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Content



Financial Services User Group (FSUG)

FSUG response to the European Ombudsman's public consultation concerning the composition of European Commission expert groups

About the FSUG

The Financial Services User Group FSUG was set up by the European Commission to improve the level of user representation in the EU policymaking process and counter balance lobbying of the industry. Our task is to advise the Commission in the preparation of legislation or policy initiatives which affect retail users of financial services and provide insight, opinion and advice concerning the practical implementation of such policies. We proactively seek to identify key financial services issues which affect users of financial services and liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level. The FSUG has 20 members, who are individuals appointed to represent the interests of retail users such as consumers, retail investors or micro-enterprises, and individual experts with expertise in financial services from the perspective of the financial services user. The FSUG members are fully compensated by the Commission; they are remunerated for their services¹ apart from receiving allowances for participation in the FSUG meetings and reimbursement of travel expenses.

Introductory note

The FSUG welcomes the Ombudsman's consultation and Her recognition of the importance of the composition of expert groups for ensuring a balanced policy making process. The past years have shown that input into the policymaking process by users of financial services is essential for restoring and maintaining a stable, reliable and inclusive financial system². We recognize that notable progress has been made in this field by ensuring a more balanced composition of expert groups which has enhanced the quality of user input. The most significant measures taken are the establishment of horizontal rules and a public register for expert groups, the creation of Finance Watch in 2011 as well as increased support for organizations and individual experts representing the interests of users in providing input to the Commission³.

1. Which specific Commission expert groups do you consider to lack a balanced representation of relevant areas of expertise and interest in their membership? What,

¹ The FSUG members are remunerated with an annual fee of EUR 10 000 for their services.

² See for example Annex IV: 4 March 2009 « Driving EU recovery » communication from the EC, Annex I, page 4: «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”.

³ Guillaume Prache, The role of civil society in EU financial regulation, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2362785

according to you, is the root cause of the unbalanced composition of the Commission expert groups identified by you?

We would like to stress that underrepresentation of consumer and user interest in financial services expert groups often stems simply from the fact that these representatives only constitute a minority in the composition of an expert group. However, even when there is a numeric balance of representatives, retail users representatives also have considerably less resources to dedicate sufficient time and resources for work in an expert group. Unlike representatives from the financial industry, consumers and some other users additionally cannot count as much on support of staff, colleagues and related networks. Assuming a numerical balance is achieved, it is essential that the expert groups at least minimize the disparity of resources between the experts from the consumer and user spectrum and those from the industry. The problem of capacities is dealt with more broadly under Question 6.

We have noticed issues that lead to an unbalanced output of expertise in the following EU expert groups:

European Commission Groups

- Payment systems market expert group PSMEG: while the FSUG members recognize that progress has been made in this group, which helps the Commission prepare legislative acts or policy initiatives on payment issues, since the number of retail user representatives has increased, the large size of the group means that it is impossible for the consumer and user organizations to appoint enough members to achieve a balanced membership. The principal reason is the limited personnel capacities of the NGOs representing retail user interest. Realistic remuneration of the NGO experts' contribution to this group would make possible a balanced composition of the group by improving the numerical balance while making it easier for NGO experts there to dedicate the necessary amount of time and resources for the engagement in the group's work.
- EU Expert Group on taxation of savings (EUSD): This expert group advises the EC DG Taxation and Customs Union (TAXUD) on the taxation of income from savings and investments following the release of the EU Savings Directive on the taxation of interest income in the EU. Only one retail user representative has been appointed to this group⁴.
- The Pension Forum (Committee in the area of supplementary pensions): This expert group was set up in 2001 to advise the EC (DG EMPL) about any problems and developments at Community level affecting supplementary pensions. The pension forum assists the Commission in particular in finding solutions to the problems and obstacles associated with cross-border mobility of workers in the area of supplementary pensions. The pension forum works, where necessary, in cooperation

⁴ Latest available list of members

http://ec.europa.eu/taxation_customs/resources/documents/taxation/personal_tax/savings_tax/consultation/eusd/63_members.pdf

with any other appropriate bodies or committees dealing with social and economic policy. To our information, there is only one user representative of this group that counts 45 members⁵.

- The Group of Experts on removing tax problems facing individuals who are active across borders within the EU: this group has been set up by DG TAXUD in 2014 after the winding down of the EUSD (see above). Better finance's (the European Federation of financial Services Users) application was rejected by the EC⁶, and it is impossible to identify in the Register of Commission expert groups if any other retail user expert was selected in this 40 member expert group⁷. Indeed, the Register only mentions as "member type": "Individual expert appointed as representative of an interest", but fails to specify which interest it is and which organisation(s) the expert member works for.

Other expert groups at key EU institutions

FSUG would like to stress the importance of high standards of representation and balanced composition of expert groups at all EU institutions. We encourage the Ombudsman to look into how expert input is provided elsewhere in the EU institutional framework. We would like to call your attention to specific EU institutions where the FSUG members see a problem of underrepresentation of retail users' policy input:

- Stakeholder groups at EBA, EIOPA and ESMA: the serious problems of geographical imbalance and an unfair capture of "users of financial services" by financial companies such as auditing houses, professional associations or rating agencies, on which BEUC and EuroInvestors submitted complaints which have already been addressed by the Ombudsman's decisions⁸ as well as, to a certain degree, by the three supervisory authorities when constituting new stakeholder groups in 2013 and 2014. Despite the improved situation, imbalances still remain. For example, the relationship between the providers and users of pension services in the Occupational Pensions Stakeholder Group at EIOPA is still unbalanced with 15 industry representatives to 4 retail user representatives and thus contrary to the requirement of article 37.3 of the EIOPA Regulation.

Also, we regret to see the three supervising authorities are still not complying with the provision of the regulation requiring that "*adequate compensation shall be provided to members of the Stakeholder Groups representing non-profit organisations, excluding*

⁵ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailPDF&groupID=1218>

⁶ <http://www.betterfinance.eu/media/latest-news/news-details/article/the-european-commission-excludes-citizen-representatives-from-discussions-on-cross-border-taxation/>

⁷ List of members:

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3041&NewSearch=1&NewSearch=1>

⁸ EBA inquiry: <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/52432/html.bookmark>, EIOPA inquiry: <http://www.ombudsman.europa.eu/cases/decision.faces/en/53669/html.bookmark>, ESMA inquiry: <http://www.ombudsman.europa.eu/cases/decision.faces/en/52944/html.bookmark>

*industry representatives*⁹. Indeed, those members still only receive an allowance of € 150 per meeting day and € 150 for preparing the meeting, i.e. € 18.75 per hour (gross of social contributions and income tax). This is obviously not “adequate” for international financial user-side experts, when one compares it for example to the hourly rate of senior commercial consultants hired by European Public Authorities. This also obviously contributes to the imbalance in the representation of retail financial user interests versus those of the financial industry, and shows how low is the value the European Supervisory Authorities assign to user-side expert advice.

- Consultative bodies at the European Central Bank are very problematic in terms of representation of user interest. On the European retail payments board ERPB¹⁰, charged with contributing to and facilitating the development of the Euro payments market, there are only 3 retail users but 6 financial industry representatives. Members of the ERPB have to cover their travel and subsistence costs for participating in the ERBB meetings and must commit to devote the necessary time and financial resources to prepare their input and participate in meetings, putting users’ representatives at a disadvantage. Retail users are not at all represented in the ECB’s market contact groups¹¹, although their tasks are monitoring the development of financial markets and discussing structural market developments.
- The European Systemic Risk Board (ESRB) does not have consultative expert groups with retail user representation, although in the past serious risks in the EU financial system have arisen in retail financial services markets.
- Still, several other consultative bodies/groups run or funded by the EU do not allow for the representation of users per se. In particular, the European Economic and Social Committee (EESC) and the EFRAG (European Financial reporting Advisory Group) do not include any representative of financial services users although they are one of the most relevant and important stakeholders, in particular in the areas of pensions and of financial reporting¹². In EFRAG’s User Panel, which’s purpose is “to get input, from a user perspective, on important and topical accounting issues that EFRAG’s Technical Expert Group (EFRAG TEG) are considering”, only one out of 20 members represents the retail users. The EFRAG has recently even planned to introduce participation fees that would exclude retail users even further, although receiving a substantial funding from the EU, i.e. from the EU taxpayers.

2. The Commission's horizontal rules on expert groups allow for the Commission to appoint individual experts in their personal capacity. In your experience, does this possibility give rise to concern in terms of the balanced composition of expert groups and/or conflicts of interest?

⁹ Art 37 of the regulations regarding the composition of the European Financial Stakeholder Groups

¹⁰ http://www.ecb.europa.eu/paym/sepa/pdf/ERPB_composition.pdf

¹¹ www.ecb.europa.eu/paym/groups/html/index.en.html

¹² Philippe Maystadt: Should IFRS standards be more “European”, Mission to reinforce the EU’s contribution to the development of international accounting standards, http://ec.europa.eu/internal_market/accounting/docs/governance/reform/131112_report_en.pdf

Indeed individual nominations mean that when an expert leaves his/her position in the company, gets ill or changes jobs, his employer does not have the right to nominate someone else to replace their expert. Since calls for tenders to constitute a group are not organised on a frequent basis, this may mean that retail users representatives may lose one of the few seats they hold in these groups for a certain period of time. This is contradictory with the way the Register of Commission Experts presents the composition of the groups (just referring to broad categories of stakeholders). The horizontal rules should ensure that the balanced composition of the groups is not jeopardised by the rigidity of the nomination procedure.

3. Do you consider that the current level of transparency regarding the composition of Commission expert groups, in particular through the Register of Commission Expert Groups and Other Similar Entities, is sufficient? In particular, does the information made available by the Commission allow you to ascertain which interests are represented by the members of Commission expert groups? If not, where do you see room for improvement? Do you consider that the current level of transparency regarding the work of expert groups, in particular through the publication of agendas and minutes, is sufficient?

The FSUG notes that the Register of Commission Expert Groups and Other Similar Entities have improved the information on composition and activities of Commission expert groups. However, certain limitations still remain. It is often very difficult to assess from the outside by whom these different categories of stakeholders are represented in these groups and in which proportions. For example, for the Payment Systems Market Expert Group, the broad category applied for users is »associations«. These associations however include anything from consumer associations to associations of banks. For the Expert Group on taxation of savings, no categories at all are provided for its members. As mentioned above this is also the case for the new Expert group on removing tax problems facing individuals who are active across borders within the EU (E03041) , where it is impossible to learn to which stakeholder category the expert members belong. A fortiori , their main employer organisation is never disclosed. The FSUG therefore calls for a more precise definition and harmonization of categories of expert group participants that will make it possible to see the balance / imbalance between retail users, other users and industry representatives without in depth inquiries.

FSUG strongly recommends that the proposed level of transparency regarding the composition of Commission's expert groups is expanded to expert groups set up by formal instruments of other EU institutions. Without this, the Ombudsman's efforts to promote balanced policy input and better policy making on the EU level will remain insulated and limited.

Also, the FSUG proposes more transparency on the meetings and agendas of EU institution executives and officials with Third Parties. Only in this way will it be at all possible to assess whether a balanced input is made possible through this channel of communication.

4. Where the Commission publishes calls for application for membership in expert groups, do you consider that these calls provide for selection criteria which sufficiently take into account the need for a balanced composition of expert groups? If not, where do you see room for improvement? In your view, could the Commission do more to raise awareness about these calls, with a view to encouraging applications? If so, what concrete steps could it take in this regard?

The FSUG proposes to the Ombudsman to recommend to the Commission to support the capacities of retail user representatives to participate in expert groups. In particular, the EU should systematically implement the “adequate compensation” rule of the ESFS Regulations for not for profit non industry experts. In our view, the Commission could do more to raise awareness about these calls and inform financial services user organizations to send their applications.

5. Do you have any experience in applying for membership in a Commission expert group? If so, did you face any problems in the application process? If not, are you aware of any such problems faced by civil society organisations? Based on your experience, do the costs inherent in participation/the lack of comprehensive reimbursement schemes discourage civil society organisations from applying for membership?

The FSUG sees the lack of adequate reimbursement and compensation schemes as an important driver of the lack of application of civil society organizations. Retail users associations do not have the necessary resources to reimburse and compensate their experts for their expenses and work in Commission expert groups by themselves.

A further problem is the necessary work load required for active participation in the expert group. In order to decrease the unbalance, more could be done to support members of expert groups, including secretariat backup and summaries of key documents, as well as targeted support for consumer representatives. This could include presentations, orientation sessions or targeted briefing sessions¹³.

6. Please give us your views on which measures could contribute to a more balanced composition of Commission expert groups.

Adequate reimbursement and compensation of not for profit non industry experts is a key measure for improving the balance in Commission expert groups. Without this the expert groups, although envisioned as a tool for improved inclusiveness during the policy making process, will actually further cement the subordinate role of civil society’s policy input when compared to the policy input channels available to the industry representatives.

¹³ Consumer Representation at EU level: A report and recommendations by Financial Services Consumer Panel www.fs-cp.org.uk/publications/pdf/consumer_representation_at_eu_level_panel_final_report_dec_2013.pdf

However, the FSUG would like to use this opportunity to state that the problem of missing balance goes a lot deeper. The organizations representing retail user interest in general face a serious strains on their resources. Very often, they cannot afford to assign the limited number of experts they dispose of to an EC expert group because such diversion of resources would seriously limit the capacities in their core activities. Even adequate reimbursement of expenses incurred and adequate compensation for work in expert groups thus does not sufficiently address the issue of balanced input.

Moreover, the situation is even more serious in some member states (particularly in new member states and southern member states) where the civil society is less developed. There, the retail user association often cannot afford at all to employ experts in the field of financial services. This lack of user representation results in seriously unbalanced policies at the national level. As a consequence, retail financial markets, to a worrying degree, do not function to the benefit of the retail users. This has come out very strikingly from field visits organised by a few FSUG members. On the other hand, it translates into underrepresentation of retail user input from these member states on the EU level, in the Commission expert groups. The resulting unbalances are in our opinion serious enough to limit the legitimacy of EU level policy decision making.

Establishing a mechanism to support national civil society groups representing financial services users is therefore essential. From the perspective of the FSUG, this means ensuring that general conditions are met for the establishment and development of strong consumer, retail investor and SME organizations in all member states. Concretely, basic capacities for the functioning of retail user groups should be ensured. This can be done by better defined standards for national governments' policies towards such organisations, while the capacities of EU- level NGOs, such as for example the European Consumer Association BEUC, Better Finance or Finance Watch, to ensure exchange of best practices and transfer of knowledge and expertise between member states should be strengthened.

To supplement the national and EU-level funding of these policies, an option would be to analyze the legal possibility of establishing a system of compulsory contributions/ levies paid by companies that offer services/products to retail users or to look into possibilities of public funding from consumption tax income.

7. Do you have any other comments?

The FSUG would like to state that focusing on balanced expert groups at EU institutions will not always ensure the optimal policy input. Our members have on many occasions witnessed that mixed expert groups were ineffective in providing input from the retail user side, because input on risks and harmful market practices for consumers and users has been "balanced" by contrary reports of the industry representatives. The reason for this is that on retail markets, user's interests are in the short run very often opposed to the interests of the industry. This is especially the case when new market practices or products appear that can be detrimental for the consumers but very profitable for the industry.

Consultative groups such as the European Consumer Consultative Group ECCG or the FSUG are thus crucial for providing high-quality response from the user's perspective on EU policy initiatives, warnings on harmful market practices and expertise input for market reforms. All EU institutions should establish such consultative organs for retail user input with adequate means for expert engagement, while at the same moment strive for balanced representation in mixed expert groups that deal with more specific and ad-hoc policy issues.

Finally, as the systemic changes we are proposing above cannot be implemented in the near future, it can be assumed that the present unbalance in representation between retail user representatives and the industry will prevail at least for some time¹⁴. It is therefore necessary for the commission to introduce new rules for decision making (no 50% majority decisions), alternative or dissenting opinions (the possibility to publish opinions expressing disagreement with the "official" position of the group), or even providing certain advantages to civil society representatives that may compensate the disadvantage with experts representing private interests:

- as expressed above, a proper financial compensation,
- a priority access to policy makers and key documents,
- a right to "veto" certain key decisions taken in expert groups where there is an unbalance in numbers,
- an ease of administrative burdens both for applying to expert groups and during their mandate.

¹⁴ See for example the ALTER EU report on how corporate lobbyists outnumber public interest groups: <http://www.alter-eu.org/sites/default/files/documents/bursting-the-brussels-bubble.pdf> p. 23.