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IBF RESPONSE TO THE GREEN PAPER ON RETAIL FINANCIAL SERVICES



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1. Introduction:

Irish Banking Federation (IBF) is the leading representative body for the banking and financial services sector in Ireland, representing over 60 member institutions, including licensed domestic and foreign banks and institutions operating in the financial marketplace here. The IBF is pleased to have the opportunity to comment on the Green Paper on Retail Financial Services.

2. General Comments

When proposing any changes in European policy, there are a number of guiding objectives that must always be kept to the forefront of any discussion.

2.1 Proportionality

During consultation a clear view of what the Commission is seeking to achieve must be kept in mind so that all measures taken will be proportionate. While consumer protection rules should be robust and provide consumers with an adequate level of protection, boosting consumer confidence cannot mean the highest level of protection possible. It is necessary to strike a balance, as the additional costs of protection are likely to be borne by the consumer. It should be remembered that financial service providers would prefer to avoid a further wave of legislation as the banking sector is already heavily involved in the implementation of directives such as MiFID, CRD and AML.

2.2 Level Playing Field

The creation of a level playing field is always important. This does not mean that the same set of rules must be applied to all providers. One of key considerations in developing rules is the need to recognise the difference between intermediation and direct provision, between mono-providers and multi service providers, between face to face and distance sales processes.

2.3 Danger of Information Overload

Another relevant concern is the possibility of information “overload”. Introducing further legislation is not always the most appropriate solution and instead issues may better be resolved through amending or seeking clarification on the legislation that already exists. This is both consumer and provider friendly.

2.4 Variations in Market Performance

The Green paper points to large variations in market performance. It specifically identifies Spain and Ireland as being consistently above the EU average when it comes to profitability of retail financial providers. Caution should be exercised in drawing definitive conclusions from those statistics. The Commission in its Final Report of its Competition Inquiry into Retail Banking sector in 2007 accepted the contextualisation of Ireland’s high profitability. Ireland displayed the highest bank profitability in the Commissions services market survey of 2002 – 2004 and also recorded the fastest economic growth in the EU 15 between 1998 and 2005. It was accepted that the high profitability was attributable to our rapid economic growth as this often prompts a rising demand for banking services combined with a fairly low share of non performing loans.

2.5 Competition

Competition is a key driver of market activity. There is a genuine concern that over harmonisation could adversely affect competition, which is not in the consumer interest.

2.6 Over Paternalistic

Without doubt the consumer based approach has yielded some very successful and commendable results, however it is felt that the danger of adopting an overly paternalistic approach should also be pointed out. Of course it is desirable that all consumers be treated fairly but that does not necessarily mean that all consumers must be treated the same. This brings a possibility of retrograde market conditions. Consumers themselves have an important role to play, their judgment and ability to understand implications and consequences of their requests remains a crucial factor. As EBF (European Banking Federation) highlight, this approach is more consistent with the definition of the consumer shaped by ECJ rulings which state that consumers should be considered as “reasonably well informed”, “observant and circumspect”. There would seem little reason why a proactive consumer should not be permitted to benefit from his assertiveness. In fact, a market where the proactive consumer benefits, is more likely to encourage other consumers to be more engaged in their financial affairs.

2.7 Implementation

Should any legislative provision result from this consultation, there are a number of practical concerns that warrant consideration. To ensure the most efficient and appropriate implementation, it is suggested that any new measures should be confined to projects of a reasonable size with more manageable implementation deadlines. While the mutual recognition aspects of MiFID were generally welcomed, it was felt by many that MiFID was in fact too ambitious a project to implement in one go. Perhaps in future it may be advisable to divide initiatives into separate confined components. These concerns similarly relate to implementation dates. Taking again the example of MiFID, Level 2 of the process had to be completed by August 2006 and guidance on level 3 by May 2007, arguably this was insufficient time to adequately absorb the implications across various provisions and extensive range of products and services, in order to meet the November implementation deadline. It would be more practical to stagger implementation and transpositions dates accordingly.

2.8 Consultation

The Lamfalussy process is viewed as very beneficial in terms of clarifying for stakeholders when and how to engage in the consultation process on various aspects of proposal under consideration. In contrast, discussions on CCD were difficult for stakeholders as there were numerous, significantly changing drafts issued in quick succession with inadequate times for examination and response. The benefits of industry involvement from an early stage are widely canvassed so the Commission is reminded of the need to bear this in mind when deciding on relevant deadlines.

2.9 Principles Based Approach

A further consideration is the role which principles based regulation can play in going forward. In Ireland regulations tend to be more principles based and there are a number of benefits to this approach. Firstly over regulation and the cost of compliance can be a deterrent. In particular SMEs can find it difficult to prosper as they often drown under large amounts of regulation. Principle based regulations because of their flexible nature can facilitate consumers and providers as they can be more responsive to changing markets so that necessary alterations can be made in a more efficient and timely manner. In contrast a strict rules based approach can limit applicability to the specific circumstances and possibilities that were identified at the time of drafting. It makes its effectiveness difficult to measure and any change is likely to be only on a reactive basis which slows things down.

Therefore it is essential in measuring the appropriate level of regulation, that the EU Commission be ever aware of maintaining the EU market's international competitive position, through ensuring impact of regulations be proportionate and effective without being overly burdensome or costly.

2.10 Legislative Change not the only Solution

IBF feel it is worth bearing in mind that legislative change, although necessary is not the sole motivation or explanation as to why providers go cross border. There are other more practical commercial issues that need to be borne in mind, such as the cost of entry to a green field which include marketing costs to increase brand familiarity.

3. Specific Comments

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

IBF would echo EBF observations that benefits to consumers primarily come from general economic growth. On this basis it is essential that consumer protection provisions are consistent with measures aimed at boosting the EU Economy. Currently the objectives are very much consumer focused and IBF is not satisfied that the appropriate balance has been achieved. If market integration is the ultimate objective, it is more likely that this will be supplier led so providers also need to be enticed. There is also a danger that the large emphasis on consumer protection and empowerment could lead to standardised information which in turn could result in standardised products. This may bring a danger of reduced consumer choice which is clearly not in consumer interests.

There is a constant need to be aware of why or how providers go cross border, this would help in identifying the areas which need to be prioritised and thus better meet the needs of other providers seeking to trade cross border. While there is a need for the Commission to take into consideration the specific characteristics of retail banking markets, there are a number of other markets which have successfully gone cross border, for example internet shopping for holidays/CDs. It is suggested that comparative research could prove extremely beneficial in this context in order to determine *how* such markets have managed to go cross border and *why* it has proved successful and sustainable.

(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 limitation from either financial services providers or other stakeholders (employers, social security, administration, 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.).

The Green Paper understandably deals solely with issues within the remit of DG MARKET, however there are issues outside of this that would affect a provider's willingness to provide services cross-border, for example the relevant law in other areas such as Insolvency Law as well as various factors such as language barriers and cultural barriers.

The EBF has encouraged the Commission to undertake an independent Impact Assessment to determine the products which have the most potential for cross border growth based on genuine commercial opportunities for suppliers and the needs of consumers. One area that requires attention is in relation to the opening of bank accounts over the net. As a logical consequence of market integration, face to face transactions will occur less frequently. The higher standards applying to non face to face business could therefore run counter to market integration imperatives. In addition, there is a possibility that some of the AML requirements may create barriers for mobile individuals particularly in relation to identity and address verification. It is suggested that the Commission may wish to reevaluate the impact of certain AML requirements with these considerations in mind.

(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?

(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?

Consumer Choice could be enhanced if the circumstances for attracting providers to offer services cross border prevailed. It is necessary to underline the potential negative impact of the Rome 1 regulation on consumer choice. If the proposals of Rome 1 are effectuated, the current regime would be modified so that under certain conditions, the law applicable to those contracts has to be the law of the consumer's country of residence (Article 5). There is a danger that this will discourage financial providers to cross the border to reach potential clients, the knock on effect being that it may deprive the benefits of more offers and product variety.

IBF advocates the need to create an environment that facilitates cross-border provision of services and urges the EU Legislator to ensure as a priority full harmonisation of consumer protection provisions with the provider's home state rules applying to non-harmonised provisions. Specific obstacles can arise in domestic legislation which limit the development of certain channels, e.g. In Ireland providers of consumer credit are restricted from accepting electronic signatures, whereas in other countries (e.g. UK) this is allowed.

(5) Despite effort, 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 adhere to an ADR scheme? Should they be contractually obliged to offer ADR mechanisms to their clients?

According to the EBF, instruments like FIN-NET do not fully meet requirements, such that more transparency and ease of access should be ensured at national level. The advantages of such proposals are obvious. Any alteration of the current schemes in place will naturally come at a price, accordingly IBF is of the opinion that investment in changes should be proportionate to the actual level of cross border complaints that are made relative to total transactions.

There is a need to examine the practical aspects of handling cross border consumer complaints. In order to avoid the possibility of overlaps or gaps, it is suggested that the parameters of national redress agencies such as the Ombudsman be defined. Further if a national redress body is unable to adequately process a claim, or lacks capacity then they should be in a position to deal with complaints through channelling or redirecting complaints as appropriate.

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

Clearly the SEPA project is a challenging and unparalleled task that will change the payments landscape, opening up choices for consumers, businesses and providers alike. As a result IPSO (Irish Payments Services Organisation) have established an implementation task force which are aiming to deliver consumer compliant products. To date consumers in Ireland have not yet been fully engaged in the SEPA project, other than the introduction of BIC and IBAN for making cross border payments. SEPA Credit Transfers will be available from January 2008 and Banks will communicate this to their customers as the new SEPA products become available. The priority at this stage is early engagement with significant payment users such as utility companies, to ensure smooth transition to SEPA.

(7) With view to the launch of its study on credit intermediaries, later this year, the Commission would like to know whether stakeholders believe that 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

The subject of credit intermediaries raises a variety of issues. In Ireland, the term “credit intermediaries” does not include mortgage intermediaries but it will be presumed for these purposes that it includes both.

There are a number of different types of intermediaries that can operate across a range of businesses where services vary from full range to ancillary, because of this the issue of divergent terminology remains problematic. Certainly further clarification on a definition at EU level would be welcomed. EBF suggest that if a definition existed then intermediaries would be subject to a less strict regime.

It is essential to keep in mind that credit intermediaries are potentially the most significant distribution channel for any lender who decides to trade cross border, therefore any provisions likely to impact upon their practical operation need to be well thought out. Any overly onerous requirements that go back on the lender could potentially discourage the use of this channel. It is reasonable to suggest that conducting cross border business will become unattractive if there is not a clear delineation of responsibilities and the creditor cannot rely on the credit intermediary being responsible for its own compliance with all regulatory requirements.

(8) The Commission believes that it has an important role to play in developing a competitive, open and effect 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 EU-wide regime “28th regime” for savings and/or 3rd pillar pension products be envisaged?

Pensions are viewed as very important issues and therefore there is always a need to ensure more access and better distribution. This is especially true considering present demographic trends. Clearly a sustainable solution to the issues of pensions is desirable.

We would just caution on terminology at this point; it must further be observed that long term savings should remain clearly distinguished from pensions.

Consumers are unlikely to shop around different product providers directly. Pension provision is an important and sensitive issue, which many consumers would want to discuss with a financial advisor who they believe they can trust and meet face-to-face. As such, it would seem that it would be most beneficial to target any initiatives keeping in mind that most of these products would be sold through intermediaries.

IBF would encourage the Commission to pursue with the industry further analysis on the potential benefits of the 28th regime for specific products on a case-by-case basis.

(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 standardised product, which would have a god 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?

In line with EBF, IBF would express the view, that from the perspective of supply they do not see the added benefit the added value of a standardised product of the nature described in the Green Paper.

Such standardisation could actually have an adverse effect on essential elements of competition and limit consumer choice as it leaves little room for innovative flexibility and freedom and the creation of new products.

(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.

This has been identified as one of the most significant and crucial provisions in the Green Paper. The importance of this is demonstrated when one considers the expanding range of products and services available, products and services which are by their nature sophisticated. IBF feels that an overall policy at EU Level may prove difficult. It is felt that Governments have a key role to play in financial education, through the formal education system and the development of national curricula.

Currently IBF has strong links with the education sector through the education programmes we have developed for use in both primary and post-primary schools. The BSTAI (Business Studies Teachers Association of Ireland) student achievement awards are one of a number of initiatives in which we are involved to help promote business and financial knowledge and literacy in our schools. In addition to this, IBF is increasingly working with the Financial Regulator and other bodies to help ensure that financial education receives the attention and commitment it requires.

On a national level, the need to assign responsibility for this function has been mooted. Accordingly it is suggested that there is a need to require member states to assign responsibility for consumer literacy in a competent body.

(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?

Financial Institutions are already heavily regulated and have a high level of stringent duties to comply with, in addition to significant, and at times competing, domestic requirements on transparency and information disclosure. Further legislation increases the danger of overload, all of which will ultimately be limited by the consumer's ability to understand. It is felt that is consumer literacy is more appropriately the solution.

One thing to keep in mind when looking at the consistency of the various financial services directives is the national implementation of the directives. There are various instances where "gold-plating" occurs, which would mean that any conclusions reached by comparing the directives directly do not necessarily carry over into national markets where additional provisions may exist.

Furthermore, we would reiterate our previous position in relation to the CCD that we feel that the provision of advice is a separate and distinct service and whether or not to provide it should be a commercial decision. We do not believe that consumers wish to be advised on all products and should therefore not be in a position that they have to pay for a service they do not require or have their own judgement substituted where this is not necessary. It is worth reiterating that it is still the sole responsibility of the consumer to take a final decision and this should be reflected.

(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?

IBF would support initiatives to further explore accessibility issues, whilst being mindful of any data protection requirements which may have relevance. The willingness and commitment to take out poor legislation that is not working set out in paragraph (12) is to be welcomed, however it must be observed that this cannot be viewed as the most efficient solution. It should be borne in mind that both implementation and withdrawal of legislation are costly. Industry consultation from the outset should be viewed as the appropriate starting point as this is much more likely to result in practically focused proposals that are evidenced based rather than initiatives that are purely anecdotal or aspirational.

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

Care must be exercised to ensure that if more is to be done to address perceived fragmentation of the market, it can only be to an appropriate level as over consolidation may be similarly undesirable.

(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 liability?

Similar concerns have arisen out of the Bank Account Expert Group Consultation. As a result, it is felt that a detailed response in relation to the issues surrounding customer mobility will more appropriately come in this context.



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