The Consumer Voice in Europe

EU REGULATORY FRAMEWORK FOR FINANCIAL SERVICES

BEUC Response to the Commission's Call for Evidence

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Summary

Consumer protection and confidence in the providers of financial services are crucial for a well-functioning and stable financial system. The problem is that financial services regularly score badly among different sectors in terms of consumer trust and satisfaction. An efficient and properly enforced EU legal framework is key to improving consumer rights, protection and confidence.

We strongly argue against any deregulation of the financial services sector. The Commission should resist any pressure that seeks to undermine existing legislation. There is still a lot to do to restore financial stability and consumer confidence and there are good reasons for the EU's co-legislators to regulate the conduct of financial service providers. 'Better regulation' should not mean less regulation.

We have reviewed the existing regulatory framework for retail financial services, supervision and enforcement activities, and consumer redress schemes. There are major loopholes and shortcomings that need to be addressed by policymakers. These areas covered include bank accounts, payment services, consumer and mortgage credit, investments products, and issues such as information disclosure, cross-selling and the role of digitalisation and financial innovation.

BEUC general comment

In a recent speech addressed to regulators and supervisors, Commissioner Hill stressed the need to better protect consumers and regain their trust[1]. We could not agree more with this statement: a lot still needs to be done in the financial services area, both in terms of regulation and supervision.

BEUC has identified inconsistencies and regulatory gaps as regards EU consumer protection law. We have also identified too little enforcement of EU laws in certain Member States.

Consumer trust in financial service providers is very low according to Consumer Market Scoreboards published by the European Commission. For instance, in 2013 (latest data available), only 35% of retail investors trusted investment services providers to respect consumer protection rules.

That is why efficient and properly enforced EU laws are key to enhancing consumer confidence in financial services, particularly in light of the Capital Markets Union (CMU) and the single market for retail financial services.

BEUC is concerned that, through a well-rehearsed rhetoric, the financial lobby has already successfully convinced some authorities that strengthening financial legislation, which aims to restore financial stability and citizens' confidence, would generate perverse effects and jeopardize business investment, limit loans to households, increase the price of retail financial services and would ultimately be destructive to employment and growth.

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There were strong reasons to regulate the financial sector – we have gone through the worst financial crisis in a century and this has had a significant impact on the real economy and consumer trust. In many European countries, taxpayers had to bail out banks that are too-big-to-fail. Legislation should reduce the risk that this happens again[2].

The practices of financial institutions towards their retail customers have not changed dramatically over the past years: unfair trade practices and mis-selling, marketing of useless products through cross-selling, advice biased by conflicts of interest and misaligned incentives, and products inappropriate for customers have cost European consumers billions of euros.

Financial misconduct has resulted in compensation claims running into the tens of billions of euros. In the UK alone, recent compensation to consumers for mis-selling included €30 billion for payment protection insurance, €16.5 billion for personal pension products and €3 billion for interest-rate hedging products.

1 http://europa.eu/rapid/press-release_SPEECH-15-5117_en.htm
2 The 2008 financial crisis cost taxpayers €1,600 billion to rescue banks: http://www.finance-watch.org/hot-topics/blog/909

There are many examples of the financial industry pushing back against binding consumer protection rules. Our German member vzbv highlighted one particular case. Currently, German consumers have a right to withdraw from a mortgage contract beyond the 14 day cooling-off period if the lender fails to comply with its information disclosure duties, including on the right of early repayment of the loan. However, banks are using the opportunity presented by the implementation of the Mortgage Credit Directive to limit this period to one year and two weeks starting from the beginning of the mortgage contract.

The aggregate benefits of regulation to consumers, in particular the deterrent and preventive effect, are notoriously difficult to quantify.

The focus of the Commission's call for evidence on quantifiable and empirical evidence about the costs of regulation is likely to benefit industry; it is relatively straightforward for companies to estimate the costs of compliance. However, by definition, whether regulatory burdens are 'unnecessary' or compliance costs 'excessive' can only be determined by looking at their objectives and benefits, whose highlighting may not be in the interest of the industry.

The aggregate benefits of regulation to consumers, in particular the deterrent and preventive effect, are notoriously difficult to quantify. There are many examples of recent EU interventions which may have carried a cost to industry but which are likely to help consumers and wider competition in the market: the transparency drive under MiFID II and PRIIPs, the legal right to a basic payment account under the Payment Accounts Directive, responsible lending obligations under the Mortgage Credit Directive, and increased depositor protection under the Deposit Guarantee Schemes Directive to name but a few.

Fundamentally, the majority of legislation that falls within the scope of this stocktaking exercise has not yet been fully implemented in many Member States. We are therefore sceptical about the real objective of this call for evidence. It is hard to imagine how the exercise can truly demonstrate the impact of laws on consumers – to counterweight claims of costs – if these have not been transposed yet.

BEUC urges the Commission to resist any pressure that seeks to undermine current legislation. So much remains to be done to restore financial stability and consumer confidence. The EU's co-legislators should adopt further and improved measures to regulate the conduct of financial service providers. Better regulation should not mean less regulation.

1. Rules affecting the ability of the economy to finance itself and grow

QUESTION: Investor and consumer protection: please specify whether, and to what extent, the regulatory framework has had any major positive or negative impacts on investor and consumer protection and confidence.

BEUC comment

Consumer protection and confidence in financial services/providers is crucial for the proper functioning of the financial system and market stability. Over the past few years EU policy-makers have adopted several pieces of legislation in the retail financial services area. Those laws contain crucial provisions aiming to protect consumers who, for example, open current accounts, make payments, borrow money to purchase a car or a house, invest and save for their retirement.

However, most of those new or revised laws have only recently entered into force, or are about to enter into force (MIFID, PRIIPs) while some are still at the transposition phase (e.g. Insurance Distribution Directive, Payment Accounts Directive, and Mortgage Credit Directive). It is therefore too early to assess any potential positive impact on consumers.

That being said, we can already point to a number of loopholes and shortcomings in the existing regulatory framework, in enforcement activities and in consumer redress schemes that cause or will cause, in our view, detriment to consumers. These need to be assessed and addressed by the Commission.

Consumer Credit Directive (CCD)

The CCD adopted in 2008 covers personal loans, credit cards, overdraft facilities, revolving credit or credit sale agreements. Under the CCD, lenders must provide the consumer with standardised pre-contractual information, comparable interest rates (APRC), and the rights to withdrawal and early repayment. When reviewing the directive last year, the Commission concluded that no revision was required for the time being. Instead its enforcement needs to be enhanced (see our comments with regard to enforcement below). Besides several positive provisions, the CCD contains serious loopholes.

- The scope of the directive covers the amounts between €200-€75,000. This means that small loans which are widespread in many Member States under different forms (payday loan, sms loan, etc.) fall out of the CCD scope and do not have to comply with its consumer protection provisions. Those short-term and expensive loans essentially target young people and low-income consumers causing huge financial detriment and a vicious debt spiral.

- When transposing the CCD at national level, many Member States have included small loans and short term loans in the scope. Some other Member States have adopted specific measures: in an attempt to prevent irresponsible and abusive behaviour by payday lenders, the UK regulator recently took drastic measures to clean up the market[3]. **As part of the expected measures to fight over-indebtedness, the Commission should assess whether EU action is necessary in the area of small short-term loans**.

[3] https://www.fca.org.uk/news/fca-confirms-price-cap-rules-for-payday-lenders
https://www.gov.uk/government/news/cma-finalises-proposals-to-lower-payday-loan-costs

- The directive makes no attempt to control the cost of credit or the penalties that may apply in the event of late payment. This is something Member States should decide for themselves. Some countries, for example, Belgium, France, Italy and Slovenia, have laws setting the maximum interest rate that providers can charge to the borrower, while in many other Member States no such measures exist. Regrettably, after the Commission's study and consultation on this topic in 2011, no follow-up actions were taken.

  As part of the expected measures to fight over-indebtedness, the Commission should assess whether EU action is necessary to cap interest rates and penalties in case of default or late payment, while maintaining existing consumer-friendly national laws.[4]

Pre-contractual information should also be available online, and allow consumers to personalise credit offers and compare products across the market.

- **Pre-contractual information should also be available online, and allow consumers to personalise credit offers and compare products across the market.** This is important to allow consumers to shop around and make the best choice. For example, in Italy most banks do not offer this possibility to consumers.

Payment Accounts Directive (PAD)

The PAD concerns consumers' right to payment (bank) accounts, comparability of payment account fees, and payment account switching (entry into force in March 2016). Probably the main achievement of the directive is that it provides all EU consumers with a right to open a payment account that allows them to perform essential operations, such as receiving their salary, pensions and allowances, paying their utility bills or making online purchases.

- The PAD lacks ambition with regard to account switching between banks. We do not expect that consumer switching rates will increase in the near future. When the draft PAD was scrutinised by policy-makers, **BEUC recommended that automatic redirection services, similar to what currently exists in the Netherlands and UK, should be introduced in all Member States, while a full payment account number portability should be assessed as a long-term solution**.

  Instead, the PAD replicates pre-existing self-regulation by banks that did not live up to expectations. In order to make effective and smooth payment account mobility possible, consumers should access a very simple and reliable switching mechanism. Difficulties transferring direct debits and standing orders have been identified as being among the main barriers to account switching. The 2010 BEUC monitoring report of the EBIC Common Principles for Bank Account Switching (banking self-regulation) revealed that problems exist in relation to the transfer of direct debits from the former bank account to the new one[5]. The 2011 Commission mystery shopping study found that, in two third of cases, consumers were told that the bank could not assist them with the transfer of standing orders. Only 19% successfully switched their payment account including a standing order[6].

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4 BEUC response to EC consultation on interest rate restrictions, 2011: http://www.beuc.eu/publications/2011-00231-01-e.pdf

5 http://www.beuc.org/Content/Default.asp?PageID=2143

6 "Consumers' experience when switching bank accounts", European Commission, 2011: http://ec.europa.eu/consumers/rights/docs/switching_bank_accounts_report_en.pdf

The Commission impact assessment accompanying the draft PAD also stressed that the problem of potential errors occurring when in/out payments by third parties are credited/debited to the wrong account can only be fully addressed by setting up an automatic redirection service or payment account portability.

- The PAD also contains provisions on cross-border account opening. If the consumer wants to open a basic payment account in another Member State, the Member State may require the consumer to show a genuine interest in doing so which can be very burdensome for the consumer (no predefined objective criteria). Besides that, Member States may identify limited and specific additional cases where credit institutions may be required or may choose to refuse a basic payment account.

  In our view, such restrictions go against the single market principle and the free movement of people and capital. **We expect that the upcoming Green Paper consultation on financial services single market will, inter alia, look into the issue of cross-border shopping for bank accounts**.

- There are also problems with law enforcement. A recent mystery shopping in Italy revealed significant delays in account switching compared to what is stipulated in the law – the transfer must take place within 12 working days (Art 2, law on the transfer of current accounts DL 3/2015)[7].

Cross-border payments within the EU

The objective of Regulation (EC) No 924/2009 on cross-border payments in the Community was to eliminate differences in charges for cross-border and national payments in euros. The basic principle is that the charges for payment transactions offered by a payment service provider have to be the same, for the payment of the same value, whether the payment is national or cross-border.

The regulation should be extended to all non-euro currencies in the Community

All non-euro area Member States have the possibility to extend the application of this regulation and to apply the same charges for payments in euro as for payments in their national currency. Only Sweden and Romania have done this so far.

- Regulation 924/2009 on the equality of charges should be extended to all non-euro currencies in the Community. This would end the practice of banks charging exorbitant fees when workers are paid in one country for work performed for a company in another. These are often a percentage of the sum paid and so can represent a large chunk of someone's earnings.

  BEUC has been informed of several cases, where exorbitant fees for cross-border money transfers in non-euro currencies were charged to consumers. For example, a consumer was charged 48 Euros for a 10 Euros transfer to Hungary. A German consumer transferred 2,635 GBP to the UK for language courses. He was informed by his bank that the payment will cost 12 Euros. But he had to pay 60 Euros in fees in total, which were partly charged by the receiving bank. The current situation is not compatible with the EU objective of achieving an internal market for payments. **The regulation should be extended to all non-euro currencies in the Community.**

[7] http://www.altroconsumo.it/soldi/conti-correnti/news/analisi-prezzi-conti

- One of the central issues in Regulation 924/2009 is related to its **interpretation**. Article 3(1) states that "Charges levied by a payment service provider on a payment service user in respect of cross-border payments of up to EUR 50 000 shall be the same as the charges levied by that payment service provider on payment service users for corresponding national payments of the same value and in the same currency." This provision is not explicit and leaves room for interpretation.

  For example, recently in Germany, there was an issue related to cross-border ATM charges. German consumers were charged very high fees (often more than 5 Euros) by their banks for using ATMs outside Germany. If they used an ATM of another bank or a scheme at national level, fees charged by private banks were limited to EUR 1.95[8], while the co-operative banks and Sparkassen charged around EUR 3.95-4.95.

  In January 2011 the Commission issued an interpretative note, where the 'corresponding national payment' is approached from the point of view of the consumer.[9] The picture becomes clearer when comparing the situation across countries. For example, Dutch consumers do not pay fees for national and cross-border ATM withdrawals in Euros. If a German and a Dutch consumer meet at an ATM machine in Germany which is not their bank, the Dutch consumer does not pay any charges, while the German consumer will be charged an extra fee. When they cross the border to the Netherlands and do the same ATM transaction, the Dutch consumer is charged nothing again, while the fee paid by the German consumer is even higher than in his home country. **BEUC requests that the text of the regulation is amended so as not to allow any room for different interpretations**.

Investment products

In terms of raising investor protection, both MiFID II and KID for PRIIPS have not entered into force yet. We would like to issue a warning that any delay in implementing MiFID II would be a major blow to restoring retail investor trust.

Furthermore we expect that both initiatives will have a positive effect on restoring investor protection.

- The key information document (KID) standardised across the EU will explain the key features of investment products in plain language. It should also remove misleading information about how much an investment really costs.

- MiFID II is set to lift overall investor protection standards in the EU, inter alia, by upgrading transparency rules, tackling conflicts of interest and establishing an independent advice regime.

MiFID II failed to adopt a full ban on commissions

However, we would like to briefly highlight the main shortcomings of both texts.

- **Incomprehensibly, KID failed to cover personal pension products and simple shares and bonds.** This limits the effectiveness of these new requirements. Pension products are among the few long-term investment products purchased by a majority of EU consumers. Costs have a significant impact on retirement income drawn from pension products, and greater transparency is needed to allow consumers to ascertain whether they are receiving value for money.

[8] According to the latest information, this limitation has been given up and commercial banks now charge higher fees.

[9] http://ec.europa.eu/internal_market/payments/docs/reg-924_2009/application_direct_charging_en.pdf

- **MiFID II failed to adopt a full ban on commissions**, which is necessary to fully align the interests of financial intermediaries with those of consumers when they are meant to provide investment advice. The payment of a commission triggers a commission bias, resulting in a conflict of interest where intermediaries may seek to maximise their own remuneration rather than providing the customer with the most suitable product or service. This is a particular problem in markets where consumers rely heavily on intermediaries, in particular the market for investment products. Investigations carried out by several BEUC members found that investment service providers often do not act in the consumer's interest (see also the annex)[10].

On a final note we would like to urge the Commission to make sure that consumer-friendly measures are not diluted in the implementation (level 2) process under pressure from the industry. We can refer, for example, to currently pending MiFID II implementing measures: the proposed criteria for the quality enhancement test related to inducements have raised a lot of controversy.

Enforcement of EU law

- At national level

In the past few years several EU legislative texts have been adopted in the retail financial services area as a response to the financial crisis and the difficulties faced by consumers. However, lack of appropriate enforcement and supervision in many Member States raise serious concerns.

For example, the BEUC study "Financial Supervision in the EU - A Consumer Perspective" (2011) found that for some national financial supervisory authorities, consumer protection does not constitute a statutory objective. Many of those that do have this role perform only a limited number of tasks; several national authorities have a limited number of staff in charge of consumer protection supervision and not all authorities have staff members dealing exclusively with consumer protection.

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The on-site inspection capacity of many authorities is limited. 70% of the authorities surveyed consider themselves unable to make binding decisions in relation to consumer complaints. In most cases, they merely send notification letters to interested parties/government authorities. Several authorities do not publicise sanctions and consumer complaints. In many cases, conflicts of interests are a barrier to such publications (i.e. concerns over the detrimental effects on the financial markets).

There can be legal obstacles (including criminal penalties) to publication, or publication at an early stage. Although safeguards should remain to ensure that publication is appropriate, there should be a presumption of transparency in regulatory and supervisory activity. In the overwhelming majority of cases, consumers cannot get

[10] http://www.test-achats.be/argent/comptes-epargne/en-direct/mon-banquier-ce-pietre-conseiller
http://www.altroconsumo.it/soldi/nc/news/investimenti-cosa-consigliano-le-banche-il-video-con-telecamera-nascosta-soldi-diritti-115
http://www.altroconsumo.it/soldi/conti-correnti/news/banca-popolare-vicenza-veneto-banca
http://www.vzbv.de/pressemitteilung/verbraucher-erhalten-unpassende-anlageprodukte
https://www.test.de/Anlageberatung-Nur-3-von-23-Banken-beraten-gut-4964413-0/

redress. There are also potential conflicts of interests as funding of some authorities is done by financial service providers.

There are concrete examples. The Commission's 2014 report on implementation of the Consumer Credit Directive found that several provisions of the CCD are not being respected by creditors. This applies to advertisements, pre-contractual information and fulfilment of the obligation to inform consumers about their rights (particularly in respect of right of withdrawal from the contract within the first 14 days and early repayment). The mystery shopping exercise confirmed the results of the sweep carried out in September 2011. The consumer survey showed that consumers encounter problems when exercising those rights. In conclusion, the Commission said that "there is a need to continue monitoring the enforcement of the CCD in the Member States, starting with an assessment of the supervisory practices by Member States."

All consumers expect their financial supervisors to deal with consumer protection in an independent way. The big challenge is to ensure the legislation adopted is properly implemented and enforced at national level. However, supervision in financial services varies a lot from one Member State to another, leading all too often to poor consumer protection.

Supervising consumer financial services requires a degree of harmonisation. A key ingredient to successfully implementing financial markets laws is to have powerful national supervisors in charge of consumer protection in all Member States. Supervisory convergence with respect to consumer protection is all the more important in the light of the Commission's plans related to single market for financial services and Capital Markets Union.

- <u>At cross-border level</u>

Supervising consumer financial services also requires **co-operation between national supervisors**. Regulation (EC) No 2006/2004 on consumer protection cooperation (the CPC Regulation) lays down the general conditions and a framework for cooperation between national enforcement authorities. It covers situations when the collective interests of consumers are at stake and allows authorities to stop breaches of consumer rules when the trader and the consumer are established in different countries. But in the financial services areas, only the Consumer Credit Directive and the Directive on the protection of consumers concerning distance marketing of consumer financial services fall under the scope of this network so far.

Passporting regime: Financial service providers may perform their activities throughout the EU, either through the establishment of a branch or the free provision of services, based on a single authorisation (passport) issued by the competent authorities of the home Member State. While we understand the idea behind this is to strengthen the single market for companies, passporting in its current form presents serious challenges for consumers.

BEUC advocates for a 'European driving license' rather than a 'European Passport'. Competent authorities of the host country should be empowered to supervise where a financial service provider is doing business and, in case of relevant failure, have the ability to revoke the provider's access to the market.

Passporting may cause regulatory arbitrage, where companies obtain the passport in a country with lower consumer protection requirements, and then operate in all other Member States. And because those companies are being supervised by their home state competent authorities, consumers in countries where companies operate may find

themselves unprotected in case of incidents, such as mis-selling, low-quality advice, fraud, company going bust. For example, many financial providers registered and supervised abroad market products and services to UK consumers. And in case of an incident, out-of-court redress bodies of the consumer's country are not competent to address the consumer's complaint.

BEUC advocates for a 'European driving license' rather than a 'European Passport'. Competent authorities of the host country should be empowered to supervise where a financial service provider is doing business and, in case of relevant failure, have the ability to revoke the provider's access to the market. Consumer complaints should be resolved by competent bodies of their country of residence.

We call on the Commission to:

- **ensure EU legislation is properly enforced in each member state and be vocal in cases of insufficient enforcement;**

- **take action for the convergence of national supervisory practices so that in all Member States there are financial supervisors with a strong consumer protection mandate, sufficient resources and the powers to fulfil the mandate;**[11]

- **consider merging consumer protection divisions at the European Supervisory Authorities (EBA, ESMA, and EIOPA) in order to give more prominence to the conduct-of-business supervision and consumer protection issues. The Joint Committee of the three ESAs could be transformed into a formal institution.**

- Sanctioning regimes

In the financial services area, sanctioning regimes play an important role in the effectiveness of supervision. The EU retail financial services laws provide that sanctions laid down by member states for non-compliance with the law must be effective, proportionate and dissuasive. However, in practice, sanctioning regimes vary greatly across Member states, lack of dissuasiveness and in effective application of sanctions seriously undermine consumer protection and their confidence in the financial sector.

In BEUC's response to the Commission consultation in 2011 we stressed that:
- some competent authorities cannot address administrative sanctions to both natural and legal persons;
- competent authorities should not take into account the same criteria in the application of sanctions;
- divergence exists in the nature (administrative or criminal) of sanctions provided for in national legislation;
- the level of application of sanctions varies across Member States[12].

[11] See BEUC recommendations on independent and efficient consumer protection supervision at national level, 2011: http://www.beuc.eu/publications/2011-09879-01-e.pdf

[12] BEUC response to EC consultation on "Reinforcing sanctioning regimes in the financial services sector", 2011: http://www.beuc.eu/publications/2011-00147-01-e.pdf

Regrettably, there were no follow-up actions to the above-mentioned consultation to reinforce national sanctioning regimes in the financial services sector.

BEUC considers that the minimum level of pecuniary penalties should be set at European level to ensure effective implementation of EU law at national level.

- Consumer redress

The EU sectoral laws on financial services impose an obligation on Member States to set up effective out-of-court complaint and redress procedures for the settlement of disputes between providers and consumers. Yet, just having an appropriate Alternative Dispute Resolution (ADR) scheme is insufficient. If businesses do not subscribe to the procedure, consumers are still left empty-handed. Only 9% of European retailers have used an ADR scheme.

Many successful European ADR schemes are mandatory for businesses. For instance, in Denmark, which has a very well developed ADR system for 35 years and where private ADR boards have long been in operation and cover most sectors, the case will be handled by the ADR body even if the trader chooses not to reply to the request from the Board. The same applies to the Swedish Dispute Resolution Board. One of the most successful schemes in Europe – the UK Financial Services Ombudsman, is mandatory for financial services providers operating in the UK.

Independence of ADR bodies is another crucial aspect that impacts the efficiency of dispute resolution. For example, banking ADR in Germany is run by the banking associations, plus each association has their own or even several schemes. An ombudsman at Bundesbank only deals with rare cases that fall outside of the scope of those private schemes. Although in theory banking ombudsmen are independent in their decisions, they are appointed and paid by the banking associations.

We call on EU policymakers to take measures to ensure that ADR bodies are truly independent and that financial service providers adhere to one or more ADR bodies.

QUESTION: Proportionality/preserving diversity in the EU financial sector: are EU rules adequately suited to the diversity of financial institutions in the EU? Are these rules adapted to the emergence of new business models and the participation of non- financial actors in the market place? Is further adaptation needed and justified from a risk perspective? If so, which, and how?

BEUC comment

Regarding consumer protection, rules should be exactly the same regardless of the type of provider, its size or its status. Adopting different rules would be completely contrary to the main objective of restoring consumer confidence.

N**ational measures that provide consumers with a high level of protection must be maintained, and ideally spread to other EU countries**. For example, in Italy the free of charge mortgage switching (Surroga) is very important to encourage the mobility of borrowers and market competition. In 2015, 32% of new mortgage credits in Italy

were switched to another provider. The European Commission could assess such practices and explore ways of spreading them across EU countries.

2. Unnecessary regulatory burdens

QUESTION: Contractual documentation: standardised documentation is often necessary to ensure that market participants are subject to the same set of rules throughout the EU in order to facilitate the cross-border provision of services and ensure free movement of capital. When rules change, clients and counterparties are often faced with new contractual documentation. This may add costs and might not always provide greater customer/ investor protection. Please identify specific situations where contractual or regulatory documents need to be updated with unnecessary frequency or are required to contain information that does not adequately meet the objectives above. Please indicate where digitalisation and digital standards could help to simplify and make contractual documentation less costly, and, if applicable, identify any obstacles to this happening.

BEUC comment

Standardised/comparable information on financial products plays an important role in helping consumer decision making.

Consumers should at any time be able to choose their preferred communication channel for receiving pre-contractual and contractual documentation, i.e. in digital or paper format, on a non-discriminatory basis.

The information must be relevant (enable consumers to understand the key features of each product and compare products across the market), reliable, user-friendly (standardised format; no jargon) and timely (allow consumer sufficient time to make a decision before engaging in a contractual agreement).

Recent EU financial services legislation provides for an obligation on financial service providers to present the pre-contractual information in a standardised format, with regard to personal loans and mortgage credit, bank accounts, insurance and investment products. Besides that, in line with the Payment Accounts Directive, banks and payment account providers will have to provide consumers with standardised annual statement of fees – this should help consumers compare market offers and shop for better deals. It is important to stress that besides standardised pre-contractual and post-contractual information, the consumer's decision-making toolbox should include unbiased and widely available comparison tools and the consumer should have access to independent and affordable financial advice and intermediation, which is far from being the case today.

New technologies and digitalisation have undeniably changed the ways in which many consumers interact with financial firms, shop around the market, inform themselves and take financial decisions. Nowadays, more people opt for purely online bank accounts, rarely go to bank branches, consult their account balance online instead of printing the account statement, use peer-to-peer lending platforms and robot advice services, shop and pay through mobile devices. Market entry of new players made possible by recent regulatory developments (e.g. Payment Services Directive), digitalisation and useful financial innovations, greatly benefit consumers by cutting costs, eliminating

unnecessary intermediaries, and increasing choice and convenience.

However, this is far from being the case for all consumers, in particular the elderly, migrants, and those with no internet connection, without forgetting consumers who have limited confidence in the security of online financial services[13].

Consumer choice should be respected by providers. **Consumers should at any time be able to choose their preferred communication channel for receiving pre-contractual and contractual documentation, i.e. in digital or paper format, on a non-discriminatory basis.**

QUESTION: Rules outdated due to technological change: please specify where the effectiveness of rules could be enhanced to respond to increasingly online-based services and the development of financial technology solutions for the financial services sector.

BEUC comment

BEUC welcomes innovation and new market actors that challenge established providers and traditional business models, create more competition, offer broader choice, better quality, convenience and lower prices to consumers.

Competition is badly needed in the financial services area to help regain consumer trust. High fees, misbehaviour and mis-selling scandals involving financial firms are recurrent e.g. LIBOR and EURIBOR manipulation. Unsuitable and even toxic investment and insurance products are marketed to consumers as are unhedged foreign currency loans.

Currently, financial technology companies based on using software to provide financial services (the so-called 'fintech') and founded with the purpose of disrupting incumbent financial systems and corporations are more and more common. Many of those initiatives benefit, or have the potential, to benefit consumers. For example, equity crowdfunding can give savvy investors easy access to an investment. P2P lending can offer better rates for both lenders and borrowers; Consumer-to-consumer money transfer solutions in various countries like the UK and Denmark offer easy and secure service to consumers. In France, consumers can open cost-efficient payment accounts through tobacco shops. Some banks have also understood the need to propose attractive online services, like Ideal in the Netherlands, an online bank account-based payment solution (developed jointly by banks) which has became the most popular online payment method for Dutch consumers and merchants.

While various financial technology solutions can potentially benefit consumers, innovation and growing digitalisation present potential challenges, such as information disclosure, security, privacy, liability, and interoperability aspects. For example, in the last couple of years, national and EU authorities issued opinions and recommendations on the risks related to virtual currencies.[14] Consumer data used by insurance companies and social networks to offer tailored products to consumers or assess their creditworthiness also raise controversy.

Policymakers must make sure that regulation and oversight keep pace with innovation.

[13] http://thefinanser.co.uk/fsclub/2015/03/is-there-a-digital-divide-in-banking.html

[14] For example, see the opinion of the European Banking Authority: https://www.eba.europa.eu/documents/10180/657547/EBA-Op-2014-08+Opinion+on+Virtual+Currencies.pdf

Policymakers must make sure that regulation and oversight keep pace with innovation. They must ensure providers are properly regulated and supervised to ensure consumer protection, a level playing field and an avoidance of regulatory arbitrage.

BEUC's comments with respect to payment services and crowdfunding are provided below. Our detailed position on digitalisation and financial services will be developed at a later stage.

Payment services

One of the key objectives of the recently revised Payment Services Directive (PSD II) was to adapt to changes and innovation in the payments area. Thus, the previously unregulated 'third-party payment initiation service providers' (TPPs) have been brought under the scope of the PSD II. TPPs will have to comply with a number of requirements as regards their registration and licencing, strong customer authentication, authentication vis-à-vis the consumer's bank, and liability in case of payment incidents. The liability requirements related to TPPs under the PSD II are very consumer friendly: in case of an unauthorised transaction, the consumer will be entitled to get the refund from his bank; the ultimate liability for the fraudulent transaction will be addressed between the consumer's bank and the TPP.

A major security concern relates to the operating model where TPPs come into possession of the consumer's personal security features to access his bank account. This threatens consumer security and privacy and by far exceeds the objective, which is to receive payment authorisation and a payment guarantee for a specific payment transaction.

The European Banking authority (EBA) has been mandated by the PSD 2 to develop binding technical standards setting minimum security requirements for payment services providers across the EU, and providing enhanced protection of EU consumers against payment fraud on the Internet[15].

We expect the EBA's future technical standards will ensure the safety of consumers' personal security features with respect to payment transactions through TPPs. Besides that, policymakers must closely monitor new developments in the payments sector (such as mobile payments, virtual currencies, etc.) and make sure all payment service providers and services are properly regulated and supervised.

See below our policy demands relating to some specific financial services sectors.

Crowdfunding

BEUC welcomes the development of investment-based crowdfunding and peer-to-peer platforms as it gives consumers direct access to a wider range of investment options and as it could help in building competitive pressure in their respective markets. However, we believe that a clear legal framework guaranteeing consumer rights is necessary to empower this still growing industry[16].

[15] EBA outlines its upcoming initiatives for the regulation of retail payments, May 2015: http://www.eba.europa.eu/-/eba-outlines-its-upcoming-initiatives-for-the-regulation-of-retail-payments

[16] BEUC response to the CMU consultation, May 2015: http://www.beuc.eu/publications/beuc-x-2015-046_gve_green_paper_building_a_capital_markets_union.pdf

It is clear that the current regulatory framework is not designed with this industry in mind, as was also pointed out in the ESMA opinion on investment-based crowdfunding, which could spur regulatory arbitrage. Indeed, many platforms seem to be designed specifically to escape MiFID or Prospectus requirements, to the detriment of investor protection.

As crowd investors are prone to a high risk of capital loss and have very few options on secondary markets, there should be an effective risk warning pointing to the specific risk profile of these investments. Moreover, platforms can be exposed to conflicts of interest as they are generally remunerated on the basis of the amount of transactions on its platform. A recent study by our member AK Wien exposed the weak disclosure practices in this area.

We believe that an EU framework guaranteeing minimal consumer protection standards will become necessary in the near future.

Peer to peer lending faces similar regulatory challenges and unaddressed lending-related risks. As this business could expand rapidly, just as it is currently doing in the UK, it would require swift regulatory attention.

Moreover, due to the inherent digital nature of this service, and the associated cross-border potential, **we believe that an EU framework guaranteeing minimal consumer protection standards will become necessary in the near future. This could serve the scalability of user-friendly platforms. Regulatory efforts should focus inter alia on the following aspects: clearly visible risk notices, disclosure and organisational requirements, right of cancellation and investment amount caps. Specifically for peer to peer lending, creditworthiness checks on the borrower should be performed.**

In this context, BEUC wants to make clear that a self-regulatory approach, including the promotion of a voluntary transparency label without public enforcement, is not the best way to give investors the much needed trust in these new type of intermediaries and risks giving a false sense of security.

Any regulation needs to be calibrated in order to strengthen this industry, not stifling its growth. We would also recommend the European Commission consults on this topic more in detail before taking further action. Merely loosening prospectus' requirements for the sake of crowdfunding, without a broader regulatory approach is not the best way forward.

3. Interactions of individual rules, inconsistencies and gaps

QUESTION: Links between individual rules and overall cumulative impact: given the interconnections within the financial sector, it is important to understand whether the rules on banking, insurance, asset management and other areas are interacting as intended. Please identify and explain why interactions may give rise to unintended consequences that should be taken into account in the review process. Please provide an assessment of their cumulative impact. Please consider whether changes in the sectoral rules have affected the relevancy or effectiveness of the cross-sectoral rules (for example with regard to financial conglomerates). Please explain in what way and provide concrete examples.

BEUC comment

Alignment of consumer/investor protection rules

BEUC is very concerned about the silo-based approach when it comes to investor protection. In this perspective **we have called for a strict alignment between investor protection rules under MIFID II and similar rules under IDD (Insurance Distribution Directive) for insurance-based investment products (IBIPs).**

For consumers, a mutual fund (governed by MIFIDII) or an IBIP are often substitutable products and therefore should enjoy the same level of investor protection when they are purchased.

However, the final IDD failed to produce a full alignment of these rules, giving further leeway to regulatory arbitrage in the future. Two major upgrades of investor protection, which many stakeholders warned of, were incomprehensibly left out in the end:

- **the establishment of an independent advice regime, where inducements are banned.** This is a major blow for the development of truly independent advice;
- **the mandatory disclosure of the amount of commissions.**

Responsible lending

The Consumer Credit Directive does not address the issue of irresponsible lending. This concerns the obligation for lenders to assess the creditworthiness of consumers prior to offering credit.

Although there is a basic obligation to assess creditworthiness, the means by which this is done is largely left to the creditor and the directive still does not oblige lenders to grant credit only to those borrowers who are likely to repay it.[17] On the other hand, the recently adopted Mortgage Credit Directive obliges creditors to make the credit available to the consumer only where the result of the creditworthiness assessment indicates that the obligations resulting from credit agreement are likely to be met. **Considering that irresponsible lending is one of the causes of consumer over-indebtedness, it is important to align the CCD with responsible lending principles that apply to mortgage credit**.

Cross-selling practices

The retail financial services sector does not function properly.

One of the crucial issues is cross-selling practices, particularly tying, which is widespread across EU Member States. Cross-selling limits competition and consumer choice, and too often simply makes it impossible for the consumer to decide whether he is going to benefit financially from it or not.

The financial benefits are not always clear, but cross-selling marketing gives the impression they are. For example, bundled items are not included into the APR (Annual Percentage Rate) of credit products. Costs at the time of purchase but also costs for the consumer in the long run (i.e. in the life span of the contract) must be considered. This implies taking into account potential tariff increases for individual services included in the package as well as switching costs for the consumer.

[17] Responsible lending principles are provided only in recital 26 of the directive

BEUC's response to the Commission consultation on tying and other potentially unfair commercial practices (2010) contains numerous examples of cross-selling practices in different Member States and their potentially negative impact on consumers[18]. Examples include bank account packages that include an overdraft facility and credit card on a 'take it or leave it' basis, ancillary products (bank account, multi-risk insurance contracts) tied to mortgage credit, and 'optional' insurance bundled with credit. In France, consumer associations regularly point out that bank packaged accounts sold as a 'package' are often more expensive than services bought separately. In addition, many packages include services consumers do not need. In Slovenia, with travel or accident insurance linked to credit cards, consumers can not opt out of, or adapt, insurance premiums. More recently, BEUC's position on the draft MiFID II proposal (2012) provided examples of tying of retail investment services[19].

BEUC calls on the Commission to adopt a horizontal approach and ban tying in retail financial services

All the legislative texts on retail financial services adopted following the EC consultation in 2010 contain provisions related to tying and bundling. Although all of these texts (MiFID II, MCD, PAD and IDD) recognise the harmful impact of tying on competition and consumers, none of them have actually introduced a ban on the practice.

In general, firms are only required to inform the consumer about whether the service can be purchased separately and provide the price of individual items included in the package. Only the Mortgage Credit Directive instructs Member States to allow bundling and prohibit tying practices, but this general provision has been considerably weakened by a Member State option allowing all kinds of tying justified on the grounds of providing additional security to the creditor in the event of default. **BEUC calls on the Commission to adopt a horizontal approach and ban tying in retail financial services[20].**

QUESTION: Gaps: while the recently adopted financial legislation has addressed the most pressing issues identified following the financial crisis, it is also important to consider whether they are any significant regulatory gaps. Please indicate to what extent the existing rules have met their objectives and identify any remaining gaps that should be addressed.

BEUC comment

See our responses to previous questions.

END

[18] BEUC response to EC consultation on tying and other potentially unfair commercial practices in retail financial services sector, April 2010: http://www.beuc.eu/publications/2010-00300-01-e.pdf

[19] See also BEUC response to ESAs consultation on draft Guidelines for cross-selling, March 2015: http://www.beuc.eu/publications/beuc-x-2015-027_fal_response_to_consultation_of_the.pdf

[20] See also the ESAs' joint letter to Commissioner Hill, 27 January 2016: http://www.eba.europa.eu/documents/10180/15736/ESAs+letter+to+European+Commission+on+cross-selling+of+financial+product....pdf

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