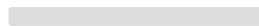


Towards a European Retail Financial Services Market

- Creating a post-crisis competitive EU Retail Single Market -

May 2010



THE EUROPEAN BANKING FEDERATION

The European Banking Federation (EBF) is the representative voice of banking in Europe. Set up in 1960, the EBF speaks for some 5,000 banks, responsible for 2.4 million employees in 31 EU and EFTA countries. The EBF's constituency is diverse and the banks it represents are large and small, wholesale and retail, local and cross-border financial institutions.

The EBF has taken an active role in the dialogue with the European Institutions and has been consistently advocating market integration at European level and supporting the creation of a single market in financial services.

The present paper was produced at the request of the Executive Committee of the European Banking Federation (EBF), which suggested the elaboration of a document entailing the EBF's position and policy strategies vis-à-vis retail financial services issues.

With the emerging signs of economic recovery, it is important to have a clear vision so as to move forward in the creation of a competitive single European market. Whilst the restoration of trust in the banking industry must be driven by sound and sustainable banking practices, the European Institutions also have a role to play in this process.

The EBF is a strong supporter of further market integration, yet compatibility with existing EU and national legislation must be ensured, also with regard to the European Commission's better regulation principles.

Essentially, this paper is an initiative to communicate the EBF's strategic views on the progress in the creation of a European retail financial services' market, and discuss the impact of current initiatives on further integration in a post-crisis environment. What is more, it aims to create an overview of the direction taken, presenting the Federation's strategy in the relevant areas.

It may serve as a basis for fruitful cooperation with both the European Parliament and the new Commissioners. In addition, it could contribute to the dialogue with consumer organisations at EU level.

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EXECUTIVE SUMMARY

In light of recent developments, the integration of the European retail financial services market has been overshadowed by the more imminent need to restore market stability and carry out regulatory and supervisory repair.

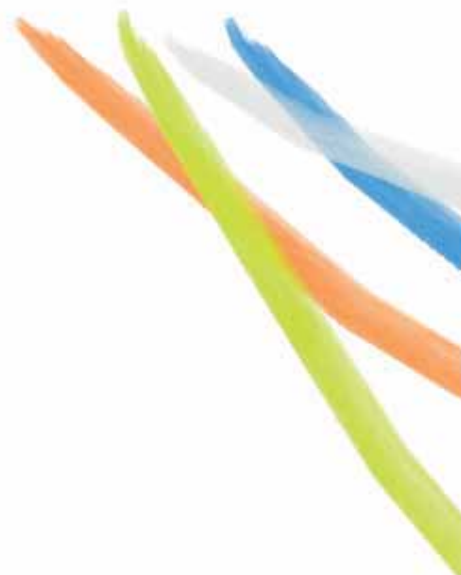
The purpose of this paper is to outline the areas of retail financial services which are currently being reviewed by the European institutions and to present a concrete strategy for further integration of retail financial services in the aftermath of the financial crisis.

The European Banking Federation (EBF) remains convinced that the European Union should strive to achieve a higher degree of financial integration in retail banking markets. However, currently the first priority of banks and authorities is to address the failures showed by the financial crisis. The EBF believes that in the longer term ambition towards integration should remain, but the focus should be on well targeted and limited initiatives where progress can be achieved without unnecessarily increasing the burden for banks. In other words, there is a clear need to focus on priorities that continue to stabilise the markets and restore confidence in the short term, while keeping in mind the longer term goal of developing a single market in retail financial services.

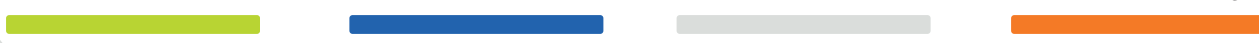
As the creation of a specific Consumer Page on its website shows, the EBF wishes to give more visibility to the initiatives relating to retail financial services, which have an impact on the European consumer.

Some of the most prominent issues for the discussion at EU level include the following:

- the creation by industry of Common Principles for the Switching of Bank Accounts has been a great achievement;
- the Payment Services Directive should bring about an improvement in the results for retail financial services in the next Consumer Markets Scoreboard;



- we welcome efforts to ensure better legislation. Accordingly, it is important that initiatives such as the Consumer Markets Scoreboard and subsequent market studies are based on sound methodologies and reliable sources for data collection. The EBF considers enhanced cooperation between the European Commission and relevant stakeholders in this debate as essential to achieve this common goal;
- whilst irresponsible lending was one of the triggers to the financial turmoil in the United States, the majority of European countries have not experienced the same. Yet the European Commission is considering a far-reaching initiative on mortgage credit markets.



I. INTEGRATION OF THE EU RETAIL FINANCIAL SERVICE'S MARKET

Historical perspective and context: first facing up to the crisis

The concept of economic integration and financial market integration in particular has been, with good reason, at the core of EU policy-making in recent decades. Integration is one of the main strategies for promoting economic and social development in the EU. Much success has already been achieved. A new dynamic phase of Community action began in 1999 with the Financial Services Action Plan (FSAP)¹ and has been developed with the White Paper on Financial Services Policy 2005-2010².

The completion of the FSAP has allowed for significant progress and a single market for wholesale financial services is therefore close to reality. Conversely, it is widely recognised that the integration of other important parts of the financial market, in particular retail finance, is not yet complete.

Retail financial services are understood as services, provided to individual customers, including retail investors, such as: current accounts, payments, credit cards, personal loans, mortgages, savings, pensions, investments, and insurance products. They are essential for the everyday lives of EU citizens by facilitating their full participation in the economy, enabling them to plan for the long term and protecting them in unforeseen circumstances.

Integration in this context, however, is an alterable term and the question of measurability of integration has not yet been resolved satisfactorily. It therefore seems imperative that the assessment of the markets for individual products, which are deemed inadequately integrated,

is not considered as the benchmark for the degree of convergence of the national markets.

The integration of the retail financial markets is strongly supported by the industry, but it is crucial that natural barriers are taken into consideration. Specific barriers, such as cultural and linguistic differences, cannot be removed through legislation. This limits the potential for (European) institutional intervention and encourages a market-driven approach.

Measuring integration

Whilst the alterability of the term impedes an adequate assessment of the actual degree of integration, it can be observed that the evolution of integration is diverging somewhat from the original vision for an integrated Internal Market, as outlined by the European Commission and widely supported by the financial sector. Having observed a degree of market convergence, it should be noted that the provision of services across borders and the consumers' desire to shop around have not been the main drivers for this development. Businesses mostly enter foreign markets through the establishment of subsidiaries or by the acquisition of domestic businesses. Whilst this development should also be supported, the EBF believes that the acknowledgement of the difference between the anticipated model for more integration and the reality will improve the ability to consider where further stimuli and initiatives may be appropriate.



¹ http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=1999&nu_doc=232

² http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2005&nu_doc=629

The industry is apprehensive of the assessment of individual markets to measure the degree of integration. Whilst supportive of the Commission's commitment for an evidenced-based approach, especially in the context of better regulation, it is considered important to use a sufficiently wide variety of factors - rather than creating a piecemeal picture - before drawing any conclusions. This is particularly true in instances where such conclusions are taken in account in policy making decisions.

Any decision for regulatory action must be based on the evaluation of the sector concerned. For this purpose, the data for the underlying studies, as well as the methodology used, must be as accurate as possible, in order to enhance the significance and validity of the results. Recent studies have highlighted this need for adequate data; however, the means of data collection are difficult. National Banking Associations and Federations, as well as financial institutions themselves are restricted in their ability to collect meaningful data owing to constraints imposed by competition rules.

Considering the need for appropriate assessment of the current situation prior to the introduction of regulatory instruments to enhance integration, the importance of continued dialogue with all stakeholders must be emphasised.

Prospects for further integration in today's economic conditions

The financial crisis has unveiled its manifold developments and consequences. These consequences have reached key sectors of the economy and have generated a substantial downfall. They have also created a number of important and additional challenges to building a pan-European financial market and re-establishing unsettled consumers' confidence in the industry.

Restoring trust and confidence in the banking sector should therefore be a priority for the coming months. Numerous measures have already been adopted by the European Institutions and Member States, not least to protect individual consumers, in particular consumer savings. The review of the Deposit Guarantee Schemes' Directive has, in this respect, been an important achievement in restoring consumer confidence.

Banks generally accept that the industry has been criticised – justifiably so in certain circumstances – for its role in the economic turmoil. But there is also a consensus that the crisis is a collective problem with many and varied causes. Criticism is therefore directed at all concerned, including of course, financial institutions, but also regulators, policy makers, investors, and consumers.

What is also acknowledged is that the unprecedented nature of the crisis will have a profound effect on the shape of banking, also in Europe. Broadly speaking, European retail banks have been less affected by the crisis than the large investment banks, mainly because of their less significant involvement in the structured finance business, and relative autonomy from wholesale markets for funding. In future, some banking models will be rendered obsolete while others will thrive and become increasingly popular.

The impact on European integration is still unclear given recent events in a number of European countries. The EBF still remains convinced though that the European Union should strive to achieve a higher degree of financial integration in the retail banking markets. However, currently, it is the first priority of banks and authorities to work through the crisis.

Further integration is needed to give the banking system the means to deal with the challenges of the global business environment, including crises of confidence in the financial system, and to increase competition. Retail banking integration is particularly crucial as it is one of the most important financial markets that allows economies of scale and generates further competition, thus benefiting consumers.

The ability of consumers to make use of an integrated Internal Market for retail financial services is also inextricably linked to the advancement of the use of the internet for banking services. It is in this context that the results of the World Retail Banking Report³, which confirmed the reinforcement of policies designed to encourage internet usage as a major trend, is considered as indicative of a positive development. It has the potential to strongly support the convergence of the European market.

Nonetheless, relationship banking, based on the proximity to and knowledge of the consumer, will remain a key element for the provision of retail financial services. Therefore, the advancement of internet banking must essentially be accompanied with increased cross-border competition and legislative frameworks which support the establishment of financial institutions in other EU Member States through subsidiaries, branches, or by the acquisition of domestic banks.

Despite the undisputed need for more integration, it risks becoming, at present, a burden to 'foster the overcoming' of the crisis and stifle innovation. Therefore, improving the operation of these markets will require targeted and considered action, building on what has been achieved. Particularly in the current context in which trust and confidence are key elements, initiatives should only be pursued where there is evidence of clear and tangible benefits for consumers and industry alike, and a strong economic rationale.

³ Published by Capgemini, the European financial management and marketing association (Efma) and Unicredit. For the results of the study please see http://www.bankenverband.de/pic/artikelpic/092009/0909_wg_um_bankvertrauen.pdf.
http://www.mckinsey.com/locations/swiss/news_publications/pdf/private_banking_survey.pdf

EBF OPINION

THE EBF IS A KEEN BELIEVER IN THE ADVANTAGES AND OPPORTUNITIES THAT FURTHER INTEGRATION IN RETAIL FINANCIAL MARKETS WOULD BRING TO BOTH THE INDUSTRY AND CONSUMER. RETAIL BANKING INTEGRATION IS PARTICULARLY KEY IN THE CURRENT POLITICAL CONTEXT AS IT IS A CENTRAL AREA IN WHICH EUROPEAN CITIZENS CAN SEE THE BENEFITS OF THEIR CITIZENSHIP.

NONETHELESS, A REALITY CHECK - TAKING INTO ACCOUNT THE IMPACT OF THE CURRENT CRISIS - IS NEEDED. AMBITION TOWARDS INTEGRATION SHOULD REMAIN, BUT THE FOCUS SHOULD BE GIVEN TO WELL TARGETED AND LIMITED INITIATIVES WHERE PROGRESS CAN BE ACHIEVED WITHOUT SUBSTANTIALLY INCREASING THE BURDEN AND COMPLIANCE COSTS FOR BANKS. IN OTHER WORDS, THERE IS A CLEAR NEED TO FOCUS ON PRIORITIES THAT CONTINUE TO STABILISE THE MARKETS AND RESTORE CONFIDENCE IN THE SHORT TERM, WHILE KEEPING IN MIND THE LONGER TERM GOAL OF DEVELOPING A SINGLE MARKET, NOTABLY IN RETAIL FINANCIAL SERVICES.

IN THIS CONTEXT, ENHANCING THE DIALOGUE WITH STAKEHOLDERS AT EUROPEAN LEVEL IS A VITAL ELEMENT FOR THE WAY FORWARD.

II. REBUILDING TRUST IN BANKS - REGAINING CONSUMER CONFIDENCE

Retail banking has, to some extent, proved to be an area of stability within the banking business during the recent period of financial turmoil. Owing to its close relationship with consumers, retail banking also appears to be at the centre of any strategy for increasing consumer confidence in the banking industry. It will certainly be under close scrutiny, with the challenging task of regaining consumer confidence and rebuilding trust in banks on the one hand, and generating revenues for banks when their other sources of income are less robust, on the other. The shift of some banks from investment and wholesale banking to retail banking may also lead to more aggressive commercial behaviour in the latter segment.

Indeed, it should be pointed out, that at this stage, the decline in confidence seems to be more present in aspects of banking such as investment and wholesale, rather than in retail financial services. The proximity to the consumer requires trust as a founding element of the relationship, which the crisis may not have affected in the same way that it has affected the perception of the banking sector as a whole. Rather than being perceived as a mere provider of services, consumers require and seek, a competent, knowledgeable financial partner. This close partnership is also known as relationship banking.

A recent study, conducted in Germany, confirmed that although trust in the banking sector as a whole is still improvable, 60% of respondents declared that the economic and financial turmoil of the past months has not affected at all their trust in their own bank⁴.

This tendency was also indicated in a survey conducted by the consultancy McKinsey & Company on European Private Banking 2009, which identifies a “significant retreat away from managed assets” towards simpler, safer, and more transparent investments, indicating that the lack of confidence is sector specific⁵.

⁴ For the results of the study please see http://www.bankenverband.de/pic/artikelpic/092009/0909_wg_um_bankvertrauen.pdf.

⁵ http://www.mckinsey.com/locations/swiss/news_publications/pdf/private_banking_survey.pdf

In order to improve the image of banks, in addition to individual initiatives, it would appear worthwhile to consider and identify areas in which the EU banking industry can assume leadership and adopt a pro-active approach.

In this respect, financial education has already been identified by the EBF as an area in which the EU banking sector might act and communicate further (see below), given the numerous positive initiatives taken by banking associations and banks at national level in this area.

It is also why enhancing contacts with consumers at EU level through a more on-going constructive dialogue is considered an additional priority for the EBF. The EBF recognises that it is important to take into consideration the concerns of those consumer organisations when developing an EU industry response to the challenges faced in retail financial services.

EBF OPINION

NOTWITHSTANDING THE CURRENT CLIMATE, THE EBF BELIEVES THAT THE UNIFORM AND SHARED GUIDING PRINCIPLES THAT CONSUMERS CAN REASONABLY EXPECT TO SEE APPLIED IN THE AREA OF CONSUMER PROTECTION, AS PRESENTED IN ITS REPORT ON FINANCIAL INTEGRATION IN 2007⁶, ARE STILL VALID. THIS PREVIOUS REPORT SPECIFICALLY REFERRED TO THE PROPORTIONALITY AND BETTER REGULATION APPROACH TO WHICH THE EUROPEAN COMMISSION COMMITTED ITSELF. IT ALSO REFLECTS UPON “REASONABLE CONSUMERS” AS WELL AS THE PRINCIPLE OF “QUALITY, NOT QUANTITY” OF INFORMATION. FURTHERMORE, THE EBF ADVISED AGAINST A STANDARDISATION OF PRODUCTS. WITH REGARD TO ADVICE, THE EBF EXPRESSED ITS REJECTION OF ANY PROPOSAL TO INTRODUCE AN OBLIGATION. ADVICE SHOULD BE TAILORED TO THE CLIENTS’ NEEDS AND AVAILABLE ON REQUEST. IN ADDITION, THE EBF ADVOCATED A SIMPLE CUSTOMER COMPLAINTS’ SYSTEM.



⁶<http://www.ebf-fbe.eu/uploads/documents/publications/Reports/Financial%20Services/EBF-Integration-report-2007-02232-01-E.pdf>

III. SELF-REGULATION VERSUS HARD LAW

The EBF still recommends targeted full harmonisation as the most effective means of creating a genuine European Internal Market for retail banking services. By this, the EBF means the full harmonisation of key provisions which would foster cross-border competition and facilitate further integration. For the more residual/peripheral provisions and for provisions beyond the scope of a Directive, the EBF recommends the use of mutual recognition as a tool to facilitate application by Member States of harmonised EU provisions while procuring progressive convergence.

On the other hand, self-regulation has an important role to play in retail financial services, yet the attitude towards self-regulation in some files such as bank account switching, as well as in the Single Euro Payment Area (SEPA) for instance, and more generally in the area of retail financial services, has raised some concerns for the financial services industry. The involvement of the European Commission in the self-regulation process has often produced a form of 'co-regulation' rather than a regulator's endorsement of a set of rules agreed by the parties involved (industry and consumers); thereby raising some questions on the perimeters of self-regulation. Yet, the EBF believes that good firms thrive in a properly regulated market. The EBF further believes that the hallmarks of a good regulatory system include one in which consumers are encouraged to shop around, competitive market regulation is risk-based and is delivered in a cost-justifiable and accountable manner.

Another crucial aspect of this debate concerns the intervention of the European Commission in costs' and prices' recovery within retail banking services. Retail banking services are not free and costs incurred must of course be recovered through normal business practices. Price intervention is a serious issue and there are concerns over a growing desire on the part of the Commission to intervene directly in the pricing policies of banks, either through regulation or self-regulation.



Better regulation

In the context of the introduction of legislative proposals for more harmonisation, as well as for revising existing legislation, the Commission launched a comprehensive strategy on better regulation to ensure that the regulatory framework in the EU delivers on a number of objectives. The European Union body of legislation aims to deliver economic development, environmental protection, and the improvement of social standards through advancing integration of the Internal Market. The better regulation policy aims at simplifying and improving existing regulation and to design new regulation in line with the EU proportionality principle.

The pursuance of the better regulation approach, and call for efficient evidence of the Commission, is widely supported. This encompasses the need for sound methodology for market studies, thorough methods for data collection, and the use of the data, as well as adequate cost-benefit analysis and impact assessments.

The better regulation principles should also be borne in mind for the 2020 Strategy: vision for Europe. This vision, set out by President Barroso in the run-up to his re-election as Commission President, is being transformed into a common EU strategy to exit the current crisis and to enter into a new sustainable social market economy.

This EU 2020 Strategy should deliver the objectives for convergence and integration. At the Council meeting of 10/11 December 2009, the Council recommended building on the work already carried out and to examine how to strengthen further the Internal Market, as well as to define the elements of the strategy, in the time leading up to the Spring European Council. It also stressed that a new reflection on the methodology to be used is necessary, whilst a more efficient and transparent governance structure, geared towards reaching tangible results, is needed. In this context, it found that monitoring and evaluation of policy measures is crucial.

The European Commission formally launched the EU 2020 Strategy by presenting a Communication in March 2010, identifying three key drivers for growth, to be implemented through concrete actions at EU and national levels: smart growth (fostering knowledge, innovation, education and digital society), sustainable growth (making our production more resource-efficient while boosting our competitiveness), and inclusive growth (raising participation in the labour market, the acquisition of skills, and the fight against poverty). At the Council meeting of late March 2010, some key elements of the Communication were agreed upon by the European Council. A formal adoption is expected for June 2010.

IV. SPECIFIC ISSUES AT NATIONAL LEVEL

The EBF is taking stock of the measures adopted or currently discussed at national level in the field of retail financial services/consumer protection, both before and in the context of the crisis. The initiatives outlined below were undertaken by National Banking Associations and National Legislators, but also include initiatives undertaken in cooperation with the industry and legislator.

Several initiatives have been adopted, notably in the area of access to, and repayment of credit. In addition to the transposition of the Consumer Credit Directive, the fulfilment of monthly payment obligations (also for mortgage credits) has been facilitated or even suspended in some countries, in order to grant the consumer a period of grace in cases of financial difficulties. Other national initiatives include the suspension of foreclosure and usury prevention. What is more, the granting of loans to small and medium enterprises (SME's), as well as for green technology investments and other viable and healthy undertakings, is encouraged and supported by national governments.

In this context, some Member States have also tackled the issue of over-indebtedness, providing consumer debt relief mechanisms and reinforcing responsible lending behaviour. This includes the provision of clear and simple pre-contractual information as well as proposals for the regulation of independent credit-intermediaries, in order to maintain a level-playing field for market participants.

The reinforcement of deposit protection, for predominantly natural persons, has been ensured in several Member States, either through raising coverage levels permanently, or for a specified period of time.

In addition, the implementation of the EBIC Common Principles on Bank Account Switching was unanimously agreed in all Member States and the transposition of the Unfair Commercial Practices Directive is currently taking place.



IV. SPECIFIC ISSUES AT EU LEVEL

A. SECTORIAL ISSUES

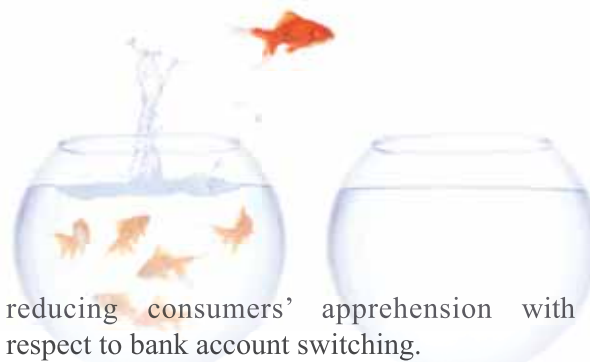
1. Bank account switching

An essential feature of a market economy is the consumer ability to choose and switch between providers of services. The comparability of bank accounts was targeted by the European Commission following the Single Market Review.

As a response, the banking industry regrouped under the auspices of the European Banking Industry Committee (EBIC). It dedicated itself to achieving a satisfactory self-regulation solution in order to address the problems effectively. The resulting Common Principles on Bank Account Switching are designed to facilitate domestic current account switching, thereby creating a common benchmark for increasing customer mobility in all Member States. The unprecedented initiative is compatible with different market conditions in all 27 Member States as well as with the already existing self-regulatory arrangements. This exercise is considered by some as a unique opportunity for the banking industry to prove that self-regulation can work in retail issues.

The Common Principles ensure that bank account switching is not onerous for the consumer and that his mobility is not constrained by any unnecessary delay or cost, or by a lack of support from banks.

The Common Principles also increase the consumer's awareness of the switching-related services they can expect, aimed at



reducing consumers' apprehension with respect to bank account switching.

Banks were also invited to abolish existing discriminations, either based on nationality or residence, which prevent individuals from opening accounts on a cross-border basis. The Commission's services identified specific countries in which the problem seemed to occur.

The EBIC Common Principles on Bank Account Switching⁷ were published on 1 December 2008. The progress, following the implementation on 1 November 2009, will be monitored by the EBF and EBIC on an ongoing basis. Whilst further meetings between EBIC, the European Commission and consumer associations can be held in order to report on the operation of the Common Principles, EBIC has prepared an implementation report, containing an overview of the results of implementation at national level, as well as reference to the national adaptations of the Common Principles, which has been published on the EBIC website⁸. The Commission has already declared its intent to launch a monitoring exercise in 2010, to complement the industry evaluation of the implementation process.

EBF RECOMMENDATIONS

MOVING FORWARD, THE IMPLEMENTED EBIC COMMON PRINCIPLES ON BANK ACCOUNT SWITCHING ARE BEING MONITORED, AND THE PROGRESS OF NATIONAL BANKING COMMUNITIES IS BEING FOLLOWED BY MEANS OF A SURVEY. THE EBF WILL CONTINUE TO BE ACTIVE IN ENCOURAGING THE NATIONAL BANKING COMMUNITIES TO PROVIDE THE EUROPEAN COMMISSION WITH AN APPROPRIATE RESPONSE ON THEIR CONCERN RELATED TO DISCRIMINATORY LACK OF ACCESS TO BANK ACCOUNTS FOR NON-RESIDENTS.

A REVIEW OF THE PROGRESS IS SCHEDULED FOR NOVEMBER 2010.

⁷ <http://www.eubic.org/Position%20papers/2008.12.01%20Common%20Principles.pdf>

⁸ <http://www.eubic.org/Position%20papers/2010315%20PUBLIC%20EBIC%20Implementation%20Report%20final.pdf>

2. Pricing transparency and comparability

In the context of empowering EU consumers and putting consumer welfare at the heart of functioning markets, the European Commission established at the beginning of 2008 the annual Consumer Markets' Scoreboard (2008)⁹ to monitor the performance of markets in terms of social and economic outcome for consumers

The Scoreboard looks at five indicators (complaints, prices, satisfaction, switching, and safety) to detect cases of market malfunctioning and areas where in-depth market analysis is required. In the continuity of its Scoreboard, former Commissioner for Health and Consumer Protection, Meglena Kuneva, tasked her services to undertake a study on Data Collection for Prices of Current Accounts provided to Consumers across Europe with a focus on pricing, transparency, and comparability. The EBF voiced its concern in relation to this study from an early stage, more particularly, as comparing the prices of retail banking products and current accounts has proved, in this case, a rather difficult exercise. Notably, because it is extremely difficult to find products that are really the same, since each individual product exhibits many different features, making it hard to define classifications such as 'like products' or 'similar products'. Furthermore, bank costs play an important part in retail banking products' pricing.

Even if the methodological problems were resolved, the conclusions drawn from the Data Collection study would still need to take into account another important factor, namely that the degree of popularity – and as a consequence, the related demand and price - of the compared products, which may vary greatly across the Member States. In extreme cases, a standard product will be requested by the overwhelming majority of customers in one country, whereas in another country, consumers will barely make use of it

⁹ http://ec.europa.eu/consumers/strategy/facts_en.htm

even though, in theory, it is available. This will affect the banks' pricing behaviour and consequently restrict the informative value of price comparison. Also, it should be considered that the variety of products offered by banks enables customers to choose products which will reflect their individual needs and usage patterns. The diversity of products should therefore not be stigmatised.

On 22 September 2009, the study on Data Collection for Prices of Current Accounts provided to Consumers across Europe and an accompanying staff working document on the Follow up in Retail Financial Services to the Consumer Markets Scoreboard were published.

The study identifies transparency of bank tariffs as problematic and concludes that it impedes the comparability of bank accounts as a product and therefore customer mobility. The divergence of prices of current accounts is also identified as improvable, with an apparently significant correlation between the opacity of fees and higher prices for current accounts.

Following a detailed analysis of the methodology used for the study, the EBF outlined areas for improvement and communicated these to the European Commission's services. Strikingly, the methodological analysis identifies an oversight of legal obligations or availability of products in certain countries as an underlying reason for the perception of a fragmented market. Furthermore, economic developments differ between those countries, which require the consideration of factors such as purchasing power, per capita income, or average disposable income for an assessment of the actual burden on the consumer in a specific country.

What is more, the sought for representation of a significant part of the national markets was identified as not having been achieved homogenously throughout Member States, thereby limiting the value of the results.

The EBF has welcomed the recent initiative of the European Commission to open a dialogue on this matter with the main stakeholders (industry and consumers) that was formally launched on the occasion of the Consumer Summit 2010, held on 18/19 March 2010. More generally, the European Banking Federation is committed to contributing further to the enhancement of an efficient methodology that serves the purpose of better regulation and market evaluation.

EBF RECOMMENDATIONS

THE EBF CONSIDERS THAT, WITH A VIEW TO ASSISTING THE EUROPEAN COMMISSION IN WORKING OUT EFFECTIVE METHODOLOGIES AND TO HELP WITH THE INTERPRETATION OF THE INFORMATION GATHERED, THE DIALOGUE BETWEEN THE COMMISSION'S SERVICES AND INTERESTED STAKEHOLDERS - NAMELY, INDUSTRY AND CONSUMER REPRESENTATIVES - SHOULD BE EXTENDED.

THE CONSUMER MARKET SCOREBOARD IS STILL IN ITS EARLY STAGES AND THE CALIBRATIONS OF THE INDICATORS USED AND THEIR COMPARABILITY STILL HAVE ROOM FOR IMPROVEMENT. THROUGH ACTIVE COOPERATION WITH THE COMMISSION AND THE CONSULTANCY FIRM, THE EBF IS PREPARED TO CONTRIBUTE TO THE AIM OF IMPROVING THE QUALITY OF THE DATA USED AND INCREASE THE IMPACT OF THE SCOREBOARD.

¹⁰ http://ec.europa.eu/internal_market/consultations/docs/2009/responsible_lending/consultation_en.pdf

3. Responsible lending and borrowing

Not surprisingly in the current context, potential measures on responsible lending and borrowing were considered as a priority for the coming years. The European Commission's interest in this area has increased since the advent of the financial crisis, generated in the US subprime lending market. This incident contributed to redefining the Commission's focus.

The prominence has now been given to "delivering responsible and reliable markets and restoring consumer confidence¹⁰". Actions taken in this area should, in the eyes of the Commission, bring lenders to act in a "fair, honest, and professional manner, before, during, and after the lending transaction", while prospective borrowers willing to obtain a credit should provide relevant, complete, and accurate information on their financial conditions, and be encouraged to make informed and sustainable borrowing decisions.

Whilst the European Commission has not yet decided how exactly any future initiative would be composed, the numerous ongoing work streams, particularly on non-credit institutions and credit intermediaries, as well as pre-contractual information (notably the ESIS testing) access to credit data, creditworthiness assessment, and advice, are likely to be brought together.

Neither is it clear yet whether the envisaged measure(s) could potentially interact with the revised Consumer Credit Directive 2008/48/EC, due to be implemented by Member States before June 2010.

The European Commission conducted a consultation on the Communication from 15 June to 31 August 2009 to which the EBF contributed and the results of which were published on 30 November 2009¹¹.

¹¹ See EBF position paper <http://www.ebf-fbe.eu/uploads/documents/positions/RetailFinance/Responsible%20Lending%20and%20Borrowing.pdf>

¹² See also Chapter VI, 15. – Financial Education

In the public hearing on Responsible Lending and Borrowing of 3 September 2009, the discussion also focused on the issues of credit intermediaries and incentives, pre-contractual information and the related issue of advice, as well as the lenders' post-lending responsibilities. It also emerged from the discussions that any future measures should be targeted at mortgage credits. Another key point of the hearing was the need for improvement of the consumer's financial understanding.

The importance of financial education in the context of responsible borrowing was also acknowledged. While it remains undisputed that consumers face the responsibility of acquiring basic financial knowledge, it is also clear that financial education is merely a complementary measure to responsible lending behaviour¹².

Commissioner Barnier, in his response to the questions submitted for his public hearing on 13 January 2010 in the European Parliament, has reiterated his willingness to come forward with an initiative in this area, namely, including pre-contractual information and advice.

From the outset, the EBF has been contributing actively to the debate around mortgage credit in the EU and its various related issues in order to deliver valuable input from the industry's perspective. Discussing responsible lending and borrowing today, is a means for the EBF to work towards restoring consumer confidence, in particular in mortgage lending.

From this point of view, the EBF fully shares the goal of the European Commission, as the banking industry is conscious of the paramount importance of customers' trust for the functioning of the Internal Market for retail financial services and the EU economy as a whole.

The key messages for each respective area of analysis that have been elaborated by the EBF can be summarised as follows.

Credit intermediaries

Credit intermediation covers distinct situations. It can first of all designate the situation whereby a consumer asks a specialised credit broker to assist him in finding the most appropriate mortgage or consumer credit deal. It can then assign the offer to the consumer of a credit facility at a point of sale in order to purchase specific goods. In certain countries, consumer and mortgage credit are granted through the credit intermediary community.

The European Commission has identified credit intermediation as an area for potential future initiative in its White Paper on Financial Services Policy and Green Paper on Retail Financial Services. Since then, the London based consultancy, Europe Economics, has been commissioned by the European Commission's DG Internal Market to undertake a Study on Credit Intermediaries in the Internal Market, which was published in May 2009. In addition, the consultation on responsible lending and borrowing also addresses the scope of the definition, responsibilities, advice, registration, and supervision, as well as prudential and professional requirements of the credit intermediaries.

The EBF believes a clear distinction must be made between entities that provide credit mediation to third parties for remuneration as their main activity (e.g. brokers, agents, etc.) and entities that practise credit mediation as an ancillary activity (i.e. dealers and retailers involved in the distribution of credit at the point of sale) as their roles are very different. Dealers and retailers have no role in respect of the granting of credit, take no part at all in any phase of the

credit decision and have no other role than collecting information for the consumer on behalf of the lender. They cannot influence the limited range of credit products made available by the lender, at the point of sale. Finally, they are not mandated by the consumer and, consequently, receive no fee from him.

In order to ensure a level-playing field that justifies the application of the same rules to those players that act in the same business and take similar risks, the EBF would support the provision of specific professional and prudential requirements for credit intermediaries.

Pre-contractual information

The purpose of pre-contractual information is to inform the consumer about the features of the product before he decides to buy it. Timely information is also important to ensure an informed choice by the consumer, and financial institutions rely on consumers to play their part in choosing the most appropriate product for their needs, based on the pre-contractual information received. The European Commission emphasises the need for comparability of products and therefore promotes information to be presented in a timely, coherent, and where product features allow it, in a standardised form. This has seen an emphasis on complete, correct, clear, and consistent information in all areas of the financial services' market, which has to be concise enough not to overwhelm the reader. In this context, the EBF believes it to be important to focus on the quality, rather than the quantity of information. Consumer testing has confirmed that the European Standard Information Sheet (ESIS), part of the European Voluntary Code of Conduct on Home Loans is regarded very favourably by borrowers. The Commission had commissioned a study to examine the effectiveness and usefulness of individual ESIS information, which may contribute to improving the lay-out and presentation of the ESIS, ensuring that it corresponds to consumers' needs and preferences.

The results of the testing were made available in January 2010¹³. The study presents the following as “perceived advantages of the ESIS by consumers”:

- complete and transparent nature of the information;
- educational function of the ESIS;
- better equipping consumers to conduct their search process and make informed choices;
- increased propensity to compare various offers.

The results showed that nearly all participants to the study believed that information contained in the ESIS would be read in detail and that the impact of the existence and use of the ESIS increased consumer’s confidence to be allowing for a good and informed decision.

Another important factor highlighted by the study was the mismatch between the desire for receiving comprehensive information and the difficulty in appreciating the content thereof, thereby highlighting the close link to the issue of financial education¹⁴.

Advice

There is a clear distinction between information and advice. Advice implies a recommendation and an assessment of products or services suited to the personal circumstances of the client. The European Commission considers the reliability of advice, owing to potential conflicts of interest which may arise from the structure of some remuneration systems, as improvable. It has therefore been aiming to introduce consistent advice standards across all retail investment products.

While financial institutions should fully and appropriately inform the consumer, providing advice is a separate service which should not be forced upon the consumer. Any attempt to introduce obligatory advice would be to the detriment of those consumers, who would not request or require the service.

The EBF believes it is of great importance to point out the difference between information and advice in that introducing advice standards is against the nature of advice, as by definition, advice cannot be standardised. Advice needs to be provided on an individual, tailor-made basis, considering the product requested and the consumer requirements. It should also be pointed out that even for those instances where advice is offered, the responsibility for the final decision of contracting particular banking products lies with the customer.

Should the Commission consider an initiative in this area despite this fundamental irreconcilability, standards should be high level in order to provide the necessary flexibility.

¹³ http://ec.europa.eu/internal_market/finservices-retail/docs/credit/esis_report_en.pdf

¹⁴ See also Chapter VI. 15. Financial Education

Post-lending responsibility

The European Commission has announced in the White Paper on Mortgage Credit in the EU the publication of a Recommendation on foreclosure, land registration, and property valuation. Its publication was however put on hold, in the light of the new prioritisation of issues within the framework of responsible lending. The concerns, however, remain and it is therefore possible that the elements of the planned recommendation will be taken up in the responsible lending and borrowing measures.

The Commissions' Communication Driving European Recovery also announces plans to investigate ways to ensure foreclosure procedures are avoided where possible. To this end, the Commission will prepare a report setting out existing practices to help consumers, experiencing financial difficulties. On the same subject, the Commission is concerned that a well balanced message be sent out. For this reason, it is considering measures focusing not just on the length and efficiency of foreclosure procedures, as proposed in the draft recommendation it had planned to publish earlier last year, but also measures on foreclosure prevention.

The European Commission has also mandated a study on this subject, which should be issued in the coming months. It will result in a report on best practices, a 'toolbox' for Member States to improve on any problematic areas of foreclosure in the national markets.

Opportunity for the EBF to take a more proactive attitude

The EBF believes that many lessons should be learned from the crisis. In a number of specific areas, whilst responding to the need for increase transparency and confidence, the current situation could be improved:

- clarification of the status of credit intermediaries;
- appropriate information to consumers; (for instance the review of the ESIS, see above);
- credit histories in case of cross-border lending; and
- highlighting existing responsible lending practices in the EU.

However, for the European Union, there are not enough examples in all Member States of a widespread problem linked to irresponsible lending behaviour¹⁵, similar to that exhibited by the subprime crisis in the United States, to justify the introduction of a new legislative framework. Responsible lending and borrowing in Europe is, indeed, in no way comparable to that which occurred in the US and which contributed to the current crisis. The crisis in the EU is not owing to a mortgage market crisis, nor indeed a dysfunction of European mortgage markets driven by irresponsible lending. There are major differences between practices in the EU and the US.

First, there are structural/systemic differences, in that traditionally, EU lenders use a mix of funding techniques including:

- a) savings deposits (~60%);
- b) covered bonds (~17%); and c) securitisation (~10%) in order to fund their loans. This means that most of the risk remains on the lenders' balance-sheets, thereby motivating responsible lending.

¹⁵ As stated in the European Commission note to the ECOFIN meeting on 12 September 2008 (Survey on national provisions on responsible lending (see in Annex)).

¹⁶ http://ec.europa.eu/internal_market/speeches/docs/2008/081121-mortgage-federation_en.pdf

Second, common practice at European retail level differs largely from that in the United States, which is seen from a DG MARKT study showing that instances of mis-selling in the EU have been “few and far between”¹⁶.

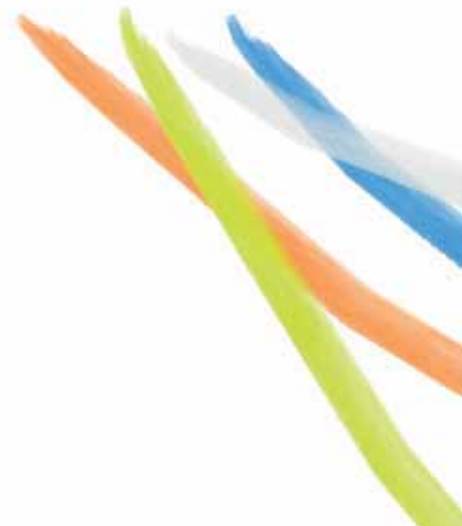
The European Commission should refrain from proposing regulatory measures. The main concern over such an approach would be the likelihood that industry solutions would be framed to suit the regulation rather than consumer needs, and that compliance with the regulation would introduce significant development costs which would considerably outweigh the consumer benefit. Ultimately, the consequences of such an approach would be likely to include a reduction in competition (which may include the withdrawal of some players from the market owing to the increased costs) and in the availability of credit in the European mortgage market (which will logically lead to a decrease in lending), as well as stifled innovation (because of the challenge of fitting new products into a fixed framework).

The EBF is aware of the Commission's concern for putting safeguards in place as a preventive strategy for the future, but the policy focus is rightly placed on supervision issues and not on retail policy.

What is more, the EBF believes that the Commission's analysis of outstanding issues with regard to responsible lending and borrowing should be correlated with the extensive regulatory reforms undertaken in response to the crisis. The Commission should also take into account the substantial amendments of prudential rules which are currently discussed (within the context of the so-called Capital Requirements Directive).

It may be judicious to engage in a more in-depth dialogue with the European Commission during the ongoing phase of policy shaping, thereby exploring all the possible approaches including market-driven initiatives that could support the spreading and development of best practices and witness responsible lending and borrowing.

In addition, possible overlap between any initiative in the area of responsible lending and borrowing and other ongoing initiatives at EU level, namely over-indebtedness, financial education, and financial inclusion, as well as with existing legislation in the area of consumer credit, should be carefully considered.



EBF RECOMMENDATIONS

IT IS IMPORTANT TO PROVIDE THE CONSUMER WITH ADEQUATE INFORMATION. IN THIS RESPECT, THE INDUSTRY HAS AGREED TO ADOPT A CONSTRUCTIVE APPROACH IN REVIEWING THE EUROPEAN STANDARD INFORMATION SHEET (ESIS) ONCE THE RESULTS OF THE CONSUMER TESTING HAVE BEEN PUBLISHED. ON THE OTHER HAND, A CLEAR COMMITMENT FROM THE EUROPEAN COMMISSION ON MAINTAINING THE CODE OF CONDUCT AND THE ESIS AS A SELF-REGULATORY TOOL WOULD BE INSTRUMENTAL IN ACHIEVING SUCH A REVIEW.

MOREOVER, IT IS IMPORTANT TO REOPEN DIALOGUE WITH CONSUMER ORGANISATIONS, NOTABLY WITH REGARDS TO THE REVIEW OF THE ESIS.

FOR CREDIT INTERMEDIARIES, THE EBF BELIEVES THAT THERE IS THE POTENTIAL FOR FURTHER ANALYSIS AND CLARIFICATION OF THE ROLE AND RESPONSIBILITIES OF INTERMEDIARIES.

CONVERSELY, ON THE SPECIFIC ISSUE OF RESPONSIBLE LENDING AND BORROWING IN THE EUROPEAN UNION, THE EBF WOULD RECOMMEND REFRAINING FROM ADOPTING MEASURES THAT ARE NOT DESIGNED TO REMEDY AN IDENTIFIED FAULT. THE EBF DOES NOT BELIEVE THERE IS A PROVEN NEED TO INTRODUCE A NEW LEGISLATIVE FRAMEWORK.



4. Access to credit data and cross-border transfer

When deciding on whether or not to grant a loan or credit facility to a consumer, lenders need to assess the creditworthiness of the applicant-borrower. Access to external credit data and use of credit scoring systems help lenders make such assessments. Both are tools to support responsible lending.

Facilitated access to and exchange of credit data was identified as an important factor in promoting competitive retail financial markets in the European Commission's accompanying staff working document Initiatives in the Area of Retail Financial Services¹⁷ to the Single Market Communication.

The industry has itself identified the lack of cross-border access to, and effective use of borrower's credit data as an obstacle to the further integration of the European retail credit markets. A wide variety of national solutions exist in order to assist creditors in assessing borrower's credit applications. Existing differences in credit reporting systems are the outcome of different national regulations and approaches, cultural preferences and traditions. These differences may hinder the development of cross-border credit in two ways. First, they may impede foreign creditors accessing national credit databases, thus denying them the possibility of properly assessing a credit request. Second, even when access is possible, different data content, definitions and registration criteria may render the interpretation of foreign credit reports difficult and their information unexploitable.

Although the difficulty in accessing credit data cross-border may not be the decisive factor in determining the business strategy of lenders willing to enter a new market, it certainly represents an obstacle to the correct functioning of the Internal Market.

In September 2008 the European Commission set up an Expert Group on Credit Histories (EGCH). The EGCH's aim was to identify solutions to maximise the circulation of credit data within the EU, whilst ensuring a high level of consumer protection.

The Expert Group was composed of representatives from relevant stakeholders: consumers, lenders, credit registers, central banks, and data protection authorities.

The work of the EGCH was finalised, beginning of May 2009, and the report was published on 15 June 2009, proposing 22 recommendations¹⁸.

Generally, the EGCH acknowledges the small appetite for, and the high cost involved in radically changing large-sized and complex national credit register systems in order to facilitate the current low level of cross-border lending activity. As a result, the EGCH has rejected the options of either establishing an EU central credit data system or aligning Member States to an existing or a new credit data model. Instead it recommends measures that are proportional to the problem tackled. The report also recommends that creditors be given free choice between all access models available to them, depending on the business case and with regard to data protection rules.



¹⁷ http://ec.europa.eu/citizens_agenda/docs/sec_2007_1520_en.pdf

¹⁸ http://ec.europa.eu/internal_market/consultations/docs/2009/credit_histories/egch_report_en.pdf

The EBF recognises that the question of converging databases' content is probably the most difficult one to tackle, in particular owing to the diverging underlying legal concepts, such as that of default. However, and as stressed in Recommendation 19 of the Report, progress in this area would be highly beneficial and should be accompanied by a systematic use of reciprocity in access to data.

Regrettably, the EGCH consumer representatives finally decided not to endorse the report for reasons related, notably, to consumer data protection concerns.

With the publication of the report, the Commission opened a consultation phase during which the EBF submitted its position to the Commission. The consultation phase expired on 31 August 2009. A summary of responses was published on 30 November 2009, which shows that the majority of respondents agree with the recommendations issued. The results of the consultation and the recommendations are expected to be considered by the new Commission in the framework of any initiative put forward in the context of responsible lending and borrowing.

EBF RECOMMENDATIONS

GENERALLY SPEAKING, THE EBF SUPPORTS THE OUTCOME OF THE EXPERT GROUP ON CREDIT HISTORIES (EGCH) AND BELIEVES THAT ACCESS SHOULD BE MARKET-DRIVEN.

THE EGCH EXPERTS RECOMMEND A PROGRESSIVE MARKET-DRIVEN APPROACH THEREBY AVOIDING A DISPROPORTIONATE AND COSTLY SOLUTION. MORE CONVERGENCE SHOULD BE SOUGHT AT THE APPROPRIATE TIME.

FURTHER DIALOGUE SHOULD CONTINUE WITH KEY STAKEHOLDERS (INCLUDING, WHERE APPROPRIATE, CONSUMER ORGANISATIONS) IN ORDER TO ASSESS HOW BEST TO IMPLEMENT THE PROPOSED RECOMMENDATIONS PROGRESSIVELY.

THIS SHOULD BE CONSIDERED AS A LONG-TERM PROJECT.

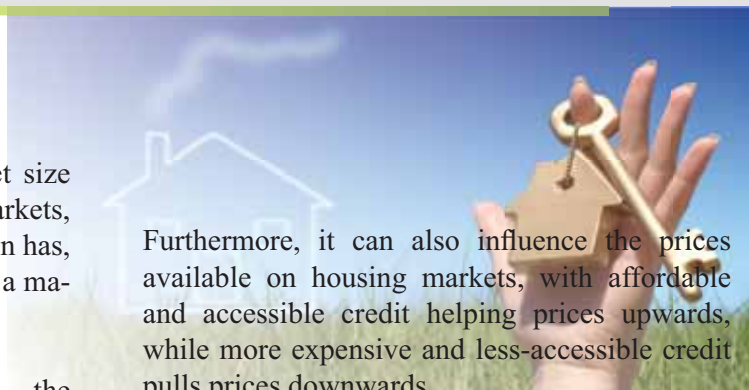
5. Mortgage credit

With a variable weight in terms of market size and income production across national markets, the mortgage industry in the European Union has, generally speaking, always been and still is a major driver of European development.

Seen from the perspective of EU's citizens – the EU primary stakeholders - - the mortgage industry offers access to housing to over 70% of them. Providing stability, security, and shelter to a significant part of the EU's population, mortgage credit has an important societal role to fulfil in laying the foundations for social and economic development across the EU. Recent events have demonstrated -dramatically - the importance of stable housing markets for prospering economies. More than simply granting citizens access to credit, mortgage loans also offer affordable credit. This, owing to the long maturity and low interest rates of most mortgage products, rendered possible through the existence of an underlying security which mitigates the lenders' risk.

In terms of national figures, levels of homeownership tend to be higher in southern European countries, largely owing to tradition, and in Central and Eastern European countries, on account of the widespread privatisation of former state-owned dwellings. Levels of homeownership in northern European countries tend to be significantly lower, with the region's rental markets traditionally being more developed.

Another aspect worthy of note is the strong link that exists between the mortgage industry and the housing market. Indeed, the mortgage industry is instrumental to the development of the housing market insofar as access to credit is a condition for such development.



Furthermore, it can also influence the prices available on housing markets, with affordable and accessible credit helping prices upwards, while more expensive and less-accessible credit pulls prices downwards.

Impact of the current crisis

The financial crisis has hit the European mortgage industry in a way that was largely unforeseen in respect to its origin, strength, and amplitude; its initial catalyst being the US sub-prime/securitisation market.

Against this background, the industry has had to address a severe drying-up of liquidity and a credit crunch that reflects both banks' shortage of funding as well as an increasingly more difficult economic environment, which is now characterised by a general decrease in economic growth, and in some countries, by recession and falling house prices.

As a result, consumers have changed their attitude, adopting a more cautious approach to spending and taking out loans, whilst lenders have been re-assessing their underwriting conditions and the prices of their highest risk loans/products.

Furthermore, it is important to note that given the national mortgage markets across Europe functioned differently before the crisis, they now have to face a fresh type of challenge. These depend upon factors such as their primary choice of funding tool, the range of products offered, the characteristics peculiar to their national housing market, and other national features. This diversity of national circumstances implies that only a limited number of targeted actions/proposals can be applied equally to all EU mortgage markets.

Moreover, a number of specific responses developed and implemented on a national level are required to address the more individual needs of those differing markets.

In principle, expectations for 2010 were marked by the awareness that the consequences of the financial crisis for mortgage lending and consumer demand for housing loans in the EU have not been as dramatic as in the US. Moreover, EU governments' various capital injections and guarantee schemes, as well as repeated cuts in central bank interest rates between the 4th quarter of 2008 and the 1st quarter of 2009, have contributed to a decrease in mortgage rates for consumers and to the stabilisation of the markets. Such a decrease, in turn, has been helping to sustain demand for mortgage credit whilst at the same time assisting with the restoration of confidence in all market stakeholders across the EU.

At the same time, it has to be acknowledged that the crisis will undoubtedly have a measurable impact on consumers' attitude to debt and the housing market for the coming years, and this may affect the lending policies of mortgage providers and business models of intermediary firms.

Despite the differences that characterise the national mortgage markets and their respective reactions to the crisis, a common viewpoint is shared by the EBF membership, namely that the banking industry is currently concentrating its resources on and investment in the economic recovery that has shown its first signs at the end of 2009. This approach should be given high priority with the support of the EU and national regulators. Regulatory intervention that is not instrumental in helping the recovery, and would represent a further burden for banks, should be avoided so as to allow the markets to restore viable economic conditions.

The wide set of actions undertaken in the area of market infrastructure and supervision architecture are rightly considered of paramount importance for restoring stability of financial markets in the long run.

The EBF shares this view and would also expect the retail market to gain in transparency and better functioning, once the stability goals have been achieved. Introducing further regulatory requirements for lenders at EU level that would add to the existing national legislations on mortgage credit - be it to respond to responsible lending issues or to bring out the cross-border potential of such a market - would risk thwarting the difficult process of the economic recovery.

As referred to above, this should not be interpreted as the banking industry reducing the degree of its commitment or ambitions towards contributing to building up a more integrated and better functioning market for retail financial services, and mortgage credit in particular. Rather, the EBF wishes that the more immediate needs be considered first, to assess the appropriateness of upcoming policy decisions.

In the context of the crisis development, non-credit institutions must also be considered. A study, conducted by London Economics on behalf of the European Commission on the Role and Regulation of Non-Credit Institutions in EU Mortgage Markets¹⁹ was published on 2 December 2008. It aimed at establishing the differences between, and backgrounds for, the various national approaches to regulation and supervision of non-deposit institutions in the EU, their scale and their market share. Whilst the Commission has indicated that it is, in principle, in favour of allowing non-credit institutions to be active in the lending business, it is essential that responsible lending, as well as financial stability and effective supervision are not compromised.

Although the non-credit institutions' market share in the EU, compared to that of credit

¹⁹ http://ec.europa.eu/internal_market/finservices-retail/docs/home-loans/non-credit/non_banks_report_en.pdf

institutions as such, is very low, regulatory fragmentation should not lead to ‘loopholes’. What is more is that a number of non-credit institutions operate particularly high-risk strategies and have correspondingly high arrears’ rates.

Their expansion in certain markets was pursued primarily to new, higher risk consumers, with limited and vulnerable means that had previously not enjoyed access to lending.

The European Commission has to assess carefully

the impact of these lenders’ business model, not only with regard to responsible lending but also in connection with the ongoing work on the files on over-indebtedness and financial inclusion. In this respect, the EBF believes that competition in the mortgage credit sector, as in many others, can be ensured only when subject to the respect of the golden rule for a workable competition, namely: same business, same risk, same rules that has as a corollary an appropriate legal framework surrounding the active players in the sector²⁰.

EBF RECOMMENDATIONS

THE EBF BELIEVES THAT IT IS ESSENTIAL THAT ANY INTERVENTION IN THE FIELD OF MORTGAGE CREDIT BE BOTH WELL-TIMED AND CONDUCTED IN THE LIGHT OF A FULL UNDERSTANDING OF THEIR LONG-TERM IMPACT ON THE MARKET. FEW THINGS UNDERMINE MARKET CONFIDENCE AS QUICKLY AS REGULATORY CHANGES BEING DRIVEN BY POLITICAL EXPEDIENCY.

IN THIS CONTEXT, IT IS IMPORTANT TO NOTE THAT GIVEN THAT NATIONAL MORTGAGE MARKETS ACROSS EUROPE FUNCTIONED DIFFERENTLY BEFORE THE CRISIS, THEY NOW FACE FRESH CHALLENGES THAT DEPEND UPON FACTORS SUCH AS THEIR PRIMARY CHOICE OF FUNDING TOOL, THE RANGE OF PRODUCTS OFFERED, THE CHARACTERISTICS PECULIAR TO THEIR NATIONAL HOUSING MARKET, AND OTHER NATIONAL FEATURES. THIS DIVERSITY OF NATIONAL CIRCUMSTANCES IMPLIES THAT ONLY A LIMITED NUMBER OF TARGETED ACTIONS/PROPOSALS CAN BE APPLIED EQUALLY TO ALL EU MORTGAGE MARKETS. ADDITIONALLY, A NUMBER OF SPECIFIC RESPONSES DEVELOPED AND IMPLEMENTED AT NATIONAL LEVEL, ARE REQUIRED TO ADDRESS THE MORE INDIVIDUAL NEEDS OF THOSE DIFFERING MARKETS.

IT IS NECESSARY TO ENSURE THAT ALL LENDERS/LOAN ORIGINATORS, WHATEVER THEIR BUSINESS MODEL, ARE SUBJECT TO ADEQUATE SUPERVISION, AND APPLY SOUND LENDING PRINCIPLES THROUGHOUT THE LOAN GRANTING PROCESS.

THERE IS A NEED TO ENSURE A LEVEL-PLAYING FIELD ACROSS THE INDUSTRY FOR ALL STAKEHOLDERS IN THE EU MORTGAGE MARKETS. THIS REQUIREMENT CAN BE SUMMED UP BY THE PRINCIPLE OF SAME BUSINESS, SAME RISKS, SAME RULES: BOTH BANKING (DEPOSIT TAKING) AND NON-BANKING INSTITUTIONS MUST ADHERE TO THE SAME REGULATIONS IN TERMS OF SUPERVISION, WITH THE SOLE EXCEPTION BEING FOR RULES THAT ARE SPECIFIC TO THE SAFETY OF DEPOSITS. FURTHERMORE, BOTH BANKING AND NON-BANKING INSTITUTIONS MUST ADHERE TO THE SAME RULES IN TERMS OF SOUND LENDING PRINCIPLES, INCLUDING THE OBLIGATION FOR THE LENDER TO ASSESS THE CANDIDATE BORROWER’S CREDITWORTHINESS BEFORE GRANTING A HOME LOAN. THIS ALSO IMPOSES AN OBLIGATION ON THE LENDER TO PROVIDE THE CANDIDATE BORROWER WITH FULL AND ADEQUATE INFORMATION THROUGH THE EUROPEAN VOLUNTARY CODE OF CONDUCT ON HOME LOANS.

THE GRANTING OF ADEQUATE I.E. COMPLETE, TO THE POINT, UNDERSTANDABLE, WITHOUT OVERLOADING, AND COMPARABLE INFORMATION IS THE INDUSTRY’S COMPLEMENT TO THE PRINCIPLE OF PRODUCT DIVERSITY AND INNOVATION, AND IS STRONGLY SUPPORTED. AS A RESULT, THE INDUSTRY REINFORCES ITS COMMITMENT TO THE CODE ON HOME LOANS AND IS READY TO CONTRIBUTE TO THE COMMISSION’S CURRENT UNDERTAKING TO REVIEW THE CODE’S CONTENT AND TO CONTINUE TO WORK FOR INCREASING THE LEVEL OF COMPLIANCE OF THE CODE IN THE MEMBER STATES, IN COOPERATION WITH THE EUROPEAN COMMISSION.

²⁰ The EBF observations on the study on the role and regulation of non-credit institutions in the mortgage markets is available on <http://www.ebf-fbe.eu/uploads/documents/positions/RetailFinance/Non-credit%20institutions.pdf>

EBF RECOMMENDATIONS

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6. Consumer credit

The first Consumer Credit Directive (CCD) was adopted in December 1986. It laid down rather basic standards for consumer protection which in turn encouraged many Member States to adopt higher standards. As such, the Directive fell short of creating a single market for consumer credit. Since then the consumer credit market has evolved in a considerable manner, both in terms of product innovation and consumer attitude towards credit. After a long institutional process, a new Consumer Credit Directive was adopted on 7 April 2008. The approved text aims at fully harmonising provisions in a number of key areas, as identified by the 2007 impact assessment:

- definition of Annual Percentage Rate of Charge (APRC);
- pre-contractual and contractual information;
- right of withdrawal (with a limited exception for linked credit agreements).

Member States are required to adopt and publish the provisions necessary in order to comply with this Directive by 11 June 2010.

The EBF, whilst acknowledging the efforts of the European Commission to foster full targeted harmonisation of key elements of the CCD, has some doubts that the Directive will achieve its initial objective of harmonising consumer protection rules across the European Union with a view to increasing the diversity of the credit offer, reducing the cost of credit, and ensuring a high level of consumer protection. Indeed, on a certain number of key topics the Directive falls short of fully harmonising the rules existing at national level by allowing Member States either to keep their existing regime or to adopt more stringent requirements.

Regulatory fragmentation, as a result, will persist. Such fragmentation represents costs for credit providers that are ultimately borne by the consumers. Moreover, issues that fall outside the scope of the Directive may still be subject to different rules.

The European Commission also conducted a study to elaborate benchmarks against which to measure the efficiency and economic impact of the Directive in the short to mid-term, the results of which were published in December 2009²¹. In parallel, the Commission launched a study examining the examples used to demonstrate the practical application of the Annual Percentage Rate of Charge (APRC) in relation to consumer credit, and to provide guidance to Member States as to how APRC should be calculated. The results of the study were published in September 2009 and provide twenty-four calculation examples.

The EBF believes that it is now essential that the provisions of the Directive, and in particular the full harmonisation provisions, be interpreted in the same manner by all Member States thereby avoiding any goldplating. The European Commission has an important role to play in this respect. The implementation process has been moving slowly - owing to the interpretation and adaptation of the provisions - and has proved more complex than anticipated. Therefore, most Member States are expected to conclude the implementation process close to the deadline. Without the granting of a 'grace-period', the industry will be left with a very limited time-frame in which to comply with new rules.

²¹ http://ec.europa.eu/consumers/rights/docs/ccd_benchmarking_study_en.pdf

Accordingly, the concern over the Directive's ability to fulfil its objectives of increasing consumers' confidence and their credit activities across Europe remains questionable, the more so in light of the added bureaucratic burden for both business and consumer.



EBF RECOMMENDATIONS

THE CONSUMER CREDIT DIRECTIVE (CCD) HAS NOW TO BE IMPLEMENTED IN EACH MEMBER STATE. SPECIAL ATTENTION HAS TO BE GIVEN TO ENSURE A SIMILAR IMPLEMENTATION ACROSS MEMBER STATES AND TO AVOID 'GOLDPLATING' CERTAIN PROVISIONS. IT IS IMPORTANT TO OUTLINE THAT BANKS REQUIRE A MINIMUM OF ONE YEAR TO IMPLEMENT THE CCD'S NATIONAL PROVISIONS. SHOULD THE CONTRARY OCCUR THE DIRECTIVE WILL NOT ACHIEVE ITS GOAL OF HARMONISING THE EU CONSUMER CREDIT MARKETS FURTHER. IT IS MAINLY THE ROLE OF THE EUROPEAN COMMISSION TO ENSURE THAT INTERPRETATION, FOR HARMONISED PROVISIONS, BE THE SAME ACROSS MEMBER STATES. THE COMMISSION SHOULD ALSO ASSIST AND ENCOURAGE MEMBER STATES TO TRANSPOSE THE DIRECTIVE IN DUE TIME AND COLLABORATE CLOSELY WITH THE STAKEHOLDERS.

7. Product tying

Tying occurs when two or more products are sold together in a package and at least one of these products is not sold separately. It is different from bundling that occurs where two or more products are sold together in a package, although each product is also available separately.

Product tying in retail financial services may reduce the credit risk faced by financial services providers by enabling them to monitor the customer's finances more efficiently. It also allows economies of scope and scale, which in turn may benefit consumers by enabling them to purchase two or more products together more cheaply than could be done if they were sold separately. The European Commission is concerned about some potentially negative aspects of this kind of practice, such as a risk for consumers to purchase additional or perhaps unnecessary products or an impact on price transparency and comparability among providers.

As announced by the European Commission in its accompanying paper to the Single Market Review, a study contracted out to CEPS/Bureau Van Dijk on current tying and other potentially unfair practices in all areas of retail financial services (credit, accounts, payments, insurance, and investment) was launched in 2008. The objective of the study was to assess the extent of these practices, to identify costs (e.g. impact on customer mobility, price transparency, comparability of providers, switching costs, entry of new players on to the market, and consumer confidence), and benefits (e.g. risk management, economies of scope, potential price and reductions), and to understand the reasons why financial services providers engage in them.

²² http://ec.europa.eu/internal_market/consultations/2010/tying_en.htm

²³ According to the study, "mixed bundling" covers the cases where two or more products are sold together in a package although each of the products can also be purchased separately on the market. Conversely, "pure bundling" occurs when none of the package components is available separately and the components are offered in fixed proportions. As such, pure bundling is assimilated by the contractor to tying. Such definitions adopted by the contractor seem to aim at catching market practices at a higher level of granularity; yet, the classification in particular the category of "pure bundling" appears rather artificial in the light of market practice.

The study consisted of two phases. In a first phase, interviews were conducted with financial market experts from different institutions and associations (for instance Central Banks, Ombudsmen, Consumer Organisations, and Financial Associations) from 10 Member States. In a second phase, the merits of a regulatory approach on unfair commercial practices in the field of financial services were assessed by means of a questionnaire.

The study was published on 15 January 2010²² and submitted to public consultation until 14 April 2010. According to the contractor, cross-selling practices (defined as both tying and bundling) are wide-spread across the EU-27 and are mostly applied in the areas of mortgages, consumer loans, and current accounts. Tying represents about one third of the recorded practices, while (mixed) bundling²³ is the most commonly used. Financial institutions are reported to make use of such practices mainly for reasons of risk reduction, cost efficiency, and commercial strategy.

The study concludes that tying and other cross-selling practice have the potential to be harmful for consumers when these practices do not lead to efficiencies that are passed on to the consumer, and/or reduce customer mobility by raising switching cost, limit price transparency, and comparability of providers. The study also takes stock of diverse situations across Member States in terms of use of such practices (e.g. the existence of national legislation banning tying or other cross-selling practices; potentially divergent interpretation when applying the Unfair Commercial Practices Directive to cross-selling or aggressive commercial practices).

In some preliminary considerations expressed to the European Commission and the consultant prior to the launch of the study, the EBF, together with the European Banking Industry Committee (EBIC) representing the whole banking industry, had stressed that, contrary to the assessment in the Sector Inquiry on Retail Banking, tying and bundling cannot be regarded as anti-competitive or unfair per se. Its effects can be positive or negative and should be assessed on a case-by-case approach, thereby taking into account the specific context in which they are used, depending on the individual market conditions and behaviour of the market players. With the exception of aggressive commercial practices such as inertia selling or 'steering' and 'churning' that are already addressed by existing EU legislation, the practices analysed in the study require to be valued in the actual context in which they are used, thereby considering costs and benefits beyond the single criteria of price. Incidentally, a tying practice can occur as the result of technical limitations (for technically linked products), and where product innovation and risk assessment management require it.

Furthermore, in the EBF's opinion any assessment of the unfair character of the practices under analysis should be based on some objective criteria such as:

- existence of technical link between products;
- conditional sale within the same entity;
- market power of the supplier allowing him to force a sale;
- existence of actual anti-competitive effects;
- lack of transparency;
- actual increase of switching costs;
- not fulfilling customers' needs.

In the EBF's view, the study's serious methodological shortcomings and insufficient empirical basis make it difficult to consider it as representative of the market situation of the EU-27. Furthermore, in its conclusions - that are rather political more than factual - the assessment of the potential anti-competitive nature or unfairness of the practices analysed appears unbalanced, in particular, with regard to the potential benefits consumers may find in these business practices.

Finally, too little attention is given in the study to fundamental aspects of the bank-customer relationship, namely, the importance of establishing a long-term business relationship in which the consumer seeks a trustworthy partner, as well as the factors affecting such a relationship related to the so-called behavioural economics that make it difficult to judge consumers' choices based purely on monetary aspects.

A dedicated Task Force has been set up at the EBF to look into this matter more deeply and to elaborate the necessary technical input that seems to be lacking in the study.

EBF RECOMMENDATIONS

THE EBF RECOMMENDS THAT MUCH CARE BE TAKEN IN AVOIDING BIASED INTERPRETATION OF DATA AND DRAWING RUSHED CONCLUSIONS BASED ON A ONE-SIZE-FITS-ALL APPROACH.

WITH THE EXCEPTION OF AGGRESSIVE COMMERCIAL PRACTICES, MARKET PRACTICES SHOULD NOT BE CATEGORISED AS ANTI-COMPETITIVE OR UNFAIR PER SE, BUT RATHER ASSESSED ON A CASE-BY-CASE APPROACH THEREBY PLACING THEM IN A SPECIFIC CONTEXT IN RELATION TO AN INDIVIDUAL BANK-CUSTOMER RELATIONSHIP UNDERTAKEN WITHIN A DETERMINED MARKET CONTEXT. AD HOC CRITERIA SHOULD BE USED TO PERFORM THIS ASSESSMENT. IN THIS AREA, THE ONGOING STUDIES ON BEHAVIOURAL ECONOMICS MAY BE ABLE TO PROVIDE SOME FURTHER INSIGHT INTO THE UNDERLYING REASONS FOR A CONSUMER'S DECISION.

8. Payments - the single European Payments Area (SEPA)

The Single Euro Payments Area (SEPA) is an EU-wide policymaker-driven integration initiative in the area of payments designed to achieve the completion of the EU Internal Market and Monetary Union. Following the introduction of Euro notes and coins in 2002, the political drivers of the SEPA initiative (EU governments, the European Commission, and the European Central Bank) focused on harmonising the Euro payments' market. Integrating the multitude of national payment systems existing today is a natural step towards making the Euro a truly single and fully functioning currency.

The overall goals were defined by EU governments in the Lisbon Agenda²⁴. According to the Lisbon Agenda, the integration of Euro payments' markets is a major pre-requisite for the realisation of this vision. It is therefore a necessary step towards strengthening the European economy as a whole. SEPA will become a reality when a critical mass of Euro payments has migrated from legacy payment instruments to the new SEPA payment instruments. Although European banks have decided to take a leading role in this migration by self-regulation, SEPA will be realised only when key stakeholders, such as the business community and public administrations, embrace the SEPA vision and commit themselves to implementing the necessary changes.

The European banking industry has defined SEPA schemes for credit transfers and direct debits together with a SEPA data format based on global International Organisation for Standardisation (ISO) standards. The SEPA Credit Transfer (SCT) scheme was successfully launched in January 2008. The SEPA Core Direct Debit (SDD)

scheme and the SEPA Business to Business Direct Debit scheme were launched on 2 November 2009, a point in time when EU Member States had adopted a common legal framework for payments.

As of November 2009, banks gradually implement SEPA Direct Debit services. In a step-by-step process, all banks in the Euro area, offering direct debit services today, will become reachable for SEPA Core Direct Debit by November 2010, in line with the obligations set out by the recent EU Regulation 924/2009 on Cross-Border Payments. For payment cards, a SEPA Cards Framework has been agreed and is in the process of being implemented by banks, card schemes, and card processors.

Whilst much progress has been achieved, the migration to SEPA is still an ongoing process. The EBF considers that the most effective means to further the migration to SEPA instruments would be the setting of an end-date, both for SCT and SDD²⁵.

In April 2006, DG Internal Market commissioned the consultancy CapGemini to conduct a study on the benefits, costs, and opportunities of SEPA²⁶, in which the added value of an end-date was recognised. The European Parliament, in March 2009, adopted a Resolution on the implementation of the SEPA, in which it called on the Commission "to set a clear, appropriate and binding end-date, which should be no later than 31 December 2012, for migrating to SEPA instruments, after which all payments in euro must be made using the SEPA standards"²⁷. This was followed by a European Commission consultation, open between June and August 2009, to analyse further whether a deadline should be set for the migration of corresponding legacy payment products to the new SEPA credit transfers and direct debits.

²⁴ http://europa.eu/scadplus/glossary/lisbon_strategy_en.htm

²⁵ See also the EBF response to the consultation on SEPA end date(s) http://www.ebf-fbe.eu/uploads/documents/positions/RetailFinance/1337C-2009-PSC-86thPSCMeeting-080909-AgendaItem4_3EndDateMigrationSEPAProducts-2009-01199-01-E.pdf

²⁶ http://ec.europa.eu/internal_market/payments/docs/sepa/sepa-capgemini_study-final_report_en.pdf

²⁷ <http://www.europarl.europa.eu/oeil/file.jsp?id=5744042>

On 2 December 2009, the Council of Ministers for Economic and Financial Affairs (ECOFIN) invited the European Commission, in collaboration with the European Central Bank and in close cooperation with all actors concerned, to carry out a thorough assessment of whether legislation is needed to set binding end-dates for SEPA Core Direct Debit and SEPA Credit Transfer, and to come up with a legislative proposal, should this assessment confirm the need for binding end-dates.

The EBF, as well as the overwhelming majority of stakeholders, expressed its support for the setting of an end-date by EU regulation to provide certainty so that stakeholders can adopt a SEPA strategy, an adequate migration plan, and allocate the necessary budgets for SEPA in the next few years. The European banking industry is concerned that without an end-date, the project will lose momentum. This would result in a great loss for both end-users and financial institutions that have already invested in the project, a result which may bias the industry against future initiatives in this area.

As a first step, it is now important to communicate that there will be an end-date. The industry welcomes the commitments made by Commissioner Barnier since the outset of his approval as new Commissioner for the Internal Market on the need to accelerate the single market integration.

Furthermore, it is important that progress made at European level be reflected in the national communities. Without the commitment of the Member States and national public authorities, the impact of SEPA will be strictly limited to cross-border transactions. Public authorities account for around 20% of all cashless transactions made²⁸ and can therefore significantly contribute to the advancement of the migration to SEPA. Member States are encouraged to introduce the SEPA schemes expressly designed by the European Payments' Council (EPC), in order to replace entirely, all national schemes for such payment instruments.

²⁸ http://ec.europa.eu/internal_market/payments/docs/sepa/com_2009_471_en.pdf

Yet, it should be feasible and acceptable for some specific niche instruments to remain available (also beyond a migration end-date). Instruments falling into this category should however be strictly defined. The creation of mini-SEPAs, on account of lenience on the subject, must be avoided.

The European banking industry, via the EPC, has successfully delivered innovative and commonly applicable SEPA payment schemes and frameworks. It is now up to the political drivers of the SEPA initiative – EU governments, including ECOFIN, the European Commission, and the Governing Council of the European Central Bank – to create the incentives needed to ease the migration of bank customers to the new SEPA instruments.

In addition, the opportunity to develop more modern forms of payment, which will play a significant role in banking in the future, should be encouraged and further pursued: innovation features prominently as one of the priorities in the European Commission's SEPA Roadmap.

This new Roadmap addresses the second phase of SEPA, designated as e-SEPA and encompassing initiatives such as:

- e-payments, using SEPA payment instruments to pay web-merchants;
- m-payments, using a mobile phone as a channel to initiate SEPA payments; and
- e-invoicing, seamless integration of SEPA instruments in e-invoicing processes.

The EBF believes that the broadening and deepening of SEPA should be encouraged. Banks should progress rapidly on electronic and mobile payments' solutions and embrace a forward-looking attitude.

Equally important, over and above the acceptance of SEPA and its benefits by the financial

institutions, is the acceptance of the payments' services by bank customers. The successful roll-out of SEPA requires, inter alia, a communication effort comparable to that which was prepared for the introduction of the Euro. The European Payments' Council has already made comprehensive and targeted information material available, to help implementation by suppliers, as well as users of payments' services. Going forward, however, it will be necessary to expand further and diversify such communication initiatives if sufficient uptake of the SEPA payment instruments, e.g. a critical mass of SEPA transactions, is to be achieved. Public authorities at EU, and at national levels in particular, should step up their communication efforts for the full realisation of SEPA.

In its Communication of September 2009 *Completing SEPA, a Roadmap for 2009-2012*²⁹ the European Commission considers that there

is a need for an over-arching SEPA governance model at EU level, which fosters integration of the Euro retail payments' market in a way that meets the needs of end-users.

Therefore, the Commission strives to establish, in close cooperation with all actors concerned by the SEPA project, in particular the ECB, an effective SEPA governance structure at EU level. The proposal for an EU SEPA Council, which is proposed for the duration of three years, is generally welcomed by the banking industry. This said there is some concern over the interaction with the existing European Payments Council (EPC). A duplication of the work already conducted by the EPC should be avoided, but the EU SEPA Council could complement the EPC, the European Commission, and European Central Bank (ECB) in their communication efforts and foster the integration of SEPA into the national markets.

EBF RECOMMENDATIONS

THE EBF STRONGLY SUPPORTS THE SEPA ROADMAP PRESENTED BY THE EUROPEAN COMMISSION IN SEPTEMBER 2009, AS WELL AS THE MEASURES IDENTIFIED IN IT, AND ENCOURAGES STAKEHOLDERS TO ENDORSE THE RECOMMENDATIONS.

FINANCIAL INSTITUTIONS CANNOT SET AN END-DATE THEMSELVES BECAUSE THEY DO NOT HAVE THE AUTHORITY AND WOULD BE LIKELY TO FACE OPPOSITION FROM COMPETITION AUTHORITIES. THE EBF BELIEVES THAT THE EUROPEAN COMMISSION IS BEST PLACED TO PROPOSE SUCH AN END-DATE BY EU REGULATION AND FULLY SUPPORTS THE COMMISSION'S COMMITMENT ON THIS ISSUE.

TO ENHANCE CUSTOMER AWARENESS AND PROMOTE THE BENEFITS OF SEPA TO THE CONSUMER, A SIGNIFICANT COMMUNICATION EFFORT IS NECESSARY. THE EBF THEREFORE PROPOSES TO COLLABORATE WITH THE EUROPEAN COMMISSION AND THE EUROPEAN CENTRAL BANK WITH A VIEW TO LAUNCHING SEVERAL INITIATIVES IN COOPERATION WITH THE EPC.

IN ORDER TO MOVE TOWARDS MORE MODERN FORMS OF PAYMENT, THE EBF ENCOURAGES THE CREATION OF LEGAL FRAMEWORKS WHICH WILL STIMULATE INNOVATION AND ACCELERATE THE WIDESPREAD ADOPTION OF NEW PAYMENT SERVICES. THE EBF BELIEVES THAT THE BROADENING AND DEEPENING OF SEPA SHOULD BE ENCOURAGED. BANKS SHOULD PROGRESS RAPIDLY ON ELECTRONIC AND MOBILE PAYMENTS' SOLUTIONS AND EMBRACE A FORWARD-LOOKING ATTITUDE.

THE EBF WELCOMES THE CREATION OF A SEPA GOVERNANCE BODY BUT WARNS OFF A DUPLICATION OF THE WORK CONDUCTED BY THE EUROPEAN PAYMENTS' COUNCIL.

²⁹ http://ec.europa.eu/internal_market/payments/docs/sepa/com_2009_471_en.pdf

9. Retail investment products

As announced in the Commission Communication Driving European Recovery, the Commission published a Communication on Packaged Retail Investment Products³⁰ on 29 April 2009.

In short, the Commission has identified the Market in Financial Instruments Directive (MiFID) as the benchmark for selling practices and proposes that MiFID rules apply to all kinds of retail investment products. The Commission also proposes short disclosure requirements in the style of the Undertakings for Collective Investments in Transferable Securities (UCITS) Key Investor Information (KII) document for all kinds of retail investment products; thereby adopting a horizontal rather than sectorial approach, so that a consistent set of rules applies to all packaged retail investment products, irrespective of the legal form.

The Commission has been working on practical proposals to put into action the measures envisaged in its Communication, both on product disclosures and on selling practices. The Communication outlined important investor protection and level-playing field issues in the retail investment markets which broadly cover investment funds (both UCITS and non-UCITS), retail structured products, and insurance-based investment products.

The Commission committed itself to ensuring investor protection standards are always at the appropriate level by taking a new horizontal regulatory approach to the standards. The declared aim, thereby, is to ensure a level-playing field between different types of retail investment products.

On 22 October 2009 a technical workshop³¹ with industry experts and consumer representatives was held. The workshop was followed by the publication of a working document in December 2009, which provides an update on the work carried out and further detail on how the Commission will take forward the commitments made. The issues to be considered can be broken down into three separate but linked areas:

- the scope of the initiative (i.e. which products should be included);
- pre-contractual disclosures (how to adapt or apply the key features of the UCITS KII to other Packaged Retail Investment products (PRIPs);
- selling practices (how to adapt or apply MiFID requirements to non-MiFID PRIPs, and also on whether MiFID requirements on sales need to be refined).

The document further outlines the next steps envisaged to deliver on the commitments before consulting on more tangible proposals in the forthcoming months. The Commission's services have explicitly committed themselves to a continuing engagement with stakeholders in the ongoing process. The release of these refined proposals is expected by spring 2010.

³⁰ http://ec.europa.eu/internal_market/finservices-retail/investment_products_en.htm

³¹ http://ec.europa.eu/internal_market/finservices-retail/investment_products_en.htm#communication

EBF RECOMMENDATIONS

THE EBF HAS RENOUNCED THE IDEA OF AN INDUSTRY SELF-REGULATORY INITIATIVE, AND IS ANTICIPATING A PROPOSAL FOR LEGISLATIVE MEASURES. THE PRIMARY OBJECTIVE WILL BE TO ENSURE SUFFICIENT FLEXIBILITY TO ENABLE KEY INVESTOR INFORMATION KIIS TO BE ADJUSTED TO DIFFERENT PRODUCTS.

A. HORIZONTAL ISSUES

10. Distance Marketing of Financial Services

In the context of the review of the Directive on the Distance Marketing of Consumer Financial Services, the European Commission, at the beginning of 2008, commissioned two studies on the Directive. The aim of such an exercise was to measure the impact of the implementation of the Directive on the functioning of the Internal Market. Specifically, the Commission was due to analyse and detail the difficulties that are, or might be faced by both consumers and suppliers, in particular arising from differences between national provisions regarding pre-contractual information and the right of withdrawal that the related minimum harmonisation rules in the Directive have allowed Member States to introduce or maintain. Indeed, when adopted in 2002, the Distance Marketing Directive left quite a large scope for national divergences in the implementation.

The first study focused on the legal aspects of the implementation, while the second analysed the economic aspects linked to the legal framework established by the Directive.

The final review was published on 20 November 2009 in the form of a Commission Communication, largely based on the results of the two studies. The conclusions drawn by the European Commission from the two-fold analysis confirm the views expressed by the banking industry during the

background work for the studies: that the distance selling of financial services in the Internal Market has not increased dramatically following the Directive. As stated in the Communication, the market for distance selling is still very small. The combination of inhibitors on the supply and demand side is reinforced by the character of retail financial services. Compared with non-financial goods and services, financial services exhibit distinguishing features, notably because they are typically more complex and often require a substantial and important long-term economic commitment which may be difficult to put in place in a distance selling context. This explains, also in the eyes of the Commission, the very limited development of distance selling in the financial sector during the last years, despite the adoption of a specific legal instrument.

Yet, the studies brought no evidence that consumers face problems arising from either the incorrect implementation of the Directive or from legal diversity owing to the options provided by the Directive to Member States. Accordingly, no argument was found that might justify an institutional intervention to amend the Directive at this stage.

Furthermore, the argument - repeatedly put forward by the EBF and other EBIC members - that barriers on the consumer side, namely language and cultural preferences, represent the most significant barriers to distance marketing of financial services, was accepted by the Commission.

Whilst no action is required in these areas, the Commission is considering taking steps to improve the quality of information provided to consumers in the context of the Consumer Credit Directive, the UCITS Directive and with regard to mortgage credit and packaged retail investment products.



The Commission will monitor the future developments in this area, and in particular, the effects of the progress on the e-commerce sector in relation to the distance selling of financial services.

EBF RECOMMENDATIONS

WHILE THE EBF SUPPORTS THE PROMOTION OF THE DISTANCE MARKETING OF FINANCIAL SERVICES, IT WELCOMES THE APPROACH OF THE COMMISSION THAT STEMS FROM A BROAD ANALYSIS OF THE MARKET FROM BOTH THE LEGAL AND ECONOMIC POINT OF VIEW. IN PARTICULAR, THE EBF RECOMMENDS THAT IN ANY FUTURE MONITORING, CARE BE TAKEN IN ASSESSING THE POTENTIAL BARRIERS THAT MAY IMPEDE A MAJOR DEVELOPMENT OF SUCH A MARKETING VENUE THAT HAS TO FACE STRUCTURAL LIMITS OTHER THAN THE LACK OF FULL HARMONISATION.

11. Consumer Rights

The incomplete business to consumer Internal Market has long been an issue for discussion at European level. As part of the review of the Consumer Acquis, the European Commission has proposed a new Directive for Consumer Rights with the aim of replacing the existing Directives on Sale of Consumer Goods and Guarantees, on Unfair Contract Terms, on Distance Selling and on Doorstep Selling.

The need for legislative action was based on the main findings of an impact assessment to which the proposed Directive was subject, which found that currently, due to the minimum harmonisation mainly applied to EU consumer protection rules, respective Member States have developed their national consumer protection laws to different standards, leading to regulatory fragmentation and posing a potential obstacle to the further development of the Internal Market.

Despite the impact assessment and a public consultation, the current proposal has been criticised by Members of the European Parliament, the Council, and stakeholders for its lack of clarity. Following the call for additional clarification from both the European Parliament and stakeholders, including the EBF, the Commission's services produced two non-papers on the Level of National Consumer Protection (Comparative Table) and its Relationship with National General Contract Law as well as with other Community Legislation. Moreover, two studies were conducted on behalf of the European Parliament Legal Affairs' Committee by the Centre for the Study of European Contract Law, University of Amsterdam, and the European Legal Studies Institute, University of Osnabrück respectively, on the links with the Common Frame of Reference³² and with the Member States' consumer law³³.

To ensure a high-level of consumer protection and establish a retail Internal Market, constructive dialogue must take place. The co-decision procedure has started and the two co-legislators, the European Parliament and the Council, have been taking the proposal through discussion and negotiations. National parliaments have also been directly involved in the debate, as foreseen in the new rules introduced by the Lisbon Treaty.

Whilst discussions are still ongoing, the main areas of concern, in addition to the EBF's point of view, remain: the suitability and compatibility of the proposed instrument with existing legislation; the approach to full-harmonisation; the potential decrease in consumer protection in some Member States, and the scope of the proposal.

EBF RECOMMENDATIONS

THE EBF WELCOMES THE INITIATIVE TO ENSURE MORE CONSISTENCY ACROSS THE CONSUMER ACQUIS. IT SUPPORTS A HORIZONTAL APPROACH WHICH WOULD GUARANTEE CONSISTENCY AT EU LEVEL.

YET, FURTHER WORK IS NEEDED TO CLARIFY THE SCOPE AND HARMONISATION APPROACH OF THE DIRECTIVE. WHAT IS MORE, THE APPLICATION TO FINANCIAL SERVICES AND COMPATIBILITY WITH OTHER EXISTING AND FUTURE DIRECTIVES, SUCH AS THE CONSUMER CREDIT DIRECTIVE, REQUIRE FURTHER ATTENTION. IN PARTICULAR, CARE SHOULD BE TAKEN TO ENSURE COHERENCE WITH OTHER INITIATIVES IN THE FINANCIAL SECTOR (FOR EXAMPLE MORTGAGE CREDIT).

SOME MORE SPECIFIC PROVISIONS SHOULD ALSO BE ADDRESSED AND MUST BE CAREFULLY DRAFTED TO CONSIDER THE PARTICULARITY OF FINANCIAL PRODUCTS AND THE IMPACT THAT A 'ONE SIZE FITS ALL' APPROACH MAY HAVE.

THE PROPOSAL AT COUNCIL LEVEL TO APPLY ONLY THE CHAPTER ON UNFAIR CONTRACT TERMS TO FINANCIAL SERVICES IS SUPPORTED BY THE EUROPEAN BANKING FEDERATION.

³² See Centre for the Study of European Contract Law, University of Amsterdam: 'A comparison between the provisions of the draft Common Frame of Reference and the European Commission's proposal for a Consumer Rights Directive - How the CFR can improve the Consumer Rights Directive'.

³³ See European Legal Studies Institute, University of Osnabrück: 'The Potential Impact of the Consumer Rights Directive on the Member States' Contract Law – Side effects on the Member States'

12. Redress

The importance of effective mechanisms for seeking redress is underlined in the EC Consumer Policy Strategy 2007-2013³⁴.

The European Commission identified a trend towards an increase in scaling up of mass claims. Expanding mass consumer markets with consumers shopping cross-border and on the internet create a high potential for large groups of consumers being harmed by the same trader's illegal practice. Currently, the Commission is moving forward on two separate initiatives concerning collective redress.

The DG Health and Consumer Services (SANCO) are exploring ways to ensure that such consumer mass claims are resolved. Collective redress could be a means to handle this type of claim.

On 27 November 2008, the Commission adopted the Green Paper on Consumer Collective Redress. The Green Paper sets out four options, namely:

- option 1; no immediate action;
- option 2; co-operation between Member States extending national collective redress systems to consumers from other Member States without a collective redress mechanism;
- option 3; a mix of policy instruments to strengthen consumer redress (including collective consumer alternative dispute mechanisms, a power for national enforcement authorities to request traders to compensate consumers, and extending small claims to deal with mass claims);
- option 4; binding or non-binding measures for a collective redress judicial procedure to exist in all Member States.

A new consultation was launched in May 2009 with the aim of presenting the first working analysis of the impact of the options in the light of the replies to the Green Paper on Consumer Collective Redress; and to gather further information - preferably with existing examples and/or figures on the actual impact of the policy options - in particular, on each national redress system. In this consultation, five options were explored, which were also discussed in a public hearing on 29 May 2009.

The five possible actions comprise:

- option 1; no action;
- option 2; self-regulation;
- option 3; non-binding Alternative Dispute Resolution (ADR) and judicial collective redress schemes combined with powers under the Consumer Protection Cooperation Regulation;
- option 4; binding ADR and judicial collective redress schemes combined with powers under the Consumer Protection Cooperation Regulation;
- option 5; EU-wide judicial collective redress with collective ADR.

These options are currently undergoing an impact assessment, the results of which are expected in the first half of 2010.

At the same time, DG Competition services have drafted a proposal for a Directive which has not yet been adopted by the College of Commissioners. The text aims at enforcing an effective compensation of private persons and undertakings that are victims of breaches of the European Community's competition rules (Article 81 and 82 of the EC Treaty). It foresees that Member States provide a combination of a group action

³⁴ http://ec.europa.eu/consumers/overview/cons_policy/doc/EN_99.pdf

and representative action, including an opt-out system in cases of breach of antitrust rules. It also provides for a binding effect of National Competition Authorities' decisions, as well as a specific regime regarding the burden of proof and the disclosure of evidence.

The EBF does not support the introduction of collective redress litigation as the principal means of redress. Nonetheless, if it is clear that the Commission does not want to replicate the US class action system in Europe, it is not clear how such a result is to be prevented. There are aspects of US class actions that are particularly dangerous, including contingency fees, 'opt-out' actions, punitive damages, the lack of the 'loser pays' rule, and jury trials. It is essential that such features are excluded from European legal systems. However, even if those elements are excluded, it will not be enough to prevent abuse. The heart of the problem is funding. Third parties (normally law firms or process financing companies) will only be prepared to undertake the risk of financing litigation in return for a substantial part of any damages awarded. This may create a new litigation culture in Europe.

The European Commission has also been active in promoting the development of Alternative Dispute Resolution (ADR) schemes. To this end, it adopted a first Recommendation in 1998³⁵ and a second Recommendation in 2001³⁶ for the establishment of quality criteria that ADR schemes should offer to users. In December 2008, DG SANCO launched a survey on ADR schemes at national level. The purpose was mainly to take stock of existing ADR schemes in Member States and their characteristics.

This initiative was echoed by a parallel survey produced by DG Internal Market to examine further the possibility of improving ADR mechanisms in the field of financial services.

In September 2009, the results of the study were published³⁷. Respondents to the consultation generally recognised the benefits of ADR schemes and agreed that the possibilities for redress through them could be improved. However, positions differ as to how the improvements could be achieved.

The EBF also responded to the consultative document on alternative dispute resolution in the area of financial services³⁸.

The EBF believes that the added value of ADR schemes for banking disputes has been proved by the broad development of such systems. Out-of-court settlement procedures at national level have proved efficient and cost-effective, and are perceived as a flexible tool which meets consumers' needs. The benefits of national schemes have been increased by the introduction of FIN-NET, the European financial dispute resolution network of national out-of-court complaint schemes.

The EBF is a strong supporter of FIN-NET³⁹, and in the public position paper, made some proposals on the occasion of the public consultation organised by the Commission to strengthen the coverage of the system and awareness of consumers.

³⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:115:0031:0034:EN:PDF>

³⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:109:0056:0061:EN:PDF>

³⁷ http://ec.europa.eu/internal_market/finservices-retail/redress/index_en.htm

³⁸ <http://www.ebf-fbe.eu/uploads/documents/positions/RetailFinance/21%20April%202010%20-Alternate%20dispute%20resolution.pdf>

³⁹ http://ec.europa.eu/internal_market/fin-net/index_en.htm

However, in accordance with the Commission study, the EBF believes that the awareness of consumers about ADR schemes at national level and at EU level could be significantly improved. This could take the form of increased accessibility of FIN-NET and its members' schemes, as well as improved websites focusing on user-friendliness.

The EBF also believes that it is worthwhile investigating the introduction of collective ADR systems further. Such systems can constitute a useful tool for the settlement of cases in which a significant number of consumers feel they have been harmed.

EBF RECOMMENDATIONS

THE EBF CALLS ON THE COMMISSION TO TAKE A HORIZONTAL APPROACH, AS SUPPORTED BY THE EUROPEAN PARLIAMENT'S REPORT ON THE COMMISSION WHITE PAPER ON DAMAGES ACTIONS FOR BREACH OF ANTITRUST RULES, ADOPTED ON 26 MARCH 2009. FURTHER COOPERATION AMONG THE VARIOUS SERVICES OF THE COMMISSION IS ENCOURAGED; IN PARTICULAR, DG COMPETITION SHOULD NOT SUBMIT A PROPOSAL TO THE COLLEGE OF COMMISSIONERS BEFORE THE CONCLUSION OF THE IMPACT ASSESSMENT ON THE DG HEALTH AND CONSUMERS' PROPOSAL.

THE EBF FAVOURS ADR AND FIN-NET AS THE APPROPRIATE WAY FOR CONSUMERS TO OBTAIN REDRESS IN THE AREA OF RETAIL FINANCIAL SERVICES. THE POTENTIAL FOR ADAPTATION OF ADR MECHANISMS AND FIN-NET SO THAT COLLECTIVE REDRESS COULD BE OFFERED TO CONSUMERS MAY ALSO BE CONSIDERED AS IT IS LIKELY TO BE LESS ONEROUS AND DISRUPTIVE THAN ANY NEW COLLECTIVE REDRESS JUDICIARY PROCEDURE.

STRENGTHENING THE EFFICIENCY OF FIN-NET, INCLUDING GEOGRAPHICAL COVERAGE, SEEMS HOWEVER A PREREQUISITE IN ORDER TO ACHIEVE THESE OBJECTIVES. RAISING AWARENESS IS ALSO ESSENTIAL IN THIS RESPECT. INITIATIVES IN THIS AREA SHOULD BE FURTHER CONSIDERED BY THE EUROPEAN COMMISSION IN COOPERATION WITH THE INTERESTED STAKEHOLDERS.

THE EUROPEAN INSTITUTIONS SHOULD PREVENT THE DETRIMENTAL EFFECTS TO CROSS-BORDER TRADE THAT WOULD BE CAUSED BY THE INTRODUCTION OF JUDICIAL COLLECTIVE REDRESS ACROSS MEMBER STATES, NOTABLY BY FURTHER ENHANCING AND PROMOTING FIN-NET (A SIMPLE, INEXPENSIVE, CROSS-BORDER DISPUTE HANDLING NETWORK FOR CONSUMERS).

13. Over-indebtedness

Over the past decade, household borrowing has grown considerably in the EU Member States, reaching high levels both in absolute terms and in relation to income. Over-indebtedness can generally be described as the imbalance in a household budget owing to expenditure increases or fall in revenue. This can arise from sudden shocks to expenditure or income flows, or simply over time. So far, there has been a lack of a 'common operational definition' of over-indebtedness, as well as a lack of tangible, comparable data across the EU Member States.

In February 2008, a first study was published, conducted by the European Credit Research Institute (ECRI) together with OEE (European Savings Institute, France) and PfRC (Personal Finance Research Centre, UK) on behalf of the European Commission, entitled Towards a Common European Operational Definition of Over-Indebtedness⁴⁰. The study had the objective of identifying the nature and causes of over-indebtedness, as well as common components. It also reviewed existing definitions and measurements at national level and came forward with a proposal for a future definition for Europe. Some key insights were that the Member States applied different concepts and that over-indebtedness must be measured by several indicators, not just one. The data collection process, towards the adoption of a common operational definition of over-indebtedness, is ongoing.

With regard to over-indebtedness, the EBF believes that the definition to be adopted should distinguish between two different cases.

⁴⁰ http://www.pfrc.bris.ac.uk/completed_research/Reports/2008_EC_Over-indebtedness_Summ.pdf

First, the situations in which over-indebtedness is an ex-post outcome resulting from circumstances that were unforeseeable at the time of contracting a loan (for instance: unemployment, marital breakdown, and/or illness) with the result of a lower capacity to repay; and second, over-indebtedness which is the result of excessive accumulated debt, without change in the consumers' ability to repay.

While the first typology of cases, the majority, is difficult to address owing to the unpredictability of the circumstances that cause them, the second form of over-indebtedness appears tightly linked to the behaviour of the individual consumer characterised by a specific situation in terms of financial education, risk propensity, and lifestyle. In the latter case, over-indebtedness can be prevented through actions aimed to increase the consumers' level of financial education that would complement the systematic creditworthiness assessment already undertaken by lenders, and a more responsible borrowing attitude from the consumer that commits himself to providing the lender with complete, updated, and reliable information on his ability to repay.

Another aspect of the phenomenon of over-indebtedness that must be considered is the variable intensity with which it is present in the various Member States. Cultural approach to credit and means of payment is also very different from one country to another and the possible solutions to the problem must be adapted to the specific market in which they have to be applied. In this area, subsidiarity has a leading role in the policy decision-making process.

EBF RECOMMENDATIONS

THE EBF CONSIDERS THAT THE ISSUE OF OVER-INDEBTEDNESS IS BEST DEALT WITH AT NATIONAL LEVEL. AND THIS, IN ORDER TO TAKE INTO ACCOUNT THE DIFFERENT CAUSES AND FACTORS, AS WELL AS THE DIFFERING DEGREES OF THE PROBLEM, AS DISPLAYED IN THE INDIVIDUAL MEMBER STATES. EFFICIENT FLEXIBILITY TO ENABLE KEY INVESTOR INFORMATION KIIS TO BE ADJUSTED TO DIFFERENT PRODUCTS.

14. Financial inclusion

Over the past few years, the European Commission has increasingly considered the issue of financial inclusion, or rather preventing financial exclusion. In this context, DG Internal Market (MARKT) and DG Employment, Social Affairs and Equal Opportunities (DG EMPL) jointly organised on 28 May 2008, a high-level conference Financial Inclusion: Improving Access to Basic Financial Services to present the main findings of a study on Financial Services Provision and Prevention of Financial Exclusion⁴¹ commissioned by DG EMPL. At that hearing, the debate was launched on the role of public authorities, the financial sector, and NGOs in guaranteeing access to basic financial services. The study defines financial exclusion as “a process whereby people encounter difficulties accessing and/or using financial services and products in the mainstream market that are appropriate to their needs and enable them to lead a normal social life in the society in which they belong”.

Following the study, and as announced in the staff working document on the initiatives in the area of retail financial services that accompanied the Communication a Single Market for 21st century Europe, a consultation on the access to a basic bank account was launched by the Commission in February 2009, and reflects the Commission’s beliefs that financial inclusion needs to be improved. The objective of the consultation was to collect views from all stakeholders on how the situation could be improved, what instruments could be used and, more specifically, how best to ensure that by a certain date every EU citizen or resident has access to a basic bank account.

The scope of the consultation was covering the question of access to a basic bank account, which includes services such as payments and withdrawals, but excludes overdraft facilities.

The consultation period expired in April 2009, and a summary report was published on 14 September 2009⁴². The respondents generally welcomed the Commission’s initiative and considered access to a basic bank account necessary in order to participate fully in society. It is also accepted that financial exclusion is still a problem in the EU.

The issue of financial exclusion is not equally prominent in all European Member States. For example, there is still a difference between the percentage of unbanked adults in the so called ‘new’ Member States and that in the EU-12 Member States. In some Eastern European countries, financial exclusion occurs as the result of lower living standards, i.e. very low income of certain social groups of the population. The EBF therefore believes that the matter is best dealt with at national level. This is also in accordance with the Commission’s aim of “enabling people to lead a normal social life in the society in which they belong”.

A cultural factor may also be identified among the various causes of self-exclusion in those countries where the bank-customer relationship is not a given, especially in the more remote geographical areas. These forms of self-exclusion, which can not be overcome through legislative intervention, should be considered when assessing the realistically possible percentage of financial inclusion.

⁴¹ http://ec.europa.eu/employment_social/spsi/docs/social_inclusion/2008/financial_exclusion_summary_en.pdf

⁴² http://ec.europa.eu/internal_market/finservices-retail/inclusion_en.htm

The Commission has recently launched a study on the Costs and Benefits of Policy Actions in the field of ensuring access to a basic bank account. The objectives of the study are to identify the costs and benefits for stakeholders of EU action in this area. The study examines what measures, or combination of measures, would be most effective and appropriate in addressing the issue of access to a basic bank account. Possible policy actions to be considered will include variations between five options:

- option 1; no further EU action;
- option 2; promoting and sharing best practices;
- option 3; encouraging self-regulation by the industry at EU level;
- option 4; an EU Recommendation;
- option 5; an EU Directive.

During the second phase of the study, interviews with stakeholders in the different Member States were being held to assess the situation concerning access to basic accounts, identify the underlying drivers of the problem, and examine the advantages and disadvantages of each of the proposed options. The study was submitted to the European Commission in April 2010. A follow up decision is expected for the second half of that year.



EBF RECOMMENDATIONS

BOTH AT EBIC AND EBF LEVEL, IT WAS DECIDED THAT THE ISSUE WOULD BE BETTER DEALT WITH AT MEMBER STATE LEVEL. IT IS IMPORTANT TO AVOID A 'ONE-SIZE FITS ALL' APPROACH AND TAKE NATIONAL AND REGIONAL DIFFERENCES, AS WELL AS THE DIFFERING DEGREES OF INTEGRATION INTO ACCOUNT. WHILST RESPECTING THE PRINCIPLE OF SUBSIDIARITY, THE EUROPEAN COMMISSION CAN PLAY AN ACTIVE ROLE IN THE EXCHANGE OF INFORMATION AND BEST PRACTICES. FINALLY, THE EBF WOULD LIKE TO REITERATE THE IMPORTANCE OF PARTNERSHIPS BETWEEN FINANCIAL INSTITUTIONS AND, FOR INSTANCE, PUBLIC AUTHORITIES TO COUNTERACT FINANCIAL EXCLUSION.

15. Microfinance

The nature of microfinance is manifold, since there is no single definition thereof. It presents heterogeneous characteristics and has specific reference targets that vary according to the different context in which it is applied. Microfinance can be about more than lending: it can be considered as an opportunity to develop a full commercial banking relationship, which may consist of a broad range of banking services, such as credit services, savings products, current accounts, payment service, and fund transfers. Microfinance within the EU normally refers to small loans (“micro-credit” or “micro-loans”) to small customers (“micro-entities”).

Private banks are among the main providers of microfinance within the European Union. They supply microfinance, both independently for their own account and in partnership with other providers, such as public bodies (notably the European Investment Bank - EIB) and specialised microfinance institutions (MFI’s).

In the Communication of 3 June 2009⁴³, the Commission proposed a new EU microfinance facility for employment and social inclusion (Progress Microfinance Facility) in order to give the unemployed the chance of a new start and to open the way to entrepreneurship for some of Europe’s most disadvantaged groups, including the young. The new facility should extend the range of targeted financial support to new entrepreneurs. Individual entrepreneurs and founders of micro-enterprises would also be assisted by way of mentoring, training, coaching and capacity building, in addition

to interest rate support from the European Social Fund.

The Progress Microfinance Facility was proposed in order to add to other Community programmes by providing risk sharing instruments, debt and equity financing. It will capitalise on the experience of international financial institutions, for example, the EIB Group (European Investment Bank and European Investment Fund). Based on a joint management arrangement, the international financial institutions will provide further leverage by supporting banking and non-banking providers of microfinance throughout the European Union. The facility was approved by the European Parliament on 11 February 2010. It is scheduled to come into force early 2010.

In theory, the activities of public and private providers should be complementary and mutually enhancing, with public support targeted at non-bankable borrowers to ensure that those sections of the population, which would not otherwise obtain financial services, are served. In practice, a difficult balance must be struck. Public schemes will need to identify areas of market failure so as to avoid squeezing out commercial lenders or damaging competition. At the same time, the authorities will wish to ensure that their financing supports and helps to create, to the highest degree possible, enterprises which will be successful in the long run.

In this context, the EBF has issued a study on the microfinance which EU banks are making available to borrowers within EU borders *Microfinance within the Banking Industry: Policy and Practice*⁴⁴ in February 2010.

⁴³ <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=547>

⁴⁴ http://www.ebf-fbe.eu/uploads/documents/publications/Reports/microfinance_eu_banking_industry.pdf

EBF RECOMMENDATIONS

FOR THE NEW MICROFINANCE FACILITY, IT IS IMPORTANT TO MONITOR RESULTS, AND MEASURE THE ADDITIONAL IMPACT OF THIS MEASURE AS EFFICIENTLY AS POSSIBLE. A CONTINUING AND DEEPENING DIALOGUE WITH OTHER PROVIDERS OF MICROFINANCE SHOULD FACILITATE THIS TASK.

THE WIDE DISSEMINATION OF INFORMATION ON THE OPPORTUNITIES FOR PUBLIC SUPPORT AND THE PUBLICISING OF CASES WHICH HAVE RECEIVED SUPPORT, SHOULD IMPROVE AWARENESS AMONG POTENTIAL BENEFICIARIES OF THE ASSISTANCE THAT IS AVAILABLE, AND ALSO ENHANCE THE TRANSPARENCY OF PUBLIC INTERVENTION.

16. Financial education

Financial literacy is central in today's complex financial market. It is an essential component of consumers' empowerment as it gives them an understanding of how to manage their finances in the real economy in order to avoid risks, unaffordable debt, and possible financial exclusion. Moreover, it enables people to improve their understanding of the financial opportunities that the products available to them may offer.

While financial education is crucial, it should not relieve banks of their role of providing consumers with effective, clear, and comprehensible information before contracts are concluded. In addition, employees of the financial sector, especially those who are in contact with consumers, should have the appropriate skills and qualifications to present, in a plain and simple manner, the products they are offering. In this context, the financial industry is already committed to ensure on-going training for employees of the financial sector.

Accordingly, while it cannot be considered a substitute for consumer protection, financial education is an indispensable part of the necessary background for a sound consumer regulatory environment. What is more, the importance of financial education has never been starker than in the current climate. Triggered in the United States in the so called sub-prime mortgage credit market, the financial downturn has spread throughout the world, without exception. While financial institutions certainly bear some responsibility for the crisis, and are working towards avoiding similar downfalls in the future, individual consumers also feel that they should have a better understanding of the financial products they access. A survey conducted within the framework of the International Network on Financial Education (INFE)⁴⁵ in 2009 considers

financial literacy as one of the pillars of financial stability and an essential life-skill for households.

The issue of financial education was already on the agenda of both the European Commission and Member States before the advent of the credit crisis in the summer 2007, but had not been addressed comprehensively until recently. As a result, policies have been shaped to date, by more immediately rewarding objectives in mind, such as improved financial information for consumers and on consumer protection.

In the report a Single Market for 21st Century Europe⁴⁶ the European Commission presented financial education as an essential component of its efforts to ensure that the Single Market can bring direct benefits to Europe's citizens, by empowering them, for example, not just to shop around for the best financial services - be it in their own Member State or cross-border - but also to understand some necessary basics of personal finance.

⁴⁵ <http://www.financialliteracy.org.nz/international/oecd-international-network-financial-education>

⁴⁶ com(2007)724, sec(2007)1520

The matter has been greatly emphasised in the Consumer Policy Strategy of DG Health and Consumer for 2007-2013⁴⁷. In addition, initiatives undertaken by DG Internal Market under the Single Market Review highlight the area to be tackled in order to build up consumer confidence and boost the Internal Market.

On 18 December 2007, the Commission issued a Communication on financial education⁴⁸ in which it set out the economic, societal, and personal benefits of increased financial literacy, and gave an overview of the provision of financial education in the EU.

Subsequently, in August 2008, an Expert Group on Financial Education (EGFE)⁴⁹ was set up by the European Commission. It consists of public authorities and private stakeholders (national authorities, the financial industry, consumer associations, academia, etc.) with their relevant skills and practical experience and representatives of certain EBF member Associations.

Their mandate is to present and share best practices developed at national level in the field of financial education, and to advise the Commission on possible solutions to be adopted in order to tackle the problems that might be identified at EU level. Following their previous meetings the group submitted reports with recommendations and observations to the Commission.

The Commission has also introduced an on-line education tool, Dolceta⁵⁰, which provides consumers with basic information, counselling, and training on financial services. The website is mainly aimed at adults and each Member State is catered for in its respective language(s). A module on financial services has already been in place and is complemented, since spring 2010, by a new module on teacher training in financial literacy.

In addition, the European Parliament issued an own-initiative report Protecting the Consumer: Improving Consumer Education and Awareness on Credit and Finance⁵¹ in 2008.

Nonetheless, the EU powers in this field are limited. Although the subject has clear financial implications and has a direct impact on the single market is still a matter of education policy and thus falls within the competence of Member States.

The EBF considers financial education as an important issue, to be tackled urgently, in order to boost consumer confidence. In an effort to raise awareness of the importance of financial education, the EBF has worked with its member Associations in compiling an EBF report on Financial Literacy – Empowering Consumers to make the right Choice⁵² which brings together the various initiatives on financial education taken by EBF members and their member banks. It further aims to take stock of the existing added value with a view to modelling future policies to achieve the best possible result, thanks to the exchange of best practices.

⁴⁷ http://ec.europa.eu/consumers/overview/cons_policy/doc/EN_99.pdf

⁴⁸ http://ec.europa.eu/internal_market/fin services-retail/docs/capability/communication_en.pdf

⁴⁹ http://ec.europa.eu/internal_market/fin services-retail/capability/index_en.htm

⁵⁰ <http://www.dolceta.eu/>

⁵¹ <http://www.europarl.europa.eu/oeil/file.jsp?id=5572462>

⁵² http://www.ebf-fbe.eu/uploads/documents/publications/Reports/Fin%20Literature/D0305C-2009-EBF_Financial_Education_-_rev7-26-9_webversion-2009-00831-01-E.pdf

In order to outline the context and gain a broader perspective on financial education, a compilation of measures and initiatives, taken at EU and international level, also appears in this report. The report covers a broad spectrum of initiatives taken by EBF members and their member banks. Projects range from websites teaching basic skills in financing - targeted at an audience of 5-7 year-olds to university-level education – to projects with a more hands-on approach for the older population.

Additionally, the EBF has started the implementation of a specific chapter on financial education on its website, with the purpose of informing EU consumers more effectively about the numerous initiatives taken by EBF members, to date, in the field of financial education. It will also provide a useful source of information about more general initiatives undertaken by international and EU institutions, such as the Organisation for Economic Co-operation and Development (OECD) and the European Commission. In the same spirit of fostering the spread of information and helping consumers become aware of the existing tools made available to them, the EBF will also insert information about FIN-NET on its website.



EBF RECOMMENDATIONS

THE EBF STRONGLY SUPPORTS THE EUROPEAN COMMISSION'S AND EUROPEAN PARLIAMENT'S INITIATIVE TO IMPROVE CONSUMERS' FINANCIAL LITERACY, AND BELIEVES THAT CONSUMER FINANCIAL EDUCATION RELATES TO ALL TYPES OF BANKING AND FINANCIAL SERVICES/PRODUCTS OFFERED TO CONSUMERS, INCLUDING PAYMENT INSTRUMENTS, INVESTMENT PRODUCTS, SAVINGS PLANS, CREDITS AND INSURANCES.

ANNEX 1

BACKGROUND – THE EUROPEAN COMMISSION STRATEGY

WHITE PAPER ON FINANCIAL SERVICES POLICY (2005-2010)

The European Commission published, in December 2005, a White Paper on Financial Services Policy for the period 2005-2010. In this White Paper, the European Commission recognised the potential for growth of the financial services' industry and presented its strategy in order to “effectively deliver further benefits of financial integration to industry and consumers alike”.

It is worth highlighting the Commission's commitment to better regulation principles, its support for the comitology process, the financial services' regulatory and supervisory approach and its presentation of the ongoing and/or future initiatives in retail banking in the areas of consumer credit, mortgage credit, payments services and credit intermediaries.

European Commission (EC) Sector Inquiry on Retail Banking

DG Competition published on 31 January 2007 its final report on the competition inquiry into the retail banking sector .

The European Commission sets out its competition concerns in the markets for payment cards, payment systems and retail banking products. Particular indicators are large variations in merchant and interchange fees for payment cards, barriers to entry into the markets for payment systems and credit registers, obstacles to customer mobility and product tying.

Consequently, these four key issues were identified for follow up by the Commission and the competent national authorities:

- design& operation of payment systems, including card payment systems;
- credit registers;
- cooperation between banks; and
- the setting of banks prices and policies, including product tying.

EC CONSUMER POLICY STRATEGY 2007-2013

Confident, informed and empowered consumers are the priorities of the Consumer Policy Strategy 2007-2013 that has been adopted by the European Commission on 13 March 2007 in order to achieve a single and simple set of rules for the benefit of consumers and retailers by 2013.

The Commissions declared aim is to be able to demonstrate, by that date, that EU citizens can shop anywhere in the EU and be equally protected.

To attain the objectives set out above, EU consumer policy will focus on the following priority areas:

- better monitoring of consumer markets and national consumer policies;
- better consumer protection regulation;
- better enforcement and redress;
- better informed and educated consumers.

A mid-term report will be produced by March 2011.

GREEN PAPER ON RETAIL FINANCIAL SERVICES IN THE SINGLE MARKET

The European Commission's Green Paper on Retail Financial Services in the Single Market published in May 2007 presents the Commission's objectives in the area of retail financial services which are to bring concrete benefits for consumers, notably in terms of prices and choice; to enhance their confidence, and to empower them. The Commission seeks to develop integration in retail financial services markets in three main ways:

- first, the provision of products that meet consumers' needs, offering choice, value and quality, can be ensured through properly regulated open markets and strong competition;
- second, European consumers need confidence to make the right choices. This can be achieved by ensuring that consumers are properly protected where appropriate, and that providers are financially sound and trustworthy;
- third, consumer confidence, in seeking out the best deals to meet their needs regardless of the location of the financial services' provider, can be increased by empowering consumers to make the right decisions for their financial circumstances. Empowerment can be developed through financial literacy, clear, appropriate and timely information, high quality advice, and a level-playing field between products perceived as having similar characteristics.

EUROPEAN PARLIAMENT'S REPORTS ON THE EUROPEAN COMMISSION'S GREEN PAPER ON RETAIL FINANCIAL SERVICES AND EUROPEAN COMMISSION'S SECTOR INQUIRY ON RETAIL BANKING

The report of the European Parliament on the Green Paper on Retail Financial Services was voted by the plenary on 5 June 2008. It stresses that the advantages of the financial single market shall benefit not only private clients but also small businesses. What's more the provisions of financial services to private clients will remain, to a large extent, a local business, in view of the linguistic and cultural factors, and need for personal contact. In addition, the report highlights that a single market in financial services can only be created by measures providing a secure environment both for the demand and the supply side.

The European Parliament report on the Sector Inquiry on Retail Banking was also voted in the plenary on 5 June 2008. It stressed that competition policy, though a powerful tool for completing the Internal Market, should not lead to weakened risk management in the banking sector and endanger its stability. It emphasises the need to improve the consumer's confidence for the further development of the single market; and for the importance of culture, habits, and language, in the consumer's choice of financial products.

SINGLE MARKET REVIEW FOR EUROPE 21ST CENTURY

The Communication on the Single Market Review, published in November 2007, put consumers and small and medium enterprises (SMEs) at the centre of policy-making and set out a new approach to the single market policy.

One of its annexes, a Commission staff working document, is dedicated to initiatives in the area of retail financial services. It identifies several areas where work should be undertaken in order to improve the competitiveness and efficiency of European retail financial services markets.

Those areas are the following:

- A. Improving customer choice and mobility (switching from one provider to the other). The Commission has therefore announced a series of initiatives, notably:
- I. mortgage credit; several proposals are expected to ensure greater product diversity and an adequate level of consumer protection; in addition, work will continue on reviewing the credit intermediaries' market with a view to assessing whether regulatory intervention is required;
 - II. an invitation towards the banking industry to develop via self-regulation, a set of common rules on bank account switching; banks are further invited to abolish existing discriminations, either based on nationality or residence, which abusively prevent individuals from opening accounts on a cross-border basis;
 - III. product tying; a two-stage approach is suggested. First, a study on current tying (and other potentially unfair practices) in all financial services areas (credit, accounts, payments, insurance) has been launched. The aim is to measure the impact on mobility and to understand the reasons why financial services providers engage in such practices. Second, the merits of a regulatory approach on unfair commercial practices in the field of financial services has been assessed;
 - IV. access to and availability of credit data; the creation of an expert group, representing all relevant stakeholders to assist the Commission in the identification and analysis of adequate measures to ensure the smooth circulation of credit data was suggested.
- B. Adequate and consistent rules for the distribution of retail investment products (transparency and distribution requirements).
- C. Promoting financial education, financial inclusion (reflection should progress on how to ensure that, by a certain date, nobody is denied access to a basic bank account), and adequate redress for consumers (notably FIN-NET).

COMMISSION COMMUNICATION ON “DRIVING EUROPEAN RECOVERY”

On 4 March 2009, the Commission published its Communication on “Driving European Recovery” . The Communication set out a number of deliverables and announced some measures for 2009, including measures on retail financial services.

In order to reassure investors and consumers about their savings, access to credit, and their rights regarding financial products, the Commission declared its intention to come forward more with:

- a Communication on retail investment products to strengthen the effectiveness of marketing safeguards;
- further measures to reinforce bank depositor, investor, and insurance policy holder protection;
- measures on responsible lending and borrowing;
- proposals to ensure that the full benefit of SEPA area will be realised.

COMMISSION STAFF WORKING DOCUMENT ON THE FOLLOW UP IN THE RETAIL FINANCIAL SERVICES TO THE CONSUMER MARKETS SCOREBOARD

DG Health and Consumer Affairs published, on 22 September 2009, the results of the study on Data Collection for Prices of Current Accounts provided to Consumers and an accompanying staff working document on the follow up in Retail Financial Services to the Consumer Markets' Scoreboard .

The staff working document analyses the various retail financial services' issues which were singled out for examination: pre-contractual information and the related issue of advice, level and transparency of

bank fees, and bank account switching. In addition, it outlines a number of Commission policies in response to the identified areas, including both existing regulatory requirements, and recently announced policy initiatives.

The study on data collection is not favourable to the pricing of bank accounts. It appears to be based on misperceptions and erroneous methodology, as well as the misinterpretation of data. The study indicts banks of opaque pricing structures, claims unavailability of comparative information, and concludes that the market is highly fragmented along national lines
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