



European Banking Industry Committee

European Banking Federation (EBF) • European Savings Banks Group (ESBG) • European Association of Cooperative Banks (EACB) European Mortgage Federation (EMF) • European Federation of Building Societies (EFBS)
European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

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EBIC RESPONSE TO THE GREEN PAPER ON RETAIL FINANCIAL SERVICES IN THE SINGLE MARKET

The European Banking Industry Committee brings together European banking associations with a mandate to provide advice, assure a comprehensive consultation of market participants and ensure a representative industry view throughout the process of drafting, adopting, implementing and enforcing EU-financial legislation and thereby provide input for the European institutions and their relevant sectoral committees. It is amongst the declared aims of EBIC to advise the Commission on relevant legislative banking and cross-sectoral initiatives and any developments at Community level affecting the banking and financial services activities associated with the establishment of a European Single Market for financial services.

EBIC has been established by the main banking industry federations: the European Banking Federation (FBE), the European Savings Banks Group (ESBG), the European Association of Cooperative banks (EACB), the European Mortgage Federation (EMF), the European Federation of Building Societies (EFBS), the European Federation of Finance House Associations (Eurofinas) / the European Federation of Leasing Company Associations (Leaseurope), and the European Association of Public Banks (EAPB).

1. GENERAL COMMENTS

1. EBIC welcomes the European Commission's initiative to submit for consultation its "Green Paper on Retail Financial Services in the Single Market". Specifically, EBIC appreciates the Commission's efforts to prepare, with an eye to the forthcoming Single Market Review, an accurate contribution for the area of retail financial services, taking into account the views of the industry.
2. Being the first significant consultation document addressing specifically the retail financial services sector, the Green Paper is also perceived as recognition of the important role this sector plays for Europe's economy and for its citizens.
3. EBIC is generally supportive of the objectives of the Commission in the area of retail financial services, as set out in the Green Paper: to bring about concrete benefits for the consumers; to ensure consumer confidence; and to empower consumers. However, EBIC is concerned that the Commission fails to some extent to take into account the perspective of the supply side when defining a policy to develop the Single Market, having in mind the specific characteristics of retail banking markets.
4. The creation of a European Single market for financial services should increase the international competitiveness of the EU market place, in line with the overall priorities set by the Lisbon agenda, which aims at making the EU the most competitive market in the world. Europe's banking industry wishes to contribute actively to this objective, but think it must be a joint effort; the competitiveness angle should be taken into account in the context of future European initiatives.
5. Irrespective of the increased mobility of the population and the growth of cross-border retail financial services provision consumers tend to opt for products distributed locally through branches, subsidiaries and intermediaries. Notwithstanding this fact consideration should also be given on facilitating the supply of financial services to consumers in their home member state by enabling financial services providers to operate cross-border or by making it easier for European consumers to accept cross-border offers from providers. In this context, EBIC welcomes the Commission's proposal to conduct in-depth analyses of the reasons for the low level of cross-border activity before proposing initiatives.
6. EBIC is of the view that the integration of retail banking market requires a different policy approach than that for wholesale banking markets. It is therefore important that the Commission adopt a 'case by case' analysis approach to further integrating retail financial services. EBIC is therefore committed to the Commission's approach to establish forum groups for specific retail products previous to any policy measures and the industry will continue to offer its support and expertise by contributing in these groups. Action should be taken when there is evidence that it would bring an added value to further integration of retail financial markets.
7. EBIC would also like to take the opportunity to underline its support for the commitment of the European Commission to the Better Regulation principles; efforts must be made to ensure that new regulation is introduced only if it can be demonstrated that the benefits linked to such new regulation outweigh the costs. Policies must be based on solid economic evidence.

8. EBIC recalls that achieving consolidation of existing directives; implementing, enforcing and evaluating existing legislation; removing unjustified obstacles to integration in accordance with EU jurisdiction; and enhancing supervisory cooperation and convergence in the EU is essential to enable financial services providers to exploit economies of scale and to offer customers a broader range of retail financial services. For that purpose, EBIC favours targeted harmonisation, i.e. full harmonisation of those key provisions which would facilitate further integration. However, an appropriate level of necessary legislation has to be found to avoid over-regulation.
9. Although factors such as language and culture explain why consumers still value a certain proximity to their banks, there are also artificial elements which make it difficult for financial institutions to distribute their products and services across the European Union. These aspects, which comprise tax issues, key provisions of consumer protection and divergences in supervisory practices, should be addressed.
10. The European banking sector is pluralist (diversity of providers of financial services) in structure and EBIC considers this an important characteristic which should be maintained, if European banking markets are to remain competitive, provided however that there is the same level playing field for all kind of institutions and that there is no distortion of competition.
11. The Commission should in our view adopt the right balance between the demand and the supply sides. Generally speaking EBIC believes that consumer protection rules should be robust and should provide consumers with an adequate level of protection across the EU. It is important however for the Commission to recognize the costs associated with ensuring consumer protection, which ultimately have to be born by the end users of financial services. Likewise, attempting to ensure very high levels of consumer protection can be counterproductive, and can lead to e.g. a decrease in the range of products and services on offer or to information overload. This is certainly not in the interest of Europe's consumers. As such, striking the right balance in terms of consumer protection is of paramount importance.
12. EBIC would like to remind the Commission that all the measures envisaged in the consumer policy area should be based on the assumption of the informed, reasonable consumer who takes his buying decisions confidently, while also bearing the financial consequences of his actions. This is also why education and empowering citizens to make the right choice is key. To make appropriate choice, a consumer must be given the necessary skills and knowledge. This was also underlined by Commissioner McCreevy encouraging Member States to consider how to improve consumer education on financial matters, and specifically on financial risk.
13. EBIC does not share the apparent view of the Commission that the level of competition in retail financial services is insufficient. EBIC believes it is difficult to draw final conclusions solely on the basis of the DG Competition sector inquiry on retail banking. EBIC would like to stress the importance of gathering evidence in addition to the figures in the sector inquiry for the purpose of developing new policies

2. ANSWERS TO THE SPECIFIC QUESTIONS

(1) Do you agree with the objectives and priorities set out in this paper?

Please see general comments section above.

(2) Are there issues that are not covered in this Green Paper, which are important for the integration of retail financial markets and to which the Commission's attention should be drawn? For example, are consumers in their everyday life confronted with requirements or limitations from either financial services providers or other stakeholders (employers, social security, administrations, businesses, etc.) which restrict their ability to use cross border financial services (such as an obligation to have a bank account or insurance policy in one specific country, etc.).

EBIC believes that the issues addressed by the Commission in this Green Paper are relevant.

As regards the distance selling of financial products / services, the banking industry believes that the current application of the directive on distance marketing of financial services makes it difficult to assess the potential for growth in distance selling. Some factors such as legal, tax and regulatory differences but also language and culture could explain why some consumers still value a certain proximity to their banks. However, it should be noted that some contracts concluded under distance marketing laws are growing in popularity in our era of e-commerce. With regard to any product specific policy initiatives, we think that an independent impact assessment would be of an important added value particularly to assess which products have the most potential for growth (and under which conditions) based on genuine commercial opportunities for suppliers and the needs of consumers.

Another important element for the possibilities of establishing a relationship between parties cross-border is the access to reliable identification methods. Uniform standards of identification would facilitate such a progress. As recommended by the expert group on customer mobility in relation to bank accounts, we would suggest the Commission to analyse the impact of existing anti-money laundering rules on customer mobility. The credit institutions would also derive advantages if they could receive reliable information about a person's place of residence (access to national ID registers would certainly serve this purpose).

(3) The Commission has undertaken several initiatives to improve consultation with consumers and to secure their input into its policy making. Should further steps be taken and, if so, what steps?

EBIC very much values the efforts of the Commission to consult with all stakeholders, including consumers, in order to have a detailed and accurate image of the views of all parties involved. Such an approach is especially relevant in relation to the area of retail financial services. Conducting wide consultation is also in line with the better regulation approach that the Commission is committed to follow. It is the impression of EBIC that the initiatives taken recently by the Commission to improve consultation with consumers are all going in the right direction.

In the context of consultation with consumers, EBIC would like to highlight that the contributions should be - to the largest extent possible - based on evidence as this is the best way to guarantee a high quality dialogue. It is also especially important having in mind the technicality of the

discussions in the area of banking: keeping the discussions at an ideological level cannot serve the purpose of designing high-quality legislation.

Looking ahead, EBIC would encourage the Commission to pursue the dialogue with consumer organizations, possibly through the organization of tri-partite forums involving the Commission, consumer organizations and the industry.

(4) Is consumer choice unnecessarily limited by restrictions on the providers and channels through which they access retail financial services? What are, in your experience, these restrictions?

As mentioned above, consumers' cross-border access to providers and products at a distance is still difficult today, in particular due to natural obstacles such as differences in language but also because the current legal framework, in particular the directive on distance marketing of financial services, did not significantly help the cross-border sale of financial services. Instead, the directive makes distance selling even more complicated to the detriment of the bank and the consumer

From the providers' point of view, unjustified regulatory additions, i.e. over-implementation at the national level (forms of gold-plating)¹ as well as inconsistencies across Directives are such restrictions. They could act as a deterrent.

EBIC also sees a potential impact on the availability of channels in the recent proposal of Regulation incorporating into EU law the Rome I Regulation (Rome I Convention on the law applicable to contractual obligations, in particular article 5 of the proposed regulation). This is why EBIC would strongly support the Commission in conducting an in-depth impact assessment before adopting any measures on this file.

EBIC welcomes the recent adoption of the Directive on the supervisory approval process as regards mergers and acquisitions in the financial sector, which should facilitate these operations, especially in a cross-border context.

(5) Despite efforts, in particular the creation of FIN-NET, the handling of cross border consumer complaints in the field of financial services still remains problematic. The Commission would welcome input as to the ways to improve the current situation. For example, should Member States be obliged to ensure that alternative dispute resolution (ADR) schemes are in place? Should providers be obliged to adhere to an ADR scheme? Should they be contractually obliged to offer ADR mechanisms to their clients?

EBIC would like to repeat its previously expressed support for the initiative of DG Internal Market to set up FIN-NET, as a system for dealing with cross border consumer complaints. We consider FIN-NET to be a flexible system which makes efficient use of existing national schemes, as opposed to harmonizing the existing bodies. In this context it is unclear to EBIC why the Commission is suggesting that the system of handling cross border consumer complaints is problematic.

EBIC supports the work which is currently done by the ombudsmen within FIN-Net. In order to increase consumers knowledge about the possibility FIN-Net could offer, EBIC would encourage the

¹ See EBIC Response to the Green Paper on Financial Services Policy (2005-2010) for a more complete view on the issue of gold-plating.

Commission to increase efforts in the publicity of FIN-Net and as well translate the website into all EU official languages.

It is moreover our understanding that the amount of cross border complaints remains low. Considering, not only the low amount of complaints and the well-functioning system in place, but also the unnecessary administrative burden that such an obligation might bring, the European banking industry sees no value in the introduction of a legal obligation for financial institutions to adhere to an ADR scheme.

EBiC strongly believes that opting for a more bureaucratic approach than the current one would not be in the interest of the consumers.

Finally, mediation and out of court settlement are already part of intensive discussions at EU level. With the current adoption of the Proposal for a Directive on certain aspects of mediation in civil and commercial matters, COM(2004) 718 in the European Parliament standards for mediation procedures will be further harmonised.

(6) The creation of the Single Euro Payments Area (SEPA) offers challenges and opportunities for businesses and consumers alike. What do stakeholders think of SEPA's impact on consumers? Should consumers be more involved in the governance and the preparation of SEPA?

EBiC is of the opinion that SEPA will greatly benefit consumers. There will be no distinction between cross-border and national payments in euro within the EU. Consumers will be able to make (and receive) payments in euro all over Europe as easily as if they were making a payment in their home town. Specifically, for the internationally oriented European citizens, making and receiving payments and managing personal finances will be greatly facilitated.

Consumers will be able to reach all bank accounts in the Eurozone with the same payment instruction. Integration of non-paper payment instruments will contribute to decrease the enormous cost to society of the extensive use of cash.

As regards the involvement of consumers, the important steps taken by the industry should be highlighted. Already in 2003 the European consumer association had been invited by the European banking industry to express their “Top 10 wishes” as regards the introduction of SEPA. No response has been received so far. In addition, consumer associations have been regularly included in the Stakeholder meetings organized by the European Central Bank. They are also part of the Stakeholder Forum established in the context of EPC Scheme Management with the aim to interface directly with the owners and designers of the SEPA schemes, and as a process to enable stakeholders, such as consumers, to propose changes and improvements to the schemes. Consumers, along with other stakeholder representatives, have also been included in the SEPA migration forums established by most national communities.

(7) With view to the launch of its study on credit intermediaries, later this year, the Commission would like to know whether stakeholders believe the current legislative framework to be sufficient and if consumers face any particular problems in dealing with credit intermediaries, particularly on a cross-border basis.

There is currently a low level of clarity as regards the legal environment and definition of credit intermediaries at EU level. The initiative of a Commission study on this matter could help in bringing clarity and in identifying the relevant areas where a need for measures may be appropriate. EBIC would thus support the Commission in conducting an impact assessment before proposing any measures, in accordance with the principles of better regulation.

(8) The Commission believes that it has an important role to play in developing a competitive, open and effective market for long-term savings, retirement and pension schemes that meet consumers' needs. Do stakeholders agree and how could the Commission contribute? Could an optional legal EU-wide regime ("28th regime") for savings and/or 3rd pillar pension products be envisaged?

EBIC supports the ongoing efforts in developing a competitive, open and effective market for long-term savings, retirement and pension schemes and want to underline in particular the importance to provide a level playing field for the industry in the different Member States. Increasing the consumers' awareness on the need for old-age provision seems also very important. Promoting sustainable pension solutions that secure life-long retirement income for current and future generation is becoming increasingly important in the context of an ageing population.

3rd pillar pension products and other long-term savings products generally play the role of complementing the national pension systems and are normally attractive to consumers by reason of tax advantages.

EBIC acknowledges the current ongoing debates at EU level with regard to the 28th regime and is perfectly aware of the difficulties related to the promotion of such a regime. Further analysis on the potential benefits of 28th regime for specific products and on case-by-case basis should however not just be excluded.

EBIC wants to clarify that it does not see 28th regimes as a substitute to targeted harmonization which we regard as being the preferable approach. The 28th regime should therefore be seen as an option in cases where targeted harmonisation is not feasible. In addition, EBIC underlines that neither targeted harmonisation nor 28th regimes should lead to product standardisation (see also question 9 below).

(9) Do you think that there could be benefits for both banks and consumers, if banks would have the opportunity to offer an optional simplified standardized product, which would have a good level of consumer protection, would be easy to understand, and could be offered across borders without the need to be modified to fit local rules?

EBIC would like to reiterate in this context that we are strongly opposed to the introduction of standardized products or services through legislative measures as it is likely to lead not only to market distortions but also to a decrease in product innovation. Financial institutions should be free to design products in response to customer needs and the economic realities of the market.

When referring to an optional simplified product with the aim to be offered across borders, it seems that the Commission has the concept of basic bank accounts in mind.

Increasingly, the term "basic bank account" is used to describe an instrument with the aim to fight financial exclusion. This is the meaning of a basic bank account in the context of the report of the

expert group on customer mobility in relation to bank accounts as well as in the own initiative report of the European Parliament on Financial services policy (van den Burg Report). EBIC believes that, in line with the subsidiarity principle, this issue should be addressed at the level of the Member States. In contrast, the Green Paper seems to refer to a simplified bank account that could easily be offered across borders. EBIC is of the opinion that there is a need for a clarification as regards the aims of such a concept.

(10) The Commission believes that more could be done to improve consumers' financial literacy and capability. Possible measures include developing guidelines or promoting best practices. The Commission would welcome input on how this policy should be further developed at the European level.

Europe's banking industry fully recognizes the importance of increasing consumers' financial capability. The wide variety of ongoing schemes aimed at promoting financial literacy among customers demonstrates the European banking industry's willingness to take an extensive part in order to reach this objective.

This being said, as mentioned in the Green Paper, financial education is primarily a matter for Member States. As such, as indicated at previous occasions, the view of EBIC is that measures to improve consumer education and financial literacy are and should remain the responsibility of the relevant entities at national level.

As regards possible initiatives by the Commission, EBIC welcomes the promotion of best practices in this field. On the other hand, EBIC would like the Commission to take note of the disadvantages that may be brought by developing general guidelines, which could result in damaging existing and well-functioning frameworks. In addition, in order to create an environment with room for innovation and development as regards financial literacy initiatives it is important to avoid bureaucratic approaches.

(11) Do you think that, as they stand, the provisions on consumer information contained in financial services directives are adequate and consistent with one another? Were it not the case, how could the Commission ensure that information requirements are set at the right level, ensuring proper information but without creating any overload? Do you think that informing consumers is sufficient or that advice should also be provided? If yes, should that be compulsory or on request?

In order to avoid information overload or possible gaps, it is of great importance that the approach towards consumer information in all EU legislation is coherent and that the political objectives are coordinated at all times. We believe that the information needs of consumers are best served when the information provided is to the point and easy to understand. With regard to more complex financial services, information should also be provided on the characteristics of these products. These principles have not always been followed in the past, where information requirements have often been excessive and inconsistent across directives. One example where requirements have become more burdensome than simplified are the requirements on pre-contractual information in the Distance Marketing of Financial Services Directive and in the proposal for a Consumer Credit Directive.

EBIC very much welcomes the Commission's plans to conduct tests to examine the needs of consumers in terms of pre-contractual information. The tests should be conducted with consumers,

as opposed to consumer associations, and should take as a reference the “average consumer” (see also paragraph 9 in the *general comments* section above).

On the relationship between information and advice, EBIC supports the distinction made by the Commission between the two.

In the view of EBIC, the responsibility of the lender is to give correct and adequate *information* to the consumer. Once the consumer has been duly informed, it is his/her responsibility to take the final decision as to which product best suits his/her needs. “The final decision to accept a credit offer from a lender belongs to the consumer”.

As a complement to the Commission’s description, EBIC would like to reiterate its previously proposed definition of *advice*: “Advice is the recommendation of a specific product to an individual consumer taking into account his specific circumstances. It is a subjective, non-standardized, separate and personalized service (i.e. a “tailor made” service) available at the explicit request of, and paid for by, the consumer”.²

Advice to consumers should be regarded as an additional service provided solely on demand of the consumer. Making advice a compulsory obligation would mean that all customers would have to pay for an additional service only requested by a minority. In addition, a mandatory duty to advise with a liability risk for the lender would lead to a dramatic increase in litigation. Finally, advice should remain a matter of choice since the reason for and the extent of advice required may differ from case to case. Only an optional provision of advice can ensure that the consumer’s individual needs are appropriately met in any contractual environment (i.e. face to face or distance contact).

(12) Measures to improve lenders’ access to credit data will be discussed in the context of the forthcoming White Paper on Mortgage Credit. The Commission believes that more could be done to promote the accessibility of credit data, in particular on a cross-border basis. Who should be able to access consumer credit data? How could the cross-border transferability of consumer credit data be improved, ensuring in particular that mobile credit data follows increasingly mobile consumers? Could a memorandum of understanding, ensuring smooth data circulation between credit bureaus, be a workable solution?

EBIC believes that access to credit registers and databases should be ensured in a non-discriminatory and transparent manner to all creditors operating in a given market as is stated in the draft proposal for a Consumer Credit Directive (Article 8). However, in order to ensure legal certainty it should be specified that this access should not include internal databases set up by individual lenders.

EBIC considers that any Commission’s proposal in this context should have to observe the restrictions as regards data protection. More cooperation in this field could facilitate cross border provision of credits. A memorandum of understanding could be the starting point for such cooperation.

Finally, EBIC is of the opinion that before any measure is taken with the aim to facilitate the transferability of such data, it must be carefully considered in the light of the costs it would bring.

² See EBIC Response on Information & Advice Mortgage Industry & Consumer Dialogue Group, 16th August 2006

Access to both credit and fraud data is necessary for consumer credit providers to grant loans responsibly and the sharing of fraud related data is necessary to protect the consumer. Once a consumer's identity becomes compromised or is stolen, it is in his or her interest that lending institutions prevent the use of this identity by fraudsters in credit applications.

(13) Fragmentation of retail insurance markets, for example in the field of motor insurance, does not allow consumers to reap full benefits of EU integration in this area. Do you think that more should be done at EU level to address this fragmentation?

The issue of insurances is outside the competence of EBIC.

(14) Customer mobility and competition are closely associated. The Commission would welcome input as to how customer mobility could be enhanced. In particular, in the field of bank accounts, and as a follow-up to the Expert Group's work, would stakeholders see merits in, for example, having EU wide account switching arrangements? Will SEPA have an impact on customer mobility?

Providing a detailed response to this question at this stage is difficult, given the ongoing consultation on the subject. Precise contributions will be provided by the individual EBIC associations in due time. EBIC would however like to make a few general remarks in the context of customer mobility.

As regards customer mobility, EBIC fully supports the view expressed by the banking industry experts participating in the working group on current accounts, who pointed out that “low customer mobility rates are not a problem in themselves but rather a reflection of high consumer satisfaction rates and of the fact that consumers often have multiple banking relationships”.

Regarding the impact of SEPA on customer mobility, it is EBIC's view that SEPA will undoubtedly facilitate customer mobility as the availability of pan-European payment instruments will allow customers to use an account in any country for making and receiving payments in euro regardless of their place of residence. Concerning the specific situation of customers wishing to move their account(s) from their country of origin to their new country of residence, the availability of pan-European payment instruments will ease the transfer of supplier payment obligations and payment receipts (work, pension and other benefits).