



European Economic and Social Committee

INT/361
**Green Paper on Financial
Services**

Brussels, 16 January 2008

OPINION

of the
European Economic and Social Committee
on the
Green Paper on Retail Financial Services in the Single Market
COM(2007) 226 final

On 30 April 2007 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Green Paper on Retail Financial Services in the Single Market
COM(2007) 226 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 December 2007. The rapporteur was Mr Iozia and the co-rapporteur was Ms Mader-Saussaye.

At its 441st plenary session, held on 16 and 17 January 2008 (meeting of 16 January), the European Economic and Social Committee adopted the following opinion by 129 votes to one with one abstention.

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1. **Conclusions and recommendations**

- 1.1 The European Economic and Social Committee supports the Green Paper's aim of developing the single market for retail financial services, seeking to pinpoint and remove all the artificial barriers whose exploitation prevents European citizens from taking full and direct advantage of the benefits in terms of cost and quality of supply. The Committee believes that the Green Paper provides only a partial review of the financial services and products market, overlooking the issue of distribution, which is a key factor in terms of competition.
- 1.2 The EESC shares and appreciates the Commission's objective of stimulating the supply of high-quality, innovative products, by promoting the free movement of banking and insurance products that are currently penalised by national legislative and tax-related restrictions limiting such possibilities.
- 1.3 The general principle behind the **Green Paper on Retail Financial Services in the Single Market** is the need to improve consumer welfare. The dissemination and use of these services is increasingly widespread and therefore initiatives in this field are of general interest. The further integration of retail financial services could lead to a reduction in costs by means of increased competition. Consumers will reap the benefits providing the European financial system manages to remain competitive both within the EU and externally.
- 1.4 While agreeing with the premise that the retail market would benefit from being less fragmented, the EESC would stress that, as a rule, retail markets are more segmented than wholesale markets.

- 1.5 The EESC notes that new market models are emerging. The global market is being built on the basis of cross-border consolidation processes. Banking and insurance multinationals are centring their acquisition strategies on increased mobility of supply. However, these cross-border consolidation processes are having or could have very negative repercussions for employment. Announcements regarding possible acquisitions are followed by news of tens of thousands of job losses, though in practice these cuts are not always carried out. The EESC has previously highlighted this risk of social crisis and proposed appropriate countermeasures, such as vocational training and retraining schemes and social shock absorbers¹, which are written into many collective agreements in the European banking sector.
- 1.6 There is an urgent need to take the necessary measures to increase consumer skills and awareness. Consumer protection requires that the consumer be provided with all essential information, while clearly always bearing in mind that financial products and services are in a category apart. When it comes to information, consumers need quality rather than quantity.
- 1.7 The EESC believes that a distinction must be made between information and advice. The former must be given as a matter of course and must be tailored to the client's understanding and risk profile, warning them of possible pitfalls. Advice, in contrast, is a professional service to be provided on request, where the advisor could shoulder some responsibility. The MiFID Directive delimits the boundaries of information and advice, as well as conflict of interest situations.
- 1.8 The EESC believes that it is essential that this issue be addressed with clear regulations, so as to combat certain practices involving potential conflicts of interest, sales incentives and staff bonus schemes, borrowed from commercial distribution and linked to sales targets for specific products. The EESC recommends holding a specific debate between the sector's companies, consumers and employees, as the first step towards meeting consumers' primary demand for transparent behaviour from banking and insurance companies.
- 1.9 The EESC would recommend in particular that banking and insurance companies develop specific vocational training for bank and insurance employees. Consumers are better protected when operators are better skilled. With due respect for the independence of the parties involved, such projects could be discussed as part of the social dialogue between the European trade union federation for the sector, Uni-Europa Finance and the European banking and insurance associations
- 1.10 The EESC would note that the Commission is more favourable than in the past to the adoption of an optional system, known as the "28th regime". Alongside a European optional regime, a European ethical code should be adopted, defined independently by operators and discussed and agreed with the relevant Commission departments and the sector's user and

¹ [OJ C 309/26 of 16.12.2006.](#)

employee associations, dealing specifically with the company-client relationship in the context of financial services.

- 1.11 The EESC shares concerns regarding transparency of banking conditions. Differences in prices and price formulas often result in asymmetry and make it difficult to compare prices, while there is no proper information on applicable charges.
- 1.12 The EESC supports the consumer protection commissioner, Ms Meglena Kuneva, who has set three main objectives regarding the 2007-2013 consumer policy strategy:
- empowering consumers;
 - enhancing the economic and non-economic welfare of Europe's consumers;
 - protecting consumers effectively.

The EESC will shortly issue an opinion on the matter. The Commission submitted a proposal for a consumer credit directive to the Council in May 2007.

- 1.13 The EESC agrees with the idea that client mobility is an important factor in the development of the financial services sector, in terms of both quality and efficiency. The EESC believes however that the objectives with regard to consumer mobility in this sector should not be overly optimistic.
- 1.14 Relationships of trust are exceedingly important in the financial sector, given that most products are specific and involve long-term commitments between buyer and seller. There are many reasons to explain why consumers find it harder to form relationships of trust with intermediaries that are not physically present in their own country.
- 1.15 People form their impressions of financial services from their description in information leaflets and in the terms and conditions; the language and culture issue cannot therefore be underestimated. On this note, the EEC believes that it would be neither realistic nor fair to require intermediaries to draft information leaflets and terms and conditions in all EU languages. In the medium term, therefore, the problem of the language barrier is destined to remain unresolved and be a major barrier to consumers' cross-border mobility.
- 1.16 The EESC agrees that it is time to take a careful look at the legitimacy of barriers to consumer mobility, such as high fees for closing accounts, a lack of transparent information, and financial service contract structures that are calculated to dissuade clients from changing product or supplier, as occur in some countries. The EESC would also stress, however, that technical, regulatory, fiscal and legal constraints can often make it difficult to create the right conditions for the degree of consumer mobility suggested by the Commission. There is also a danger that simplifying financial services rules will result in weaker consumer protection. The dismantling of barriers must lead neither to increased product prices nor to deterioration in the present protection measures.

- 1.17 The difficulty in harmonising the framework of safeguards that emerged, for instance, in the process of revising the consumer credit directive, might give consumers the impression that the level of protection on offer will depend to a large extent on the country in which they are buying the service.
- 1.18 The EESC maintains that only consumers with a good level of financial understanding can properly grasp just how complex meeting financial needs can be and, consequently, appreciate the added value of competent, independent financial advice. There should also be special arrangements for consumers who are not (fully) at ease with new technologies.
- 1.19 The EESC maintains that it is essential to bridge the gap between financial companies and clients. Some democratic countries with market economies have managed to establish certain minimum rights for consumers, such as the legal right of bona fide residents to a bank account, as a citizenship right. If national legislation and practice is brought into line with these good practices, they could conceivably shape a common EU heritage².
- 1.20 For the purposes of drafting this opinion, the EESC held a hearing of organisations representing businesses, consumers and workers. The positions expressed by these organisations have been condensed into the opinion. The EESC shares the legitimate concerns expressed by consumers regarding the need to improve conditions so as to open up the single market effectively to retail financial activities and remove the artificial barriers that get in the way. The Green Paper has helped by launching an important debate. Meanwhile, if there is to be a general improvement in cooperation between the various economic and social players, proper attention must be given to the objective considerations of business leaders and requests from workers' representatives. For this reason, before any provisions are adopted, the EESC recommends holding a specific discussion forum for the above-mentioned representatives of the interests that must be reconciled.

2. **Introduction**

- 2.1 The Commission uses the Green Paper to define its intended policy in the retail financial services sector, which it describes as "current accounts, payments, personal loans, mortgages, savings, pensions, investments and insurance products, when they are provided to individual customers, including retail investors."
- 2.2 The Commission pinpoints barriers to market access in legislative and fiscal differences and in market fragmentation, with a view to enabling EU citizens to benefit from the single market, taking into account the remaining barriers and poor development in cross-border activities.

² [OJ C 309/26 of 16.12.2006.](#)

- 2.3 The Commission is set on using market forces and competition as a springboard for bringing down prices in these services; and it is committed to taking appropriate action in cases where Community rules are not upheld. The Commission argues in the Green Paper that legislative measures should be adopted if necessary.
- 2.4 The Commission aims to stimulate the supply of high-quality, innovative products, by promoting the free movement of many banking and insurance products which are currently penalised by national legislative and tax-related restrictions that limit such possibilities.
- 2.5 As regards the legislative framework, the Commission has relaunched the debate on the "28th regime" (seemingly putting all previous concerns to one side).

3. **Comments**

- 3.1 The EESC cannot respond to all the questions raised by the Green Paper in this opinion, but it aims to make a thorough assessment of the most important themes addressed.
- 3.2 The EESC stresses the need to distinguish between financial products and financial services. The former are purchased and are then "owned" (e.g. securities, funds, insurance policies) and the purchaser bears the risk. Banking services, however, are used rather than owned (e.g. personal loans, mortgages, overdraft facilities) and the service supplier bears the risk. The Committee believes that the Green Paper provides only a partial review of the financial services and products market, overlooking the issue of distribution, which is a key factor in terms of competition. The inherent characteristics of the various distribution channels and types of products and services available have a huge bearing both on price (consider third-party motor insurance policies sold over the telephone or internet), and on the reliability and competence of the authorised parties (financial institutions, large retailers, brokers, post offices etc.). The EESC believes it necessary to broaden out the debate to include non-traditional distribution channels and the link between the products and the distribution systems.
 - 3.2.1 Segments: In order to consider the consumer dimension of financial services it is necessary to segment the services and then to consider the retail outlets – the distribution system – by which the consumer can access these various services and the degree of competition in the retail system. Personal financial services segment naturally into three groups: retail banking, personal lines insurance and savings and investment products.

3.2.2 Retail banking³

3.2.2.1 Customers have traditionally obtained all retail banking services by contact with bank staff located in bank branches, once having established their identity and bona fides. In most countries there are many competing banks. For a foreign bank to enter a domestic market it is more practical to acquire an existing bank than to create a new network which would take time and would, in turn, create even more competition (cf. acquisition of Abbey National by Santander and acquisition of ABN Amro by Fortis, RBOS and Santander, etc.). In effect, consumer choice depends on the competitiveness of national markets since customers must choose one or other of the banks in the domestic market place.

3.2.2.2 Internet banking is now under development but is likely to remain mostly nationally based because the brand must be known and trusted by customers and the bank will need to depend on national regulations to determine the identity and bona fides of its customers.

3.2.2.3 Internet and telephone banking are providing 24/7 access to banking services which is a huge advance over the time when access depended on bank opening hours.

3.2.2.4 While competition between banks for full service customers is necessarily restricted to full service banks, there is a great deal of "cherry picking", especially in the credit card domain by banks like American Express and MBNA. These services are offered via direct sales channels and are available throughout the EU. Credit card customers are subsequently offered ATM access and extended consumer credit. In this way consumers can benefit from competition between national and international banks. At the same time, however, there is a risk of individual debt increasing further.

3.2.2.5 Retail banks do not confine themselves to offering retail banking services. With a strategy often described as "Bancassurance" they now offer products and services across the whole spectrum of retail financial products and services. Their branches and their customer records provide a captive distribution capacity of huge value. Banks tend to brand most or all of the financial products and services offered to their customers, but these branded products are not necessarily best price or best value.

3.2.3 Personal lines insurance⁴

3.2.3.1 Consumer choice in personal lines insurance is a function of the strength and extent of the independent distribution system provided by intermediaries such as brokers and independent financial advisors. The traditional role of the intermediary has been to provide best advice for

³ Current account plus cheque book; savings account; loan account and/or overdraft; standing orders; direct debits; (international) money transfer; debit card; credit card; global ATM access.

⁴ Home (buildings) insurance; home contents and personal property insurance; motor insurance; travel insurance; life insurance; medical insurance.

the circumstances of the particular client. The intermediary would consider value as well as price.

3.2.3.2 As in banking, there has been "cherry picking" by direct selling insurance organisations which seek out clients in low risk categories.

3.2.3.3 The business of the direct sales companies and the role of the intermediary are now being challenged by internet sites which offer on-line comparison of competing products, especially motor insurance. This disintermediation focuses on price and tends to reduce all products to commodity status.

3.2.3.4 For consumers to have the best possible choice in personal lines insurance, including motor insurance, there must be an alternative to Bancassurance distribution. That requires that there are no anti-competitive restraints on the development of independent intermediary networks or on distribution via the internet.

3.2.4 Savings and investment products⁵

3.2.4.1 Savings and investment products are a major business segment for banks. They are also the segment which offers the widest range of competing products and the most highly developed system of independent intermediaries. The comments about personal lines insurance in point 3.1.3.4 above apply equally to consumer choice in this segment. Regulations require that bank staff who advise customers on savings and investment products must, as part of their advice, explain that as bank employees they can only sell bank branded products and that these may not carry the lowest cost or give the best value.

3.2.4.2 Consumers are bound to take advantage of government sponsored savings schemes in their home country. International companies will provide competing products within those schemes where the volumes are attractive and distribution channels exist.

3.2.4.3 Mortgages are an essential product for consumers. The most highly developed national markets are characterised by the presence of many mortgage providers in addition to the banks and very sophisticated networks of independent advisors backed up by a great deal of direct marketing. Competition has created a hugely inventive market with a plethora of different product offerings and a good deal of customer switching between mortgage providers as terms and conditions change. With so many options, clients need the best possible guidance from their advisors.

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Government authorised savings schemes with tax incentives; mortgages: fixed and variable rates, fixed and variable terms, equity release, etc.; primary and supplementary personal pensions; collective investments: sicavs, unit trusts, etc.; stocks and shares; derivatives, e.g. exchange traded funds, contracts for differences, etc.

- 3.2.4.4 Personal pensions, collective investments, stocks and shares and stock market derivatives are also sophisticated products which require best advice based on a thorough understanding of the client's circumstances. Therefore the customer needs to have access to competent advisors and intermediaries who in turn have access to a wide range of product options. As previously mentioned, advisors employed by banks have to be particularly concerned about giving best advice.
- 3.2.5 The emphasis in the Green Paper is on bringing the benefits of the single market to customers for retail financial services. The central issue is the divide between the retail banks and the rest of the industry. The banks have an unassailable position in retail banking which means that they have unique market power since all users of financial services are already their customers. The nature of the advice given by banking staff is central to the working of the market because in the fields of personal lines insurance and savings and investments there are alternative products and alternative distribution systems which customers should consider if they are to have access to all that the market can offer.
- 3.2.6 Accordingly the presence of a network of well qualified independent intermediaries and the emergence of distribution channels on the internet for commodity products are key to the working of the market.

3.3 **Summary and findings of the public hearing**

- 3.3.1 A number of critically important points emerged during a hearing organised by the EESC. These points had already been raised by consumer, business and employees' associations in documents submitted to the Commission.
- 3.3.2 The debate highlighted agreement with the Commission's proposed objectives, as well as the practical difficulties encountered in certain areas. The Green Paper sheds no light on how legal and fiscal constraints can be overcome, such as the law on money laundering and terrorist financing, which requires the client to be personally identifiable for an account to be opened or for certain financial transactions to be carried out (KYC - Know Your Customer). Neither does it address the barriers to full market integration, stressing the fragmentation of the retail market, and almost calling for further procedures to consolidate national and, above all, transnational markets.
- 3.3.3 Operators feel that the demand for mobility has been overestimated, and call for a careful and detailed assessment of real market demand, as they believe that provisions in the area of the European payments system ought to have contributed to reducing consumer interest. The call for a completely new numbering system for European accounts to improve the mobility of personal numbers appears excessive, as the benefits would be few whereas the cost, eventually carried by consumers, would prove exorbitant.

- 3.3.4 The hearing also highlighted the need to examine all possible means of improving regulations in the sector. The banking industry calls for a reduction in compulsory regulations, so as to enable the market to react spontaneously to demand and strike the right balance in an ever more tailored and specialised market.
- 3.3.5 In the field of insurance, more so than in banking, demand in the retail sector centres on the national market, and customer satisfaction (83%) is such that there is nothing to suggest that the structure of demand will change. On the other hand, there are concerns about the forthcoming expiry of provisions that are important for insurance companies, particularly in the field of reinsurance, such as Regulation 358/2003 and the Commission intention not to renew the Block Exemption Regulation (BER), in 2010. Not renewing the BER would mean that the legal clarity it guarantees would no longer exist. The positive cooperation currently secured by the BER may then be abandoned by insurers for reasons of prudence, depriving consumers and insurers from tangible benefits of cooperation i.e. consumer mobility, products comparability, insurability, and opening-up of markets to small and medium sized enterprise and new entrants.
- 3.3.6 Workers' representatives in the financial sector pointed out that the Green Paper pays no attention to the role of workers, and reiterated their demand for more specific training, to enable them to meet the growing demand for information and clarification on the various investment options on offer. They also stressed the way in which particularly aggressive commercial practices and performance-related bonus and assessment systems have in many cases resulted in the sale of products unsuitable for clients or not geared to their needs. This point was highlighted alongside considerations about the most recent financial crisis and the problems caused by the lack of proper, meaningful, in-built market vigilance, associated with the increasingly important role played by hedge funds and private equity funds. Another factor is the need to keep a careful eye on the behaviour of rating companies, often called upon by issuers to assess the value of their shares in an obvious instance of conflicting interests.
- 3.3.7 Consumer representatives, finally, called for radical measures to cut the red tape and difficulties surrounding the mobility of national and transnational accounts, well-informed and responsible advice, full and comprehensible information, and common rules for the various countries. They were also highly mistrustful of the idea of an optional single system (the so-called 28th regime) or of harmonising the existing laws which are at the root of the differing degrees of protection within the EU.
- 3.3.8 All the participants in the hearing stressed the need to strengthen cooperation between consumers and financial institutions, recognising the practical and specific role played by employees in improving relations and bridging gaps.
- 3.3.9 The EESC believes that the contributions made during the hearing were extremely significant. It endorses the comments made and believes they bear witness to the urgent need to open up a

multi-stakeholder forum following the publication of the public consultation results, so as to seek to strike the right balance between the various bodies. The EESC would be prepared to act as a coordinator and facilitator at an event of this kind.

3.4 **The Single Market**

3.4.1 The broad principle that informs the **Green Paper on Retail Financial Services in the Single Market** is improving consumer welfare. Since consumers have many opportunities to avail themselves of financial services in their daily lives, improving the retail financial services sector could play an important role in fulfilling the overarching goal.

3.4.2 The European Union has adopted a framework of rules and inspection which, by encouraging the soundness of finance brokers and promoting the unrestricted provision of services, has been a major step forward in promoting competition in the financial sector.

3.4.3 In addition to this, the introduction of the single currency and the effects of the Financial Services Action Plan have given a substantial boost to the single market at the level of the institutional and wholesale clientele.

3.4.4 The retail market, on the other hand, has, according to the Commission, remained extremely segmented, with the result that:

- activity beyond national borders is on the whole limited;
- there are widely differing prices for services which are, by and large, similar;
- consumers have a relatively limited choice; and
- the profitability of brokers varies markedly from one country to another.

3.4.5 While agreeing with the premise that reducing the fragmentation of the retail market would be a good thing, the EESC stresses that, in general, retail markets are inevitably more segmented than wholesale markets for obvious reasons to do with the fragmentation and diversity of the demand to which they are geared; as a result, the retail market cannot be judged with the criteria applied to the wholesale market.

3.4.6 The EESC notes that new market models are emerging. The global market is being built on the basis of cross-border consolidation processes. Banking and insurance multinationals are centring their acquisition strategies on increased mobility of supply. The European market is becoming the domestic market for some major groups, and they are not concerned with providing their products and services in their own name in another Member State but rather with increasing volume and opportunities through direct entry onto individual national markets, establishing themselves from within. The fierce competition for the acquisition of a major Dutch bank is evidence of this.

- 3.4.7 However, these cross-border consolidation processes are having or could have very negative repercussions for employment. Announcements regarding possible acquisitions are followed by news of tens of thousands of job losses, though in practice these cuts are not always carried out. The EESC has previously highlighted this risk of social crisis and proposed appropriate countermeasures, such as vocational training and retraining schemes and social shock absorbers⁶, which are moreover written into many collective agreements in the European banking system. Cost savings are made but there are no significant benefits for consumers as businesses tend to base their pricing system on the local market, and the expected benefits of bringing new players onto the market are taking time to materialise.
- 3.4.8 The potential economic return on the development of the single market is inherently lower than the benefits of direct entry onto national markets, in terms of both economies of scale and position. This means that the potential benefits for enterprise are considered negligible, so specific thought needs to be given to possible measures to be taken.
- 3.4.9 Of course, the EESC endorses the aim of removing all artificial barriers to the single market which mask hidden agendas. It therefore calls for all appropriate measures to be taken to this end, but also stresses the need for the measures undertaken to be genuinely targeted and for the cost/benefit ratio to be clear.

4. Consumer information and vocational training for operators

- 4.1 There is an urgent need to take the necessary measures to increase consumer skills and awareness, in order to facilitate responsible choices. Consumer protection requires that the consumer be provided with all essential information, while clearly always bearing in mind that financial products and services are in a category apart.
- 4.2 The EESC believes that a distinction must be made between information and advice. The former must be given as a matter of course and must be tailored to the client's understanding and risk profile, warning them of possible pitfalls. Advice, in contrast, is a professional service to be provided on request, where the advisor could shoulder some responsibility. The difference is not always sufficiently understood. In some countries, these services are supplied by independent professionals, as in the case of the UK, in others by employees of financial institutions, who may find themselves in a clear conflict of interests between the need to sell financial products that may be linked to bonus systems and the need to take care of the client who is relying on their professional expertise.
- 4.3 The EESC believes that it is essential that this issue be addressed with clear regulations, so as to combat certain practices involving potential conflicts of interest, sales incentives and staff bonus schemes, borrowed from commercial distribution and linked to sales targets for specific products. The EESC recommends holding a specific debate between the sector's companies,

⁶ OJ C 309/26 of 16.12.2006.

consumers and employees, as the first step towards meeting consumers' primary demand for transparent behaviour from banking and insurance companies.

- 4.4 To be genuinely effective, consumer information must take into account cultural diversity, the fact that there is no one recipe which can be considered the best; i.e. information requirements must be geared to the different national situations. A minimal system of joint European protection such as the Commission is about to propose could be envisaged. Consideration also needs to be given to the fact that the MiFID Directive includes advice as an investment service. Such advice therefore becomes a restricted activity. In terms of the provision of advisory services MiFID guarantees investors a very high level of protection: The advisor is required to obtain all the information necessary to assess the suitability of the recommendations made. There is a need to define such an advisory service in order to be able to distinguish it clearly from the general advice provided through the distribution networks and to clarify the scope of the application of the more rigorous obligations.
- 4.5 Intermediaries are required to take all reasonable steps to identify conflicts of interest and manage them in such a way as to prevent conflicts of interest from adversely affecting client interests. Where arrangements made to manage conflicts of interest are insufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the intermediary must clearly disclose to the client the general nature and the sources of the conflicts of interest before undertaking business on the client's behalf. In general, intermediaries are now required to act in the client's best interests.
- 4.6 The EESC would recommend in particular that banking and insurance companies develop specific vocational training for bank and insurance employees who promote and sell financial services and products. Contact between financial institutions and consumers is through operators, who should be enabled to become familiar with the features of financial products and services and in turn advise clients well. The system in Cyprus, which has drawn on the British model, and includes a requirement to determine the client's risk profile and provide complete and accurate information, has shown its effectiveness. Consumer satisfaction there is very high. Consumers are better protected when operators are better skilled. As part of sectoral social dialogue, and with due respect for the independence of the various parties, the Commission should promote a specific programme dedicated to developing the training of sales operators in charge of financial services and products. This could be done by means of a project jointly run by the European banking and insurance associations and the European trade union federation for the sector, *Uni-Europa Finance*.

Financial products

- 4.7 Increasingly often, identical financial products are sold under many different guises. Clients are sometimes urged to buy products and services which are not particularly tailored to their actual needs, and the risk of excessive debt, especially in consumer credit, is causing increasingly substantial problems for families and also for specialised firms. In the United

States, the financialisation of the economy has resulted in the subprime (i.e. high risk) mortgage crisis. It is like an enormous chain letter, involving not only specialised institutes but also major investors, which have liberally underwritten high-yield (because high-risk) shares to the tune of billions of dollars. The crisis has affected all the financial markets and has brought to light the limitations of rather loose vigilance systems, as in the case of the UK. This calls for a review and strengthening of the third level of the Lamfalussy process regarding coordination between national regulatory authorities. In Europe, the impact on the financial market has been relative, although some countries that employ similar banking practices, e.g. constant remortgaging, are starting to encounter serious difficulties because of rising rates. The main problem has been the falling value of the dollar, which has propelled the euro to record levels, jeopardising Europe's moderately positive economic cycle (see opinion ECO 202, rapporteur: Mr Derruine).

4.8 The EESC would note that the Commission is more favourable than in the past to the adoption of an optional system, known as the "28th regime". In this regard, it refers to the comments it made previously, in the Opinion on the White Paper on Financial Services Policy 2005-2010⁷.

4.9 Alongside a European optional regime, a European ethical code should be adopted, defined independently by operators and discussed and agreed with the relevant Commission departments and the sector's user and employee associations. This code would deal specifically with the company-client relationship in the context of financial services, as well as the possible plans for directives being discussed.

4.10 On 18 July 2007, during a statement made at the invitation of the EESC INT section, the Commissioner for Consumer Protection, Ms Meglena Kuneva, said that three main objectives had been set with regard to the consumer policy strategy for the period 2007-2013:

- empower consumers;
- enhance the economic and non-economic welfare of Europe's consumers;
- protect consumers effectively.

To achieve these objectives, last May the Commission put before the Council a proposal for a consumer credit directive, on which a political agreement was reached.

4.10.1 The proposal for a Directive lays down parameters for providing consumers with comprehensive, understandable and comparable information on credit offers, a fully harmonised formula for calculation of the Annual Percentage Rate of Charge and the Single European Form containing pre-contractual information, a new 14-day right to withdraw from a credit agreement without any penalty, and a right to repay the credit early.

⁷ OJ 309/26 of 16.12.2006.

4.10.2 The Commissioner also stressed her intention to increase "the consumer's financial capability". This is firstly a matter of information, but another factor to be developed is financial education of consumers, which must go hand in hand with information requirements rather than replace them.

4.10.3 The EESC fully supports Commissioner Kuneva's objectives and is drafting an opinion to examine the proposals.

5. **Operational objective**

5.1 The operational objective of the Green Paper is to reduce the segmentation of the retail financial market and lift legal and economic barriers to client mobility. Having laid the ground work for mobility of supply, the European Union wants to complete the picture by supporting the mobility of demand.

5.2 Producing the rules this necessitates is costly in itself and in terms of the adjustments it requires from the various stakeholders, especially intermediaries. The EESC agrees that initiatives should only be launched if the benefits to the public are significant and there is a high likelihood of achieving them. The EESC also applauds the desire to monitor the consequences of initiatives adopted in order to verify whether results match expectations and be ready to rescind actions that do prove unsatisfactory. However, it must be pointed out that the costs of unsatisfactory initiatives which are to be rescinded can also be very high, and experience has shown that these costs may be passed on to consumers, making things more difficult for them rather than easier.

5.3 In this connection, the EESC points out that in many cases this kind of process – "modifying the initial state – impact assessment – possible return to the initial state" – may be more of a declaration of intent than a truly viable plan of action. This is because in the financial sector cultural models, relations of trust and accumulated experience play a crucial role in shaping the dynamics of commerce and competition. Most actions have an impact on these elements, changing them irrevocably and making it impossible to recover the initial state of affairs simply by rescinding actions found wanting at the impact assessment. For this reason, the EESC hopes that the Commission will not be overly optimistic and set too much store by the possibility of restoring the initial state of affairs once the results of actions undertaken have proved inadequate.

6. **Cross-border access to financial services**

6.1 The Green Paper takes the view that the fragmentation of the retail financial market will remain by and large unchanged in the medium term unless efforts are made to cut the barriers that hamper consumer mobility, such as: lack of homogeneity in rules and consumer protection, different fiscal regimes, fragmentation and incompatibility of the operational infrastructures in which financial services are embedded.

- 6.2 The EESC agrees that client mobility is an important factor in developing both quality and efficiency in the financial services. The EESC maintains, however, that goals set for cross-border access to financial services should not be over-optimistic.
- 6.3 Consumer mobility can be understood in terms of either geography (acquiring the product in a place at a distance from one's residence) or relationships (the ability to change supplier easily). The two types of mobility, while distinguishable as concepts, are closely connected.
- 6.4 At least potentially, the services sector can offer greater geographical mobility than the consumer goods sector, since the encumbrance represented by the physicality of the goods exchanged is lifted. For example, buying a car abroad involves substantial transport problems that are absent when the object of the transaction is an "intangible" service that travels on "information highways" rather than on asphalt.
- 6.5 On the other hand, there is a barrier to mobility of relationships in the service sectors in that their designation as an "intangible" product often makes services difficult to fully evaluate and understand, making the relationship of trust between seller and buyer particularly important. The relationship of trust is singularly important in the financial sector, since most products are specific and involve long-term commitments between seller and buyer. There are all manner of reasons why consumers find it more difficult to establish a relationship of trust with brokers that are not actually present in their own country.
- 6.6 Another aspect not to be underestimated is the means by which the consumer perceives the product. In the case of tangible goods, the product is perceived through the senses, which, clearly, are not susceptible to linguistic or cultural barriers. Financial services, in contrast, cannot be seen or touched, but are only perceived via the description given in information leaflets and in the terms of contracts: the language and cultural issue cannot, then, be underrated. Consumers can purchase services abroad effectively if they have a good knowledge of the language and the key financial practices of the broker's country. Imposing a kind of multilingualism in information and contracts could be envisaged as a way around this obstacle. The EESC thinks it would be neither realistic nor reasonable to oblige brokers to draft information leaflets and contracts in all the Union's languages. There is no way that the costs of initiatives of this kind, made all the greater by the continuing evolution of the product, could be offset by an increase in volume. The Green Paper itself, in fact, maintains that in the medium term no increase in cross-border consumer mobility can be expected in the financial services sector. The language-barrier issue is therefore set to remain unresolved in the medium term and be a major obstacle to cross-border access to retail financial services.
- 6.7 The Commission instructed a high-level group to assess the current situation as regards consumer mobility in relation to bank accounts. On 30 May 2007, it published an interesting report which revealed major differences in opinion on very many points. Consumer associations see this as a genuine issue while banking industry experts do not consider it to be

an issue. Some say that clients are very satisfied and see no need to facilitate mobility, while others feel that these statistics must be treated with great caution because satisfaction depends on the level of expectation, and it is important to give consumers the opportunity to switch banks without hindrance, enabling even satisfied consumers to switch banks if they find better offers on the market.

- 6.8 On the one hand, the banking industry stresses that consumers focus essentially on the domestic market. On the other, consumer associations bewail the lack of cross-border competition resulting from the barriers to switching accounts and the poor transparency and comparability of products and services on offer; consumers also show a lack of confidence in foreign businesses.
- 6.9 The experts' report analyses the current difficulties of opening an account: banks are concerned by legal and regulatory barriers, including the personal identification requirement laid down by legislation combating money-laundering; consumers highlight poor transparency of information on products and services supplied and on the documentation required. Consumers feel it is now essential that the right to open a basic current account be recognised, as it is in a number of European countries' legislation, given the impossibility of participating in economic and social life without a current account. On this point, the banks stressed that freedom of contract is a fundamental principle of the market economy, enshrined in many Constitutions.
- 6.10 Without wishing to embark on a constitutional debate, the EESC feels it is essential to bridge the gaps between financial companies and clients. Some democratic countries with market economies have managed to establish certain minimum rights for consumers, such as the legal right of bona fide residents to a bank account, as a citizenship right. If national legislation and practice could be brought into line with these good practices, they could conceivably shape a common EU heritage. The EU has often, in the past, taken advantage of the success of local legislation and applied it to all the other Member States. In a previous opinion, the EESC called for this right of access to be granted across the board⁸.

7. Objectives and action to be taken

Lower prices and more choice for consumers

- 7.1 The Commission maintains that promoting conditions to create greater consumer mobility can make it easier to achieve a twofold benefit: offering greater range of choice to satisfy much more diverse needs at competitive prices.

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OJ 309/26 of 16.12.2006.

- 7.2 For this reason, initiatives are under way in the retail banking sector to examine, in particular, the possibility of promoting the "portability" of bank accounts. A directive is also being considered on improving the portability of supplementary pension rights.
- 7.2.1 The subject of current account transferability must not however be confused with that of the single European account number. The adoption of a single European number would carry enormous costs that would be totally unjustified, and that would end up being paid for by consumers. Transferability should refer to all the transactions linked to the account, such as standing orders, direct debits or securities accounts, but certainly not to the account number. The implementation of SEPA at European level is based on the current IBAN and CIN identification codes, which should remain the same. Banking companies must provide for maximum cooperation to ensure account mobility and the transferability of arrangements, possibly by means of codes of conduct or inter-bank agreements, as is already the case in some countries.
- 7.3 The EESC agrees that it is time to take a careful look at the legitimacy of obstacles to consumer mobility such as fees for closing accounts, poor information transparency and the nature of financial service contracts that are calculated to dissuade clients from changing product or supplier. The EESC also stresses, however, that technical, regulatory, fiscal and legal constraints can often make it difficult to create the right conditions for the degree of consumer mobility suggested by the Commission. The coexistence alongside the euro of various other currencies presents a further difficulty. The non-euro area still comprises numerous Member States and this adds to the problems outlined above.
- 7.4 In particular, efforts to create homogenous conditions in the financial services sector are also hampered by barriers created by national authorities in the desire, legitimate in itself, to give consumers better guarantees. The Commission voices its intention to avoid limitations on choice that are not strictly justified. The EESC advises caution, however, in moving towards standardising the system of protection afforded to consumers, given that the EU countries are not culturally and socially close enough to justify a strongly centralist approach.

8. **Enhancing consumer confidence**

- 8.1 The exchange of financial operations and services is possible when there is a solid basis of trust between the two parties. The Commission stresses that European consumers are somewhat concerned and suspicious about the protection and guarantees that cross-border operations might be able to offer them. The mobility of consumers will only be fully achieved when they are truly persuaded that the protection of their interests is dependent neither on the place in which they purchase services nor on the distribution channel that delivers them.
- 8.2 The Commission believes that the following issues need to be addressed if this goal is to be achieved: protecting consumer interests, providing a clear and reliable regulatory framework,

ensuring access to an appropriate extra-judicial arbitration system and promoting the soundness of financial brokers.

- 8.3 The issue of protecting consumer interests is a delicate one, since, as has been stressed earlier, it is not easy to define a regulatory framework that meets all the desires and demands of each Member State: the difficulty of harmonising the framework of protection – for example, as emerged during the revision of the directive on consumer credit – may give consumers the impression that the level of protection afforded depends to a large extent on the country in which the service is purchased.
- 8.4 Regarding the clarity of the regulatory framework that governs contractual relations, the 1980 Rome Convention establishes that it is the parties who, in principle, define the law applicable to the contract. A modification of this principle is being examined which would establish that the law to be applied is that of the consumer's place of residence if the seller conducts his commercial activity in that country. However, there is no guarantee that the application of this place of residence law will enhance the supply of financial products in other Member States.
- 8.5 There is no doubt that the clear establishment of this principle could boost consumers' confidence in the legal position, although it tallies only in part with the concept of consumer mobility set out in the Green Paper. In fact, the Commission maintains that attention should also be turned to the cross-border mobility of consumers, since that of financial brokers is not enough: the new principle would help make it easier to establish a general and unequivocal rule when it is the broker who offers his services to the consumers of other countries, but not when it is the consumers who actively seek service providers in other countries.

9. **Empowering consumers**

- 9.1 The Green Paper has quite rightly pointed out that consumers often express concerns that an unduly abundant choice of financial products could confuse them and make it more difficult to make the right choice for their needs. In fact, only well informed consumers who are quite financially literate will really be able to take advantage of the possibility of greater international mobility in the single market.
- 9.2 The Green Paper stresses that average financial literacy among consumers is generally low and is a formidable barrier to their making the right financial choices. Moreover, there is a commonly held view that the financial information made available seems to fall into two extremes, being either too banal or too complicated.
- 9.3 These problems could be at least in part overcome if consumers were able to resort to independent advice services that could help them decide in their best interests. Such services have already been piloted in Cyprus and the UK and will be extended to the other Member States under the MIFID Directive; they would not be obligatory, but would offer an alternative to the services provided directly by the intermediaries. At present, consumers often

seek advice from the provider of the financial service: they probably tend to do so because of the relationship of trust that the provision of a financial service presupposes or because there is no explicit cost to the advice offered by the seller. It should be realised, however, that an advice service that is not independent may be subject to a latent conflict of interest which makes it difficult for the consumer to get a full picture of how useful it is for him.

- 9.4 The EESC maintains that only consumers who are sufficiently financially literate can properly grasp just how complex meeting financial needs can be and, as a result, appreciate the added value of competent and independent financial advice. It is therefore vital to foster such financial literacy, but also to empower savers to make responsible choices. Experts are already talking of "financial illiteracy", as a result of which many people lose track of things and cannot take autonomous decisions about their financial security, leading to possible economic losses. The education system could help young people to acquire some basic financial acumen so they can make informed choices about future investments, though this must not detract from the clear responsibility of financial market operators.
- 9.5 Advertising, particularly via the internet, warrants much attention. All too often considerable discrepancies have emerged between the actual features of financial products and the returns promised, aimed solely at enticing consumers to invest in specific financial products. It should, however, be stated that such occurrences rarely involve the traditional intermediaries such as banks and insurance companies, which are mindful of customer relations and, moreover, subject to stringent rules and controls. New entrants do not always operate within a clear regulatory framework nor are subject to comprehensive supervisory provisions. All of this weakens the position of consumers.

Brussels, 16 January 2008.

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