mergers.

FSUG believes that from the options proposed in the consultation, the abolition of withholding taxes on cross-border dividend payments to portfolio/individual investors is the simplest, fairest and most efficient approach to remove the double taxation of cross-border dividends received by individual investors. We consider that this should be coupled with an improved information exchange framework across Member States to avoid tax evasion.

FSUG regrets however that this consultation is limited to dividend income, as there is also widespread discrimination of EU private investors regarding other types of cross-border investment income. We also regret that individual investors and savers are not more closely consulted and involved throughout the policy-making process and included in expert groups on taxation of savings and investments as they represent major stakeholder interests.

### ***Public consultation on the Social Business Initiative***

The development of a successful social business market and asset class could make a very useful contribution to tackling social problems and developing a sustainable social economy. However, this market is unlikely to develop autonomously so we welcome this intervention. Specifically, we have a number of concerns:

- There is much scope for investors to be misled by market operators jumping on the social business/social investment fund bandwagon. There seems to be quite a broad range of social investments funds/financial instruments. For example: social 'impact' bonds; social purpose companies/funds; social investment bonds (SIBs) and some for-profit companies which claim that their activities have a social benefit. Substantial work is needed to ensure investors are not misled, and investor communications are clear, fair, and not misleading.
- The conventional asset management sector has well established processes for identifying potential investments, screening investments, investing, and monitoring, performance measurement, and reporting. However, potential investors in social businesses are not able to rely on an equivalent investment decision process or the same degree of transparency and disclosure.
- Sustainable social purpose investment requires investors that are able to take a long-term view on investing. For this to happen, it needs a new system of performance measurement and reporting so that investors are able to see the long-term impact of their investments.

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Therefore, if the social business sector is to be successful and sustainable, the main objectives of this initiative should be to ensure that:

- potential investors are able to identify successful social businesses that comply with accepted definitions of social businesses and meet their objectives
- investors are able to monitor the 'performance' of their investments using appropriate performance metrics and benchmarks and
- the 'market' is transparent and accountable so that potential investors are able to have justified confidence in the market as a result of effective regulation.

The full response can be found at: [http://ec.europa.eu/internal\\_market/finances-retail/docs/fsug/opinions/sbi-2011\\_09\\_19\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/fsug/opinions/sbi-2011_09_19_en.pdf).



### OTHER RESPONSES, INITIATIVES AND COMMUNICATIONS

As well as responding to requests from the Commission, FSUG:

- responds to consultations from other policymakers
- proactively seeks to identify key financial services issues which affect users of financial services and
- liaises with and provides information to financial services user representatives and representative bodies at the European Union and national level.

#### ***OECD consultation on financial consumer protection***

FSUG strongly supports that any attempt to draft principles for financial consumer protection needs to be translated into an effective regulatory model covering the following core values: consumer detriment analysis (not solely in response to the onset of consumer detriment effects but anticipating and addressing risk and problems throughout the financial products and services life cycle), prioritised targets, transparency and accountability of the rule-making processes, identifying effective interventions and benchmarks, and qualitative and quantitative impact assessments of performance.

In the light of financial users' problems arising from the financial crisis, regulators need to adopt a more interventionist style of regulation with a clear aim to make markets work in the interests of society and evaluate markets from the perspective of all consumers not just the average consumer, middle-class or wealthy consumers. Hence, FSUG advocated that the following financial consumer protection mechanisms should be advanced and implemented:

- compulsory minimum standards on financial products and services, as well as efficient product intervention and regulation
- effective financial services user representation and participation in the policy making
- oversight authorities equipped with the necessary competencies, resources, capabilities, governance, and powers to be proportionate with the importance of default, size of its effects and the business
- understanding of the typologies of consumer vulnerability in financial services and identify gaps which could lead to improvements in stricter standards of protection targeted to these groups
- standardised information disclosure requirements developed within product categories, subject to periodical revision and not used to shift responsibility from firms to consumers
- prioritised interventions aimed at changing provider behaviour and improve markets to increase the likelihood that financial education is effective
- collective redress mechanisms that enable financial users to be compensated for damages
- guarantee schemes should be introduced as protection mechanism
- legal duty of care to oblige financial intermediaries to act in the best interest of financial users
- prudential and competition regulation adequately monitored by the supervisory authorities.



### ***FSUG input to FSB Report on Consumer Finance Protection***

We focused on a number of key points in this response. If the FSB wants to improve the effectiveness of financial regulation (specifically, consumer protection) then it should promote the establishment of proper user representation in the policymaking process and regulatory system, as well as better coordination of the activities of consumer protection authorities. For example, FSUG is advocating the creation of an independent financial user expert group to sit within the ESA system. The role of the new expert group would be to: advise policymakers; ensure the individual ESAs avoid 'silo' regulation; provide an early warning system for supervisors; advise regulators on identifying consumer detriment and market failure; and advise regulators on the effectiveness of interventions and prioritising interventions.

We also criticised the way the FSB is approaching 'consumer protection'. The FSB's view is that "Consumer protection is not about protecting consumers from bad decisions but to ensure that consumers can make informed decisions." This is a very outmoded approach to consumer protection and implies that the purpose of intervention is to address information asymmetries. Helping consumers make informed decisions is important but information solutions, financial education and literacy initiatives have very limited effect in complex markets such as financial services. Therefore, the approach to consumer protection needs to be redefined so that the emphasis is on:

- protecting users from unfair market practices
- changing the behaviours of market actors along the supply chain and
- cleaning up financial markets to get rid of toxic products.

More generally, regulators need to adopt a more interventionist style of regulation, determined to 'make markets work' in the interests of society. This requires a clearly defined set of consumer protection objectives and outcomes.

The full response can be found at: [http://ec.europa.eu/internal\\_market/financeservices-retail/docs/fsug/opinions/fsb\\_consumer\\_finance\\_protection-2011\\_09\\_27.pdf](http://ec.europa.eu/internal_market/financeservices-retail/docs/fsug/opinions/fsb_consumer_finance_protection-2011_09_27.pdf).

### FSUG RESEARCH PROGRAMME

The FSUG has its own research budget which it can use to commission research on issues it thinks are important to users. We decided to focus on investigating areas in which the position of consumers is weak or there is a lack of transparency. After a prioritisation process, we selected and suggested contracting research studies on the following three important issues:

- the position of savers in private pensions
- protecting consumers in financial difficulty: mortgages, repossessions and personal bankruptcy and
- remuneration structures of financial services intermediaries and conflicts of interest.

#### ***The position of savers in private pensions***

Acknowledging the facts that private pension arrangements have been growing in importance during recent years and the forthcoming review of Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (IORP Directive), private pension products have become a priority for the FSUG.

Pension beneficiaries are the central point of pension schemes and products. However, FSUG recognises that no overreaching analysis of adequacy, safety, risks and cost effectiveness of the pension products from the perspective of the pension beneficiary has been done yet.

FSUG has therefore initiated a research project called *Position of savers in private pension products*, which focuses on key aspects determining the position of savers in the private pension schemes.

While national products may differ significantly, there are similarities in the development of pension products across Europe. Understanding development trends in the pension field and recognising the current shift from 1<sup>st</sup> to 2<sup>nd</sup> and 3<sup>rd</sup> pillar schemes, the research project will provide better understanding of future developments in the types and main characteristics of the most common private pension products in terms of adequacy, accessibility, safety, cost-effectiveness and investment risks carried by the beneficiaries. Safety and risks are most critical in 'defined contributions' products, whether they are collective or individual ones, as there is no guarantee for return from the product provider or sponsor.

The aim of this research project is to bring transparency and fact-based arguments in strengthening the consumer voice in the organisation of markets providing these dominant financial products.

The research project is planned to be organised as a two-tier quantitative and qualitative analysis covering the Member States private pension systems (1<sup>st</sup> tier) and dominant private pension products within these systems (2<sup>nd</sup> tier).

### ***Study on Means to Protect Consumers in Financial Difficulty: Personal Bankruptcy, Datio in Solutum of Mortgages, Restrictions on Debt Collection Abusive Practices***

The FSUG has drafted Terms of Reference for external research to be carried out in the area of the protection of consumers in financial difficulty.

The aim of the study is to identify all the different legal techniques and best practices to enhance as much as possible the protection of consumers in financial difficulty in three selected areas – personal bankruptcy, datio in solutum of mortgages, and restrictions on debt collection abusive practice.

The research will undertake a detailed mapping and analysis of the legal framework and of practices in the following Member States: Germany, United Kingdom, France, Italy, Spain, Romania, Belgium, Netherlands, Czech Republic, Slovakia, Hungary, Poland, Ireland, Austria, Greece, a Scandinavian Member State, a Baltic Member State.

The findings of this research will be a valuable tool for the Commission to take stock of the current factual and legal situation which millions of European consumers are facing as a consequence of the on-going financial and economic crisis. The legal findings will help to determine if legal action is needed – and if so what actions are recommended – to protect consumers in financial difficulty, or at least to mitigate the microeconomic effects caused not only by the current high unemployment levels but also by the various other macroeconomic restrictive measures that have been imposed on people by different governmental bodies.

### ***Remuneration structures of financial services intermediaries and conflicts of interest***

FSUG is aware of the detriments for consumers which are due to inadequate remuneration practices of different financial services intermediaries (credit intermediaries, tied and untied insurance intermediaries, investment consultants and employees of bank and insurance companies). Consumers are not only confronted with high sales commissions but also with invisible sales targets which influence advisors to stimulate and promote certain products in a one-sided fashion. For FSUG it is evident that salespeople have recommended risky investments and insurance products to consumers to obtain higher sales commissions. This practice may cause a conflict of interest if the salesperson is not acting in the best interests of the consumers.<sup>1</sup> Detrimental consequences are high costs and inadequate sales of products which are not tailor-made for consumers' needs and expectations.

From the consumer's point of view fair and adequate remuneration structures are required which lead to better advice and sustainable products. Consumers and users should benefit from unbiased, competent and knowledgeable advice which is in the interest of the client. There should be sound remuneration structures in all distribution channels of financial services, a high level of transparency of remuneration practices and a clear and transparent distinction between independent advisors and tied (dependent) sales people.

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<sup>1</sup> A currently released study by European Commission on retail investment advice (*Consumer Market Study on Advice within the Area of Retail Investment Services*, prepared for the European Commission, Directorate-General Health and Consumers, 2011) in the EU Member States showed that even the rate of disclosure referring to inducements is rather poor.

## FSUG Annual Report 2011

This research project will focus on commissions (premiums) and other inducements which are granted to the above mentioned types of financial intermediaries. The objectives of the survey will be the evaluation of the status of existing remuneration models (commission-based versus fee-based systems) and existing regulation set by Financial Market Authorities and legislators.<sup>2</sup> The aim of this research project is also to show possible solutions for improvements of remuneration schemes. Ten Member States will be covered by this survey.

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<sup>2</sup> Not covered by this study / no objective: Neither remuneration practices of executive boards of financial institutions nor the fixed salaries of the sales staff of banks and insurance companies will be gathered/evaluated.

### FSUG PRIORITIES

As well as identifying research priorities, FSUG undertook a prioritisation process to identify issues we think are particularly important to financial users. These are: effective financial regulation and consumer protection; dealing with the impact of the new economic paradigm on EU citizens; and collective redress.

#### ***Principles and Practices of Financial Services Regulation (PPFR)***

Rebuilding consumer confidence in financial markets post financial crisis requires three phases of reform: Phase 1, ongoing rescue and stabilisation; Phase 2, financial market reform and preventative measures; and Phase 3, making markets work for citizens and improving consumer protection. Policymakers now must turn their attention to making EU financial services work for the citizens and industry of the EU. Markets must be fair and inclusive, competitive and efficient, transparent, safe, and accountable to citizens.

Huge intellectual effort and resources has been devoted to the first two phases. However, making markets work has not been given the same priority. The 'art and science' of financial services regulation from the user perspective is very underdeveloped. Therefore, FSUG is taking the initiative and producing a paper which sets out the principles and practices of financial services regulation and consumer protection. The paper is aimed at EU policymakers, ESAs, and national supervisors, and other stakeholders (consumer groups etc). The objective is to help policymakers understand the purpose of financial services regulation from the financial user perspective and to improve the effectiveness of regulation. The paper will be published at the end of 2011.

#### ***The impact of the new economic paradigm on EU citizens***

The financial crisis has major implications for the 'real economy' in the EU, not just financial markets. FSUG is concerned that we are in a sustained period of high public and private debt, low economic growth, low interest rates, and comparatively higher inflation (that is, higher than is consistent with the current low growth environment). Of course, the effects will not be uniform across the EU but generally speaking the new economic paradigm may have major impacts on household incomes, consumer behaviour, sustainability of business models, and industry behaviours. Financially vulnerable households may be targeted by predatory lenders. Downward pressure on industry revenues means firms will be tempted to protect revenues by introducing expensive, socially useless innovations and product features. In the longer term, smaller niche providers may find it difficult to survive reducing competition and diversity in the market. Financial exclusion is likely to grow as providers focus on better off, less 'risky' households. The low return environment raises major concerns for pensions. Pension funds should be on their guard against advisers promoting complex investment strategies and 'alternative' products which claim to provide a higher return with no extra risk. In a low return environment, market efficiency is critical. We may see an even greater destruction of investor value in the investment management sector. Financial advisers need to work harder to i) help investors understand the risks involved in the new financial environment and ii) exert competitive pressures on investment managers and insurers by penalising poor investment performance and ensuring investors get the best value. Policymakers and regulators must be ready to pre-empt consumer detriment and market failure and step up their efforts to ensure that financial markets are fair and inclusive, efficient and competitive, and transparent. To help policymakers and regulators understand the risks involved, the FSUG is producing a paper setting out the risks to consumers

## **FSUG Annual Report 2011**

categorised so that the relevant ESAs (EBA, EIOPA, and ESMA) are able to identify the risks that fall within their remit. This paper will be published early in 2012.

### ***FSUG summary paper on collective redress***

FSUG has already produced an opinion on the public consultation on Collective Redress (see above). FSUG is in favour of an EU initiative which should take the form of a binding instrument. A collective redress mechanism should be available to every European consumer for both national and cross border cases irrespective of the value of the claim.

Collective redress is such an important issue for FSUG that it is producing its own paper setting out how collective redress should be delivered in the EU. Indeed, collective redress is the subject of a special feature in this annual report.

## **OTHER OUTPUTS AND COMMUNICATIONS MADE BY FSUG IN 2011**

FSUG communicates with external stakeholders on selected issues. In 2011, we wrote to the President of the Commission, Mr Barroso, and Chairs of EIOPA and EBA to express our serious concerns about the lack of user representation and importance given to consumer protection within the EU regulatory system and to President Barroso and Commissioner Barnier to seek an explanation for the withdrawal of legislative proposal on access to a basic payment account.

### ***User representation and consumer protection***

As part of its work on improving financial services regulation and consumer protection, FSUG has prioritised consumer representation within the EU policymaking and regulatory system. We have been so concerned about the level of user representation that we wrote to Mr Barroso and the Chairs of EIOPA and EBA.

Although the ESA stakeholder advisory groups are meant to contain a balance of representation between users and industry, our analysis showed that industry interests were heavily over-represented.

Moreover, we analysed the ESAs work programmes and resources and concluded that insufficient resources and attention is being given to consumer protection compared to prudential regulation.

We have held productive meetings with the Chairs of EIOPA and EBA to discuss how to improve user representation and consumer protection in the future.

Copies of the correspondence can be found below.

# FSUG Annual Report 2011



Brussels, 4 August 2011  
FSUG / MARKT/H3 D(2011)

Mr José Manuel Barroso  
President of the European  
Commission  
Rue de la Loi 200  
1049 Brussels

**Subject:** Financial user representation and effective consumer protection

Dear President,

The Financial Services User Group (FSUG) was established by the Commission to enhance the way the interests of ordinary financial users are represented at the heart of the policymaking process<sup>1</sup>. As Chairman, I am writing to you on behalf of FSUG to express our concerns about the operation of the new European Supervisory Authorities (ESAs).

In particular, we are concerned about:

- Financial user representation – specifically, the current composition of the EBA and EIOPA<sup>2</sup> stakeholder groups; and
- The apparent diminution of consumer protection within the priorities and activities of the EBA and EIOPA.

## Composition of ESA stakeholder groups

Following work undertaken by its predecessor organisation, FIN-USE, on the poor level of user representation at EU level<sup>3</sup>, FSUG has adopted user representation as one of its main priorities.

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<sup>1</sup> For full terms of reference and more detail of FSUG, please see our website: [http://ec.europa.eu/internal\\_market/finservices-retail/fsug/fsug\\_en.htm](http://ec.europa.eu/internal_market/finservices-retail/fsug/fsug_en.htm).

<sup>2</sup> FSUG did not have the time to review the more recent ESMA stakeholder group members decision.

<sup>3</sup> See *Position Paper on Consumer Voice in Financial Services*: [http://ec.europa.eu/internal\\_market/fin-use\\_forum/docs/consumer\\_voice\\_en.pdf](http://ec.europa.eu/internal_market/fin-use_forum/docs/consumer_voice_en.pdf).



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Suitable, well resourced user representation at the highest level of the policymaking process is critical for a number of reasons:

- it enhances regulatory governance and accountability by balancing the influence of powerful industry interests
- it significantly improves the capacity of user representatives to represent the interests of users at EU level and provides users with more direct involvement in the policymaking process
- it ensures policymakers abide by the principles of good consultation thereby improving the consultation process and
- most importantly, it improves the policymaking process by enabling policymakers to better understand the needs of users and avoid 'group-think'.

However, following our analysis of the constituents of the stakeholder groups, we must raise our concerns about the serious over-representation of industry interests on the groups (we have attached copies of the letters sent to the ESAs with analysis of group composition). For example:

- 15 members of the 30 member EBA stakeholder group are senior-level professionals employed and paid directly or indirectly by the banking industry. Ten are senior professionals from leading European banks. Five are from influential organizations that provide services to banks. The description of these paid service providers to the banking industry as 'users' in our view is misleading;
- Similarly, at least 15 members of both the EIOPA stakeholder groups are senior-level professionals employed and paid directly or indirectly by the financial industry.

In our view, the composition of the stakeholder groups falls well short of the intentions expressed in many public statements made by European Authorities since the financial crisis, committing to make the voice of financial services users "much more strongly heard on all financial issues", and to restore balance between the representation of financial services providers and that of users<sup>4</sup>. Specifically, this goes against both the spirit and the wording of new financial supervision regulations which require a balanced proportion between the representatives of financial services providers and financial services users (see Annex I, The regulations regarding the composition of the European Financial Stakeholder Groups).

Importantly, this must run the risk of the ESAs failing to properly understand the needs and interests of ordinary financial users and could undermine effective policymaking.

### Consumer protection

The lack of financial user representation is compounded by what appears to be a serious diminution of consumer protection in the remits of the ESAs.

We fully appreciate that given the instability in the EU financial markets, the ESAs (and indeed the Commission and other EU authorities) are currently focused on financial stability and prudential regulation. However, the lack of emphasis given to consumer protection in the ESAs' objectives, priorities and activities is quite striking.

For example, only one of the EBA's and EIOPA's objectives refers explicitly to customer protection – consumer protection is last on the list of objectives. Of course, we appreciate that other objectives may be used to support consumer protection by

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<sup>4</sup> See for example *Driving EU recovery* communication from the European Commission, 4.3.2009: "The interests of European investors, consumers and SMEs, must be at the centre of the reform..." "The Commission will ... ensure that the voice of European investors is much more strongly heard on all financial issues."

## FSUG Annual Report 2011

promoting market efficiency and transparency and so on. However, consumer protection is a specialist field requiring focus and substantial and dedicated resources.

Looking at the EIOPA work programme for 2011<sup>5</sup>, it appears that only a very small minority of the EIOPA's activities relate to consumer protection. For example, only 11 out of the 105 EIOPA 'deliverables' and only two of the 29 activities of the Joint Committee listed relate to specific consumer issues.

We do not have access to the EBA work programme for 2011/12 so we cannot comment on the share of regulatory activities attributed to consumer protection. However, looking at the EBA website, it appears that 24 staff work on various EBA policy areas<sup>6</sup>. But, just one staff member appears to have responsibility for consumer protection and conduct of business rules (as well as other policy areas within her brief).

To summarise, we have serious concerns that this lack of user representation and apparent diminution of consumer protection activities risks undermining the ability of the ESAs to understand the interests of ordinary financial users and effectively undertake this critical consumer protection role. It also risks creating the impression that consumer protection is not actually being given sufficient regard despite the very positive statements made by senior European policymakers and regulatory authorities about putting users at the heart of financial market reforms.

I have written to the chairmen of the EBA and EIOPA to express our concerns and to ask what can be done to address the deficiencies in the structure and operations of their respective institutions. However, we thought it important to also write to you ask you to use your authority to ensure these issues are properly addressed.

On behalf of FSUG, I would welcome the opportunity to discuss:

- (i) What immediate measures can be taken to remedy the composition of the group to ensure a balanced representation of stakeholders on the stakeholder groups, or at the very least offset the overrepresentation of industry interests? This should be done anyway as a matter of principle and in the interest of fairness. However, as explained above, we strongly believe that this provides significant benefits for the ESAs by maintaining confidence in and enhancing the ESA's policymaking process.
- (ii) How FSUG can help to ensure that consumer protection is effective and is given equal status in the ESA's priorities and activities? You may be interested to know that FSUG is developing new 'principles of consumer protection' which will be set out in a paper to be published before the end of the year. These principles are intended to help policymakers to effectively regulate financial markets for the ultimate benefit of financial users and covers issues such as consumer detriment analysis, prioritisation, effective interventions, and impact assessments. We would very much welcome the opportunity to share our thinking on this.

Yours sincerely,



Mick McAteer  
Chairman  
Financial Services User Group

<sup>5</sup> <https://eiopa.europa.eu/activities/annual-work-programme/index.html>

<sup>6</sup> <http://www.eba.europa.eu/Aboutus/Contacts/Eba-staff.aspx>

# FSUG Annual Report 2011



Brussels, 4 August 2011  
FSUG / MARKT/H3 D(2011)

Mr Andrea Enria  
Chairman of EBA  
European Banking Authority  
Tower 42 (level 18)  
25 Old Broad Street  
London EC2N 1HQ  
United Kingdom

**Subject: Financial user representation and effective consumer protection**

Dear Mr Enria,

The Financial Services User Group (FSUG) was established by the Commission to represent the interests of financial services users at the heart of the policymaking process<sup>1</sup>. As Chairman, I am writing to you on behalf of FSUG to express our concerns about certain aspects of the operation of the European Banking Authority (EBA).

In particular, we are concerned about:

- Financial user representation – specifically, the current composition of the EBA stakeholder groups; and
- The apparent diminution of consumer protection within the priorities and activities of the EBA.

## Composition of EBA stakeholder group

Following work undertaken by its predecessor organisation, FIN-USE, on the poor level of user representation at EU level<sup>2</sup>, FSUG has adopted user representation as one of its main priorities.

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<sup>1</sup> For full terms of reference and more detail of FSUG, please see our website: [http://ec.europa.eu/internal\\_market/finances-retail/fsug/fsug\\_en.htm](http://ec.europa.eu/internal_market/finances-retail/fsug/fsug_en.htm)

<sup>2</sup> See Position Paper on Consumer Voice in Financial Services: [http://ec.europa.eu/internal\\_market/fin-use\\_forum/docs/consumer\\_voice\\_en.pdf](http://ec.europa.eu/internal_market/fin-use_forum/docs/consumer_voice_en.pdf)

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FSUG Secretariat, % European Commission, BE-1049 Brussels, Belgium  
Internal Market and Services DG, Unit H3 – Retail financial services and consumer policy, SPA2 4/69  
Telephone: direct line +32 2 2992259

[http://ec.europa.eu/internal\\_market/finances-retail/fsug/index\\_en.htm](http://ec.europa.eu/internal_market/finances-retail/fsug/index_en.htm)  
Email: [markt-fsug@ec.europa.eu](mailto:markt-fsug@ec.europa.eu)

## FSUG Annual Report 2011

Suitable, well resourced user representation at the highest level of the policymaking process is critical for a number of reasons:

- it enhances regulatory governance and accountability by balancing the influence of powerful industry interests;
- it significantly improves the capacity of user representatives to represent the interests of users at EU level and provides users with more direct involvement in the policymaking process;
- it ensures policymakers abide by the principles of good consultation thereby improving the consultation process; and
- most importantly, it improves the policymaking process by enabling policymakers to better understand the needs of users and avoid 'group-think'.

In March 2011, the EBA announced the members of its Banking Stakeholder Group, established to facilitate EBA's consultation with "stakeholders" in Europe. However, following our analysis of the composition of the EBA stakeholder group, we must raise our serious concerns about the over-representation of industry interests and under-representation of dedicated financial user representatives on the group (see Annex I for details). We do not have access to biographies of all of the members of the stakeholder groups but from the analysis we have been able to undertake we would make the following points.

- 15 members of the 30 member Stakeholder Group are senior level professionals employed and paid directly or indirectly by the banking industry. Ten are senior professionals from leading European banks. Five are from influential organizations that provide services to banks. The description of these paid service providers to the banking industry as "users" in our view is misleading.
- The group includes only three members who in our view could be said to directly represent individual banking services users - this increases to four if one academic who is a member of FSUG is included.(see Annex I for detailed analysis).
- In addition, these three members are all from small countries. While we very much support the principle of ensuring that smaller countries are represented, it is important to recognise that these members will not have access to the same level of expert support and resource to challenge the industry representatives - including bank industry representatives from the international "mega" banking groups such as Deutsche Bank or BNP Paribas.
- There are no representatives of the banking savers and investors associations and none from the Pan-European financial services users' associations despite their applications.
- We have concerns about the independence of least one of the "top-ranking academics" given the source of funding they receive and the information included in CVs.



## FSUG Annual Report 2011

In our view, the make-up of the Banking Stakeholder Group falls well short of the intentions expressed in many public statements made by European Authorities since the financial crisis, committing to make the voice of financial services users "much more strongly heard on all financial issues", and to restore balance between the representation of financial services providers and that of users<sup>3</sup>.

Specifically, this goes against both the spirit and the wording of new financial supervision regulations (see attached Annex II) which require a balanced proportion between the representatives of financial services providers<sup>4</sup> and financial services users<sup>5</sup>.

Importantly, this must run the risk of the EBA failing to properly understand the needs and interests of ordinary financial users and could undermine effective policymaking.

### Consumer protection

The lack of financial user representation is compounded by the apparently limited role given to consumer protection in the EBA's objectives (see Annex III for a list of the EBA's objectives) and resources available for consumer protection activities.

We fully appreciate that the EBA is currently focused on financial stability. However, the lack of emphasis given to consumer protection is quite striking. Only one of the EBA's objectives refers explicitly to customer protection. Of course, we appreciate that the EBA's other objectives may be used to support consumer protection by promoting market efficiency and transparency and so on. However, consumer protection is a specialist field requiring focus and substantial and dedicated resources. We do not have access to the EBA work programme for 2011/12 so we cannot comment on the share of regulatory activities attributed to consumer protection. However, looking at the EBA website, it appears that 24 staff work on various EBA policy areas<sup>6</sup>. But, just one staff member appears to have responsibility for consumer protection and conduct of business rules (as well as other policy areas within her brief).

To conclude, we are concerned that this lack of user representation and apparent diminution of consumer protection activities risks undermining the ability of the EBA to understand the interests of ordinary financial users and effectively undertake this critical consumer protection role. It also risks creating the impression that consumer protection is not actually being given sufficient regard despite the very positive statements made by senior European policymakers and regulatory authorities about putting users at the heart of financial market reforms.

Therefore, on behalf of FSUG, I would welcome the opportunity to discuss these critical issues with you. In particular, I would like to discuss:

- (i) What immediate measures can be taken to remedy the composition of the group to ensure a balanced representation of stakeholders on the Stakeholder Group, or at the very least offset the overrepresentation of industry interests? This should be done anyway as a matter of principle and in the interest of fairness. However, as explained above, we strongly believe that this provides significant benefits for the EBA by maintaining confidence in and enhancing the EBA's policymaking process.

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<sup>3</sup> See for example : 4 March 2009 « *Driving EU recovery* » communication from the EC:  
« *The interests of European investors, consumers and SMEs, must be at the centre of the reform...*  
*The Commission will ... ensure that the voice of European investors is much more strongly heard on all financial issues* ».

<sup>4</sup> "credit and investment institutions"

<sup>5</sup> "consumers", "users of banking services"

<sup>6</sup> <http://www.eba.europa.eu/Aboutus/Contacts/Eba-staff.aspx>

## FSUG Annual Report 2011

- (ii) How FSUG can help to ensure that consumer protection is effective and is given equal status in the EBA's priorities and activities? You may be interested to know that FSUG is developing new 'principles of consumer protection' which will be set out in a paper to be published before the end of the year. These principles are intended to help policymakers to effectively regulate financial markets for the ultimate benefit of financial users and covers issues such as consumer detriment analysis, prioritisation, effective interventions, and impact assessments. We would very much welcome the opportunity to share our thinking on this.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mick McAteer'.

Mick McAteer  
Chairman  
Financial Services User Group

# FSUG Annual Report 2011



Brussels, 4 August 2011  
FSUG / MARKT/H3 D(2011)

Mr Gabriel Bernardino  
Chairman of EIOPA  
Westhafenplatz 1  
60327 Frankfurt am Main  
Germany

**Subject:** Financial user representation and effective consumer protection

Dear Mr Bernardino,

The Financial Services User Group (FSUG) was established by the Commission to represent the interests of financial services users at the heart of the policymaking process<sup>1</sup>. As Chairman, I am writing to you on behalf of FSUG to express our concerns about certain aspects of the operation of EIOPA.

In particular, we are concerned about:

- Financial user representation – specifically, the current composition of the EIOPA stakeholder groups; and
- The apparent diminution of consumer protection within the priorities and activities of the EIOPA.

#### Composition of the EIOPA stakeholder group

Following work undertaken by its predecessor organisation, FINUSE, on the poor level of user representation at EU level<sup>2</sup>, FSUG has adopted user representation as one of its main priorities.

Suitable, well resourced user representation at the highest level of the policymaking process is critical for a number of reasons:

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<sup>1</sup> For full terms of reference and more detail of FSUG, please see our website: [http://ec.europa.eu/internal\\_market/finances-retail/fsug/fsug\\_en.htm](http://ec.europa.eu/internal_market/finances-retail/fsug/fsug_en.htm)

<sup>2</sup> See Position Paper on Consumer Voice in Financial Services: [http://ec.europa.eu/internal\\_market/fin-use\\_forum/docs/consumer\\_voice\\_en.pdf](http://ec.europa.eu/internal_market/fin-use_forum/docs/consumer_voice_en.pdf)

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FSUG Secretariat, % European Commission, BE-1049 Brussels, Belgium  
Internal Market and Services DG, Unit H3 – Retail financial services and consumer policy, SPA2 4/69  
Telephone: direct line +32 2 2992259

[http://ec.europa.eu/internal\\_market/finances-retail/fsug/index\\_en.htm](http://ec.europa.eu/internal_market/finances-retail/fsug/index_en.htm)  
Email: [markt-fsug@ec.europa.eu](mailto:markt-fsug@ec.europa.eu)

## FSUG Annual Report 2011

- it enhances regulatory governance and accountability by balancing the influence of powerful industry interests;
- it significantly improves the capacity of user representatives to represent the interests of users at EU level and provides users with more direct involvement in the policymaking process;
- it ensures policymakers abide by the principles of good consultation and thereby improves the consultation process; and
- most importantly, it improves the policymaking process by enabling policymakers to better understand the needs of users and avoid 'group-think'.

On March 8, 2011, EIOPA announced the members of its two "stakeholder groups", the insurance and the pension ones, established to facilitate EIOPA's consultation with "stakeholders" in Europe. However, following our analysis of the composition of the EIOPA stakeholder groups, we must raise our serious concerns about the over-representation of industry interests and under-representation of dedicated financial user representatives on the groups (see Annex I for details). We do not have access to biographies of all of the members of the stakeholder groups but from the analysis we have been able to undertake we would make the following points.

### The Insurance and Reinsurance Stakeholder Group

- The 30 member Insurance and Reinsurance Stakeholder Group includes at the very least 15 members who are senior level professionals employed and paid directly or indirectly by the financial industry. EIOPA lists 10 'industry representatives', but we identified at least two more insurance industry executives (salaried by the insurance industry), one "bank-insurer", and at least two providers to the insurance industry (a lawyer and an actuary). EIOPA labels as "users" of the insurance industry people who actually are exactly the opposite: providers to the insurance industry, who render services to the industry and are paid by it.
- Only four members of the group appear to be there to directly represent "consumers". This increases to five if one academic who is a member of FSUG is included.
- There are no representatives of life insurance policy holders associations, despite their relevance and applications.
- We have concerns about the independence of at least one of the "top-ranking academics" given the source of funding they receive.
- The election of Ms Kay Blair from the UK FSA Consumer Panel as Vice Chair of the Insurance and Reinsurance Group is of course very welcome. But this is offset by the election of the Director General of the CEA as Chairperson of the group.

### The Occupational Pensions Stakeholder Group

- The 30 member Occupational Pensions Stakeholder Group includes at the very least 15 members who are senior level professionals employed and paid directly or indirectly by the financial industry. EIOPA lists 10 'industry representatives', but we found at least five providers to the pension industry (a lawyer, two actuaries, one auditor/consultant and one from the French "Institutions de Prévoyance"). As above, EIOPA labels as "users" of the pension industry people who actually are exactly the opposite: providers to the industry, who render services to the industry and are paid by it.
- Only four members of the group appear to be there to directly represent the many millions of European citizens participating pension schemes or pension funds. This increases to five if one academic who is a member of FSUG is included.
- There are no representatives of pension participants associations, despite their applications.

We would conclude that the composition of the EIOPA stakeholder groups fall well short of the intentions expressed in many public statements made on behalf of European Authorities since the financial crisis, committing to make the voice of financial services



## FSUG Annual Report 2011

users "much more strongly heard on all financial issues", and to restore balance between the representation of financial services providers and that of users<sup>3</sup>.

Specifically, we take the view that this goes against both the spirit and the wording of new financial supervision regulations (see attached Annex II) which require a balanced proportion between the representatives of financial services providers<sup>4</sup>; and financial services users<sup>5</sup>.

Importantly, this must run the risk of the EIOPA failing to properly understand the needs and interests of ordinary financial users and could undermine effective policymaking.

### Consumer Protection

The lack of financial user representation is compounded by the limited role given to consumer protection in the EIOPA's objectives<sup>6</sup> and limited consumer protection activities set out in EIOPA's work programme.

Only one of the EIOPA's objectives refers explicitly to customer protection. Of course, we appreciate that the EIOPA's other objectives may be used to support consumer protection by promoting market efficiency and transparency and so on. However, consumer protection is a specialist field requiring focus and substantial and dedicated resources.

On examining the EIOPA work programme for 2011<sup>7</sup>, it appears that only a very small minority of the EIOPA's activities relate to consumer protection. For example, only 11 out of the 105 EIOPA 'deliverables' and only two of the 29 activities of the Joint Committee listed relate to specific consumer issues.

To conclude, we have serious concerns that this lack of user representation and diminution of consumer protection activities risks undermining the ability of the EIOPA to understand the interests of ordinary financial users and effectively undertake this critical consumer protection role. It also risks creating the impression that consumer protection is not actually being given sufficient regard despite the very positive statements made by senior European policymakers and regulatory authorities about putting users at the heart of financial market reforms.

Therefore, on behalf of FSUG, I would welcome the opportunity to discuss these critical issues with you. In particular, I would like to discuss:

- (i) What immediate measures can be taken to remedy the composition of the group to ensure a balanced representation of stakeholders on the Stakeholder Groups, or at least offset the overrepresentation of industry interests? This should be done anyway as a matter of principle and in the interest of fairness. However, as explained above, we strongly believe that this provides significant benefits for the EIOPA by maintaining confidence in and enhancing the EIOPA's policymaking process.

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<sup>3</sup> See for example : 4 March 2009 « *Driving EU recovery* » communication from the EC:

*«The interests of European investors, consumers and SMEs, must be at the centre of the reform... The Commission will ... ensure that the voice of European investors is much more strongly heard on all financial issues».*

<sup>4</sup> "insurance and reinsurance undertakings and insurance intermediaries", "institutions for occupational retirement provision", "relevant professional associations"

<sup>5</sup> "consumers", "users", "representatives of SMEs", "beneficiaries", "users of financial services",

<sup>6</sup> see Annex III for a list of the EIOPA's objectives

<sup>7</sup> <https://eiopa.europa.eu/activities/annual-work-programme/index.html>

## FSUG Annual Report 2011

- (ii) How FSUG can help to ensure that consumer protection is effective and is given equal status in the priorities and activities of EIOPA? You may be interested to know that FSUG is developing new 'principles of consumer protection' which will be set out in a paper to be published before the end of the year. These principles are intended to allow policymakers to effectively regulate financial markets for the ultimate benefit of financial users and will cover issues such as consumer detriment analysis, prioritisation, identifying effective interventions, and impact assessments. We would very much welcome the opportunity to share our thinking on this.

I look forward to hearing from you.

Yours sincerely,



Mick McAteer  
Chairman  
Financial Services User Group

### ***Access to a basic payment account***

Access to a functioning payment account is critical if consumers are to participate fully and fairly in a modern transaction-based economy. So, we wrote to President Barroso and Commissioner Barnier to express our serious concerns regarding what was in our view an inexplicable decision to withdraw the legislative proposal on access to a basic payment account. 'Soft law' is inappropriate in such important matters of principle and where consumers' basic rights of access are involved.

We have demanded that the Commission review its position and take forward a legislative proposal in 2012 to protect the interests of millions of the most financially vulnerable citizens in the EU.

Copies of the correspondence can be found below.

# FSUG Annual Report 2011



Brussels, 14 July 2011  
FSUG / MARKT/H3 D(2011)

Mr José Manuel Barroso  
President of the European  
Commission  
Rue de la Loi 200  
1049 Brussels

**Subject: Withdrawal of Commission's legislative proposal on access to a basic payment account**

Dear President,

The Financial Services User Group (FSUG) was established by the European Commission to represent the interests of financial services users at the heart of the policymaking process<sup>1</sup>. As such we are writing to express our serious concerns over the decision of the European Commission to withdraw the legislative proposal on Access to Basic Bank/Payment Accounts.

The decision appears contradictory to stated public policy since it was identified as an essential point in the Single Market Act to increase growth and confidence and was planned in the 2011 European Commission Work Programme.

Many studies conclude that having access to a bank account is crucial for citizens to integrate into society and to live a decent social and economic life.<sup>2</sup> Moreover, it is stated in the Financial Services Action Plan, adopted in 1999 that financial inclusion is an essential step towards achieving an integrated EU financial services market. Also, the 2005-2010 EU Financial Services Policy White Paper underlines that "accessing a bank account is the entry point for most consumers to financial services and markets and increasingly important for citizens to participate in the market and society".

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<sup>1</sup> For full terms of reference and more detail of FSUG, please see our website: [http://ec.europa.eu/internal\\_market/finances-retail/fsug/fsug\\_en.htm](http://ec.europa.eu/internal_market/finances-retail/fsug/fsug_en.htm).

<sup>2</sup> *Financial services provision and prevention of financial exclusion*, European Commission, VC/2006/0183, <http://www.fininc.eu/gallery/documents/final-report-2007-and-summary/financial-services-provision-and-prevention-of-financial-exclusion-final-report.pdf>.

## FSUG Annual Report 2011

Furthermore, there is an important matter of principle involved. The basic rights and human dignity of financially vulnerable citizens is at stake here in the sense of DG Justice's official position: "The EU is based on the values of human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities."

In our view, a simple Recommendation is not the right solution. We strongly believe that it cannot be as effective as a legislative proposal to solve the bank account access problem to the 30 million concerned citizens in Europe. Indeed, too many Recommendations end up not being implemented.

Soft law processes should not be used in cases of basic rights of citizens being concerned: Already in 2001, the European Consumer Law Group<sup>3</sup> argued that "Soft law is not appropriate, ..., to deliver a universal service. There is no community of interest between businesses who do not need those who are unprofitable as customers and those who although unprofitable, have a basic need for the service provided." Self-regulation creates unequal situations between Member States. Therefore, citizens in some Member States are financially and socially excluded. Soft law is not a good way for the European Commission to combat financial exclusion in Europe.

Not having access to a basic bank account can make other key financial services remain inaccessible: they are too time-consuming or expensive. Finding a place to live or a job can become very difficult since most salaries are paid in a bank account. In summary, these citizens are marginalised.

The European Commission must now in 2011 show its role and understanding of the problem that to millions of European citizens are facing, by reviewing its position and going forward with the legislative proposal on an EU-wide right to a current account.

Best regards,



Mick McAteer  
Chairman  
Financial Services User Group

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<sup>3</sup> [http://ec.europa.eu/consumers/policy/ecdg/rep03\\_en.pdf](http://ec.europa.eu/consumers/policy/ecdg/rep03_en.pdf)

# FSUG Annual Report 2011



Brussels, 14 July 2011  
FSUG / MARKT/H3 D(2011)

Mr Michel Barnier  
European Commissioner for  
Internal Market and Services  
European Commission  
BERL 10/034  
B-1049 Brussels

email: [michel.barnier@ec.europa.eu](mailto:michel.barnier@ec.europa.eu)

**Subject: Withdrawal of Commission's legislative proposal on access to a basic payment account**

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<sup>2</sup> *Financial services provision and prevention of financial exclusion*, European Commission, VC/2006/0183, <http://www.fininc.eu/gallery/documents/final-report-2007-and-summary/financial-services-provision-and-prevention-of-financial-exclusion-final-report.pdf>.

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FSUG Secretariat, % European Commission, BE-1049 Brussels, Belgium  
Internal Market and Services DG, Unit H3 – Retail financial services and consumer policy, SPA2 4/69  
Telephone: direct line +32 2 2992259

[http://ec.europa.eu/internal\\_market/finances-retail/fsug/index\\_en.htm](http://ec.europa.eu/internal_market/finances-retail/fsug/index_en.htm)  
Email: [markt-fsug@ec.europa.eu](mailto:markt-fsug@ec.europa.eu)



## FSUG Annual Report 2011

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Best regards,



Mick McAteer  
Chairman  
Financial Services User Group

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<sup>3</sup> [http://ec.europa.eu/consumers/policy/ecdg/rep03\\_en.pdf](http://ec.europa.eu/consumers/policy/ecdg/rep03_en.pdf)

### ***Principles of external relationships of FSUG (Financial Services User Group)***

FSUG was set up to enhance the effectiveness and efficiency of user representation for the future. Therefore it is necessary to widen the communication and dissemination of FSUG opinions. It is agreed within FSUG to establish better relationships with the European Parliament and the new European System of Financial Supervisors. According to the Terms of Reference of the Financial Services User Group, FSUG will in agreement with the Commission liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level, as well as to other consultative groups administered by the Commission.

For that reason FSUG has discussed and developed some principles on how to establish external relations.<sup>3</sup> One important general principle is to increase the visibility of FSUG. Thus, finalised FSUG answers and opinions have been made accessible to the public through the FSUG-homepage.<sup>4</sup> The FSUG is also to be found in different categories of the homepage of EC.<sup>5</sup>

Another important principle of external communication is the participation of FSUG members in meetings to discuss FSUG concerns. For example, on 8 September 2011 the FSUG representatives Mr Mick McAteer (Chairman) and Mr Guillaume Prache (Vice-chairman) met the Chairman of the European Insurance and Occupational Pensions Authority (EIOPA), Mr Gabriel Bernardino.

Furthermore, in accordance with the European Commission, FSUG will proactively contact organisations and groups of particular interest by a letter in order to inform about the mandate of the group and the possibility of finding FSUG opinions on the FSUG website. This letter will be sent out shortly.

### ***Events FSUG members have attended***

FSUG members are members of the stakeholder groups of the European Banking Authority (EBA), European Securities Markets Authorities (ESMA), and European Insurance and Occupational Pensions Authority (EIOPA) and attend these meetings on a regular basis.

### **European Multi-Stakeholder Forum on Electronic Invoicing**

The European Commission set up a European Multi-Stakeholder Forum on Electronic Invoicing and invited a member of the FSUG to participate. The Forum consists of representatives nominated from the 27 Member States of the EU. An FSUG member has been invited to represent consumers and micro-business entities. FSUG believe that it is important that the debate and policies regarding e-invoicing in the EU must consider consumer and micro entities needs and their rights. The first meeting was on 13 September 2011 in Brussels. Four Task Forces were created to address varying issues. FSUG's representative is participating in the Task Force that is examining best practice in Member States.

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<sup>3</sup> Discussion over draft principles for external relationships of the FSUG at the FSUG meetings of 12-13 May, 6-7 July and 20-21 September.

<sup>4</sup> [http://ec.europa.eu/internal\\_market/finservices-retail/fsug/fsug\\_en.htm](http://ec.europa.eu/internal_market/finservices-retail/fsug/fsug_en.htm)

<sup>5</sup> See glossary [http://ec.europa.eu/internal\\_market/glossary\\_en.htm](http://ec.europa.eu/internal_market/glossary_en.htm) and related links [http://ec.europa.eu/internal\\_market/related\\_sites\\_en.htm](http://ec.europa.eu/internal_market/related_sites_en.htm).



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### **Other events**

FSUG members have also attended the following events on behalf of the FSUG:

- March 2011: European Parliamentary Financial Services Forum lunch event on Responsible lending and borrowing
- April 2011: EPFSF event on Retail Investors Protection
- May 2011: Meeting of Advisory Board of CHASM (Centre on Household Assets and Savings Management – University of Birmingham)
- September 2011: Meeting between FSUG (chair and vice chair) and EIOPA Chairman, Mr Gabriel Bernardino
- October 2011: Meeting between FSUG chair and EBA Chairman, Mr Andrea Enria
- October 2011: FSUG member spoke at public hearing on Insurance and Natural Catastrophes

## SPECIAL FEATURE

### EU Collective Redress: needed more than ever

by Carlos Zarco Pleguezuelos

*FSUG is urging the creation in Europe of a strong, coherent and binding Consumer Collective Redress legislative framework proposal, not only to strengthen the enforcement of EU law, but also to provide consumers with strong procedural 'tools' in order to tackle the increasingly unfair commercial practices and gouging tactics emerging from the ongoing financial crisis.*

While FSUG agrees that it may not be an easy task for the EU Commission to undertake, it is clear that a binding legislative proposal must be enacted, to protect consumers and other financial users and to provide them with better tools in order to tackle the inadequate application of consumer law in the retail financial services area. This is now particularly important in the specific context of low economic growth, squeezed household incomes, high debt levels, low financial returns and squeezed revenues. All of this is clearly damaging millions of consumers in the post-financial crisis world. European financial services users have already experienced, in recent years, major risks in the form of unfair market practices, and financial industry gouging tactics to maintain profit margins.

Clear evidence of such detriment is the collective actions that have recently boomed in Spain. ADICAE<sup>6</sup> has lodge at court, on behalf of more than 20 000 claimants so far, a 'macro-lawsuit' against 101 financial entities, pursuing a judicial statement that 'ground clauses', which had been surreptitiously introduced by the banking industry to approximately four million mortgage deeds since the beginning of the crisis, are null and void.

Consumers, retail savers/investors and all users of financial services, including SMEs, are faced with mass detriment situations. While recognising that the performance of existing EU enforcement tools in those situations is not satisfactory, the European Commission has not yet taken any concrete measures but has chosen to engage again in a horizontal public consultation<sup>7</sup> to which FSUG produced an appropriate position paper.<sup>8</sup>

Collective redress covers a specific situation where the (same) illegal behaviour (fraudulent or not) of a provider or an issuer harms several individuals. As stated in studies undertaken on behalf of the European Commission, the sector most implicated in mass claims/issues is the financial services sector. In the absence of efficient redress mechanisms, most victims are not compensated for the damages they have suffered. Furthermore, the lack of compensation provisions is a major deficiency in a legal system and allows for illegal profit to be retained by businesses.

This is why the FSUG is in favour of an EU-wide initiative which should take the form of a binding instrument. A collective redress mechanism should be available to all European consumers for both national and cross border cases irrespective of the value of the claim.

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<sup>6</sup> ADICAE is the Spanish Association of Users of Banks, Saving and Insurances.

<sup>7</sup> *Towards a Coherent European Approach to Collective Redress*, SEC(2011)173 final, 4.2.2011.

<sup>8</sup> [http://ec.europa.eu/internal\\_market/finances-retail/docs/fsug/opinions/collective\\_redress-2011\\_04\\_29\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/fsug/opinions/collective_redress-2011_04_29_en.pdf)

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The FSUG main recommendations are the following:

- Introducing EU mechanisms of collective redress in order to enforce EU law based on a legally binding approach.
- Private collective redress should be independent of enforcement by public bodies.
- Main features of an efficient and effective system of collective redress should be defined at EU level.
- Group representative should act on behalf of identified or not yet identified victims.
- Victims should be properly informed about the progress of ongoing collective actions.
- Recourse to truly independent alternative means of dispute resolution before or in parallel to the formal introduction of the complaint should remain voluntary for consumers and other financial users, and free of cost.
- Efficient and appropriate mechanisms for financing collective redress should be foreseen.

It seems sensible that some safeguards against possible abusive collective actions by non-qualified organisations (i.e. pseudo-associations being set up ‘ad hoc’ by alleged victims’ advocates) should be included in the envisaged legislation. Only qualified organisations should be allowed to bring actions, without any additional prerequisite. Concerning ad hoc group actions, their representativeness should always be checked by court. It would be an error for the success of the legislation to generalise to every possible plaintiff access to collective action. This would only act as an important additional deterrent to take legal action for legitimate and duly accredited consumer organisations. In this respect it must be kept in mind that, experience from those Member States where collective actions are already in place (like Spain or Portugal), proves that although hundreds of collective (injunctive and compensatory) actions have been brought to court by consumer associations so far no abuse of court proceedings<sup>9</sup> has been reported.

Given the great diversity in the approach taken by Member States, FSUG has not reached a common position on opt-in/opt-out. However, FSUG members agree whatever system is put in place, that the European Union core values and legal traditions should be respected and the system should be devised in such a way as to be as effective as possible and ensure the possibility for the inclusion of a maximum number victims particularly vulnerable ones.

It is absolutely necessary that the envisaged legislations should also provide for:

- 1) An increase in information for consumers about their rights, and available conflict resolution systems.
- 2) Designing and implementing an out-of-court conflict resolution system (ADR) for consumers throughout the EU, with participation of consumer associations and characterised by the principles of independence, impartiality and effectiveness.
- 3) Improve and strengthen the role of consumer associations in collective defence.
- 4) Newly created consumer specialised courts in charge of collective redress.

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<sup>9</sup> *Evaluation of the effectiveness and efficiency of collective redress mechanisms in the EU – Part I: Main Report*, p. 78.

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- 5) As regards the access to justice of small shareholders, in view that setting standards of good governance has not been successful, so it is needed to enhance the defence of small shareholders as consumers, i.e. establishing different, more affordable requirements in order to challenge the agreements, or request to convene of managing boards, when these actions are undertaken by the qualified organisations.
- 6) To avoid any hindrance to consumer/users associations to initiate these collective actions, including establishing mechanisms for rapid and effective means to grant legal aid to them, and weighing up the amounts of bails required by procedural laws, which in many cases become an absolute obstacle to the proper access to justice.
- 7) Establishing specific procedures for rapid resolution of legal proceedings to which consumers come in bulk.
- 8) Regulating collective actions for all Member States, without endanger efficient existing national legislations, including how to exercise them when they have a cross-border outreach.

Last but not least, there is a single market in motion that affects all Europeans and all consumers and users but, there is not yet an effective model of justice to solve problems of consumption, which motivate the citizens' lack of confidence in this great European Internal Market. While this continues, we cannot talk about a market where consumers can trust, that is why FSUG is hoping the ongoing Commission's initiative strikes a balance, like the steelyard of justice.

Carlos Javier Zarco Pleguezuelos  
Member of FSUG

## **SUMMARY OF MINUTES: FSUG MEETINGS FROM JANUARY TO OCTOBER 2011**

The following provides a brief summary of the issues discussed at the FSUG meetings.

### ***27 January 2011***

Welcoming words – Mr Jean-Yves Muylle, Head of Unit H3: Retail issues, consumer policy and payment systems (Internal Market and Services DG) and Ms Maria Cristina Russo, Head of Unit B4: Financial services and redress (DG Health and Consumers)

Retail financial services and Payments issues – presentation by Mr Jean-Yves Muylle and Mr Sebastian Bohr, Deputy Head of Unit B4, DG Health and Consumers – Discussion of the priorities of the FSUG

Public consultation on Packaged retail investment products – presentation by Mr Timothy Shakesby and Ms Esther Wandel, Unit G4 - Asset management, Internal Market and Services DG

Review of Markets in financial instruments directive and the Consumer market study on advice – presentation by Mr Timothy Shakesby and Ms Angela Black, Unit B4, DG Health and Consumers

Work in the area of behavioural economics – presentation by Mr Dragos Trusca, Unit B1 - Consumer markets, DG Health and Consumers

Bank fees transparency initiative – presentation by Ms Sarah Lynch, Unit H3 - Retail issues, consumer policy and payment systems (Internal Market and Services DG) and Ms Angela Black

Mystery shopping study on switching bank accounts – presentation by Ms Angela Black

Public consultation on the Level 2 implementing measures for Solvency II – presentation by Ms Charlotte Paterson, Unit H2 - Insurance and pensions, Internal Market and Services DG

Commission Communication: Reinforcing sanctioning regimes in the financial sector – presentation by Mr Jan Ceyssens and Ms Raffaella Assetta, Unit G1 – Financial Services Policy, Internal Market and Services DG

### ***22–23 February 2011***

Consultation on the use of alternative dispute resolution (ADR) as a means to resolve disputes related to commercial transactions and practices in the EU – presentation by Mr Sebastian Bohr (DG Health and Consumers/B4) – discussion of FSUG response

Public consultation: Towards a coherent European approach to Collective Redress – presentation by Mr Sebastian Bohr – discussion of FSUG response

Election of chairperson and vice chairperson

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Public consultation on legislative changes to the UCITS depositary function and to the UCITS managers' remuneration – finalising FSUG response

Public consultation on the Level 2 implementing measures for Solvency II – finalising FSUG response

Consultation on the Review of the Insurance Mediation Directive – finalising FSUG response

Discussion of the FSUG priorities and research programme

Review of Markets in financial instruments directive – finalising FSUG response

Consultation on the study of interest rate restrictions – finalising FSUG response

Presentation of the Finance Watch initiative by Mr Thierry Philipponnat, project manager

Consultation on technical details of a possible European crisis management framework – presentation by Mr Mattias Levin (Internal Market and Services DG/H1) – discussion of FSUG response

Update on Insurance Guarantee Schemes – presentation by Mr Javier Martin Membiela (Internal Market and Services DG/H2)

### ***12–13 April 2011***

Intervention by Ms Paola Testori Coggi, Director General of DG Health and Consumers

Follow-up to the Green Paper on Pensions – presentation by Mr Eelke Postema (Internal Market and Services DG/H2)

Update on work on combating discrimination against vulnerable consumers in financial services – presentation by Mr Tobias Müllensiefen (Justice DG)

The Social Business Initiative: How to encourage social investment? – presentation by Ms Esther Wandel (Internal Market and Services DG/G4)

Impacts of Case C-236/09, Test-Achats on the EU internal insurance market – presentation by Lukas Bortel (Internal Market and Services DG/H2)

Discussion of membership of ESA stakeholder groups

External relationships of FSUG

FSUG work programme regarding priorities and research projects

Discussion of Terms of References of studies

Update on retail financial services – presentation by Internal Market and Services DG/H3

Intervention by Mr Jonathan Faull, Director General of Internal Market and Services DG

Public consultation based on a Green Paper: The EU corporate governance framework – presentation by Mr Matthias Schmidt-Gerdt (Internal Market and Services DG/F2)

## **FSUG Annual Report 2011**

Legislation on central securities depositaries (CSDs) – presentation by Ms Felicia Stanescu & Mr Marcel-Eric Terret (Internal Market and Services DG/G2)

Consultation on taxation problems that arise when dividends are distributed across borders to portfolio and individual investors and possible solutions – presentation by Ms Marina Whitehouse (Taxation and Customs Union DG/D2)

Public consultation: Towards a coherent European approach to Collective Redress – finalisation of FSUG response

### **12–13 May 2011**

State of play of the Basel III implementation projects – presentation by Mr Mario Nava (Internal Market and Services DG/H1)

Public consultation based on a Green Paper: The EU corporate governance framework – discussion of FSUG response

Presentation of the Draft guidelines of the Commission for the calculation of APR in the Directive on consumer credit agreements – presentation by Ms Maria Lissowska (Health and Consumer Policy DG/B4)

Update on the Packaged Retail Investment Products (PRIIPs) initiative – presentation by Ms Esther Wandel and Mr Timothy Shakesby (Internal Market and Services DG/G4)

FSUG work programme regarding priorities and research projects – discussion with relevant policy officers on draft proposals for Terms of References of studies in three separate working groups

Legislation on central securities depositaries (CSDs) – discussion of FSUG response

Update on the Review of the Markets in Financial Instruments Directive (MiFID) – presentation by Mr Salvatore Gnoni/Mr Hannes Huhtaniemi (Internal Market and Services DG/G3)

Update on the Review of the Market Abuse Directive (MAD) – presentation by Mr Philip Tod (Internal Market and Services DG/G3)

Standardisation of corporate actions and general meeting processes – presentation by Mr Christoph Schieble (Internal Market and Services DG/G2)

Overview of draft proposals on Terms of References for studies

Discussion of membership of ESA stakeholder groups including a discussion over FSUG complaint letters on consumer/retail investor underrepresentation in the ESA's advisory groups – finalisation of FSUG reaction

External relationships of FSUG

### **6–7 July 2011**

Update on Finance Watch – presentation by Mr Thierry Philipponnat (Secretary General, Finance Watch)



## **FSUG Annual Report 2011**

EU multi-stakeholder forum on E-invoicing – presentation by Mr Gerd Heinen (Internal Market and Services DG/H3)

The Social Business Initiative – presentation by Ms Esther Wandel (Internal Market and Services DG/G4)

BEUC's Report on Financial Supervision in the EU – A consumer perspective – presentation by Ms Anne Fily (Head of Legal & Economic Department, BEUC)

Consumer Market Study on Advice within the area of Retail Investment Services – presentation by Ms Angela Black (Health and Consumer Policy DG/B4)

FSUG work programme regarding priorities and research projects – Finalisation of Terms of Reference for FSUG studies

Public consultation based on a Green Paper: The EU corporate governance framework finalisation of FSUG response

Update on the initiative on access to a basic payment account – presentation by Mr Philippe Pellé (Internal Market and Services DG/H3)

Bank recovery and resolution framework – presentation by Mr Laszlo Butt (Internal Market and Services DG/H4)

New initiatives in the field of credit rating agencies – presentation by Mr Michael Fridrich (Internal Market and Services DG/H4)

Review of Deposit Guarantee and Investor Compensation schemes – presentation by Mr Charles Canonne (Internal Market and Services DG/H4)

Consumer Market Scoreboard – presentation by Ms Margareta Theelen (DG Health and Consumers/B1)

Simplification of Member States' withholding tax relief procedures – presentation by Ms Federica Liberatore (Taxation and Customs Union DG/D2)

Discussion over expectations of 20-21 September meeting to be held in another Member State – location & logistical support, draft agenda

Discussion over FSUG complaint letters on consumer/retail investor under-representation in the ESA's advisory groups

Discussion over draft principles for external relationships of the FSUG

### ***20–21 September 2011 (Athens)***

Debrief from the meeting with the Chairman of the European Insurance and Occupational Pensions Authority (EIOPA) by Mr Mick McAteer and Mr Guillaume Prache

Basic principles for consumer protection in the area of financial services – discussion over FSUG draft proposal

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Panel discussion over:

- Financial and social impacts of the financial crisis on ordinary Greek citizens. What measures are regulators taking to protect citizens from such impacts? – presentation by Dr Dimitris Spyarakos, General Secretary for Consumers, Ministry of Labour and Social Affairs
- Accountability and citizen representation. Are Greek citizens able to hold policymakers, regulators, and banks to account? Do citizens/civil society groups contribute to the major decisions being made? – presentation by Mr Victoras Tsiafoutis, EKPIZO (Consumer Organisation)

The impact of the Greek crisis on small enterprises and small entrepreneurs as users of financial services – presentation by Dr. Christos Ioannou, Hellenic Confederation of Professionals, Craftsmen and Merchants (GSEVEE)

Collective redress as an FSUG priority – discussion over draft document

Long term performance – the primary factor for pensions' adequacy and sustainability (hard lessons from a real case) – presentation by Mr Guillaume Prache, Managing Director, EuroInvestors

Discussion over research projects – update on state of play of Terms of Reference and tender procedure including:

- Discussion over 2012 FSUG meeting dates
- Discussion over 2012 FSUG research projects

Administrative matters of interest for FSUG by Mr Maciej Berestecki (DG Internal Market and Services, Unit H3)

- Transparency Register and open consultations of the European Commission
- CIRCA site for FSUG use

ADR/ODR legislative proposal – presentation by Mr Xenios Xenophontos (DG Health and Consumers, Unit B4)

The impact of the new, low-growth/debt deleveraging economic paradigm on the financial services sector: How will this affect financial users in terms of restricted access, higher prices or product design? – Introduction by Mr Mick McAteer followed by FSUG discussion

Principles for external relationships of the FSUG – finalisation of proposal

Financial supervision – discussion over draft letter on how the European Commission intends to tackle financial supervision with regards to consumer protection

### **18–19 October 2011**

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

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

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

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

Review of FSUG response on OECD consultation on Financial consumer protection – presentation by Ms Catherine Garcia (member of the FSUG)

Basic principles for consumer protection – discussion over FSUG draft paper

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

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

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

Principles and Practices of Financial Market Regulation – discussion over FSUG draft paper

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

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

Collective redress – discussion over FSUG draft paper

Selection procedure of contractors of DG Internal Market and Services' Framework Contract – presentation by Ms Vanessa de Bruyn (Internal Market and Services DG/B2)

## FSUG Annual Report 2011

### FSUG MEMBERS

FSUG has 20 members, who are individuals appointed to represent the interests of consumers, retail investors or micro-enterprises, and individual experts with expertise in financial services from the perspective of the financial services user.

Name	Nationality	Title
McATEER Mick Chairman	UK	Founder-Director, The Financial Inclusion Centre Non-executive Director, The Financial Services Authority (FSA)
PRACHE Guillaume Vice Chairman	FR	Managing Director, European Federation of Investors (EuroInvestors)
BAYOT Bernard	BE	Managing Director, Réseau Financement Alternatif (RFA)
BREHONY Maeve	IE	Representative, Unite the Union & Uni Global
COTTRELL Vera	UK	Principal Policy Advisor, Which? Consumer Association
DASKALAKIS Nikolaos	EL	Head of Market and Entrepreneurship, Hellenic Confederation of Professional, Craftsmen and Merchants (GSEVEE)
DUPAL Libor	CZ	Chairman, Czech Consumer Association
FAY Patrick J	IE	Credit Union Expert, Director Irish League of Credit Unions
FERRETTI Federico	IT	Lecturer in Law, Brunel University West London
FILY Anne	FR	Head of the Economic and Legal Department, European Consumers' Organisation (BEUC)
GARCÍA PORRAS Catherine Ivonne	NL	Doctoral Researcher, Behavioral Approaches to Contract and Tort: Relevance for Policymaking Research Programme - Erasmus University Rotterdam
HÖLZ Christiane	DE	Member of Legal Committee, Euroshareholders
IACOB Alin-Eugen	RO	Editor in Chief, Conso Media Group Srl

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JARVIS Robin	UK	Professor, Accounting Brunel University Head of SME Affairs, Association of Chartered Certified Accountants (ACCA)
KAWIŃSKI Marcin	PL	Lecturer, Warsaw School of Economics Member, IRSG and OPSG of EIOPA, BSG of EBA
PARENT Anne-Sophie	BE	Secretary General, AGE Platform Europe
PRANTNER Christian	AT	Expert of financial services, Federal Chamber of Labour
ŠEBO Ján	SK	Associate Professor, Matej Bej University Consultant, Independent Traders Club
WESTPHAL Manfred	DE	Head of Financial Services Department and Member of Management, vzbv (Federation of German Consumer Organisations)
ZARCO PLEGUEZUELOS Carlos Javier	ES	Lawyer, Spanish Association of Users of Banks, Savings Banks and Insurances (ADICAE)



**FSUG**  
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