



*European Association of Co-operative Banks  
Groupement Européen des Banques Coopératives  
Europäische Vereinigung der Genossenschaftsbanken*

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## EACB Response to joint ESAs Consultation Paper: Guidelines for Cross- Selling Practices

20 March 2015

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,200 locally operating banks and 68,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 205 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 78 million members and 860,000 employees and have a total average market share of about 20%.

For further details, please visit [www.eacb.coop](http://www.eacb.coop)



## Introduction

The European Association of Co-operative Banks (EACB) welcomes the opportunity to respond to the joint Committee Consultation Paper on guidelines for cross-selling practices.

It appreciates the efforts of the JC to look at the combined effect of legislation in the area of (retail) financial services, so as to provide national supervisory authorities with guidelines on how to best deal with practices that cut across sectors.

An overview of our general comments, as well as our detailed answers to the individual questions of the consultation can be found as per the below.

## General Comments

- While the EACB welcomes the efforts of the JC to look at how cross-selling practices can be dealt with at a cross-sectorial basis, it is important to remember that the Guidelines should not go further than what the individual level 1 texts (i.e. MiFID II, Mortgage Credit Directive, Payment Accounts Directive) have put in place. For example, and contrary to what can be found in MiFID II, the Mortgage Credit Directive does not require a suitability assessment for mortgage credit contracts. Guideline 8 seems however to “stretch” the MiFID II-inspired appropriateness/ suitability test also to other retail financial services, which has not been the intention of the regulator when formulating the other texts on which the Guidelines are based (a.o. MCD, PAD).  
Going beyond what has been agreed in level 1 could even contradict the initial objective of article 16.1 of the EBA Regulation (EU) no 1093/2010 → “ensuring the common, uniform and consistent application of Union law”.
- In acknowledging the beneficial and detrimental effects of cross-selling, one should make a distinction between detrimental effects specific to cross-selling, and detrimental effects that result from unfair commercial practices or other, more general causes that can cause consumer detriment.  
The EACB finds that some of the detrimental effects as attributed to the practice of cross-selling are reflecting unfair commercial practices (e.g. misleading representation of prices) or are indeed general in nature (e.g. information overload, withdrawal from the market because of negative experience).  
As such, these examples do not provide for a proper and/or proportionate introduction to the specific topic of cross-selling.
- In line with what the co-operative form of enterprise is about<sup>1</sup>, members of the co-operative take a stake in the organisation in the form of a co-operative share. Indeed following legal provisions regarding their very structure, some co-operative banking groups require prospective clients to become member of their co-operative – by way of purchasing a share of the co-operative – in order for those clients to receive services as a member and for the co-operative banking group to serve as many members (within the client base) as possible.  
The EACB does not consider the purchase of such share to constitute a cross-selling practice and would like to stress that current guidelines should not prevent co-operative banks from continuing with their business practice and –

<sup>1</sup> “Co-operatives are enterprises that exist to serve the needs of their members who contribute to their capital, own and control them, rather than to provide a return on investment” European Commission, website “Enterprise and industry” as archived on 02.02.2015



model by require membership from those consumers wishing to engage in a commercial relationship with a co-operative bank. We thus propose to add to the section "Scope" of the Guidelines the below amendment:

**Proposal for amendment- Annex 1: Guidelines on cross-selling practices  
Scope (p.19 CP)**

5. "The purchase of shares in the credit institution where this is conditional for all consumers of the credit institution in order to become a Member and receive services as such, should not be considered to constitute a cross-selling practice in the sense of these guidelines. For example and inherent to their business model (and even by certain legal provisions due to their nature as credit co-operatives), some co-operative banking groups may require the purchase of shares for (new) clients wanting to take out services with them. Nothing in the guidelines is intended to prevent or regulate such purchase."

**Detailed answers to consultation- questions**

**Question 1:** *Do you agree with the general description of what constitutes the practice of cross-selling?*

The EACB welcomes the fact that the Guidelines seem to have taken into account the comments made by respondents to the consultation on tying in the retail financial sector which was a follow-up to the study (see [here](#)) published by the Commission in February 2010, such as:

- Focus on provision of adequate information as recommended by a number of respondents
- Adequately training of financial services staff as suggested by others

However, the EACB notes that the Guidelines also try to capture non-financial services (page 10 CP) "firms should not cross-sell packages of products which include non-financial services or products for the purpose of circumventing these guidelines". Such provisions would seem to fall outside of the ESAs mandate.

Thus, the EACB proposes to amend point 4 of "what is cross-selling?" as follows:

4. The focus of the principles set out in these guidelines is on cross-selling practices involving only financial services and products, both from the same sector (e.g. two banking products) and to the combination of products from different sectors (e.g. a banking product and an insurance product)<sup>5</sup>. ~~If competent authorities decide to apply cross-selling standards more widely than cross-selling practices only involving financial services and products, then they should apply these guidelines. The JC would like to mention that firms should not cross-sell packages of products which include non-financial services or products for the purpose of circumventing these guidelines.~~

In addition, it is not clear whether the Guidelines cover for the case of a provider acting only as an integrator providing a platform for cross-selling products from different providers.

Indeed, is this case included in the definition of "cross-selling" as set out in the Guidelines? The EACB is of the opinion that equal requirements would have to apply to such platform- providers for the sake of creating a fair level-playing-field.

Furthermore, and as expressed in our General Comments (see above):



- In line with what the co-operative form of enterprise is about<sup>2</sup>, members of the co-operative take a stake in the organisation in the form of a co-operative share. Indeed following legal provisions regarding their very structure, some co-operative banking groups require prospective clients to become member of their co-operative – by way of purchasing a share of the co-operative- in order for those clients to receive services as a member and for the co-operative banking group to serve as many members (within the client base) as possible.. The EACB does not consider the purchase of such share to constitute a cross-selling practice, the EACB would like to stress that current guidelines should not prevent co-operative banks from continuing with their business practice and – model by require membership from those consumers wishing to engage in a commercial relationship with a co-operative bank. We thus propose to add to the section “Scope” of the Guidelines the below amendment:

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**Question 2:** *Do you agree with the identified potential benefits of cross-selling practices?*

Additional consumer benefits for consumers resulting from cross-selling practices:

- Consumers could benefit from consolidated billing
- Having a current account with the bank that granted a credit may allow a bank (provided that he has the permission to do so) to be early informed about any developments on the side of the consumer which could lead to payment difficulties and to play a role in preventing those difficulties (see also link with EBA guidelines on “Treatment of borrowers in payment difficulties”)
- The consumer is introduced to products that the consumer did not know before, but that may be very well suited to his/ her needs

**Question 3:** *Do you agree with the identified potential detriment associated with cross-selling practices?*

In acknowledging the beneficial and detrimental effects of cross- selling, one should make a distinction between detrimental effects specific to cross- selling, and detrimental effects that result from unfair commercial practices or other, more general causes that can cause consumer detriment.

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<sup>2</sup> “Co-operatives are enterprises that exist to serve the needs of their members who contribute to their capital, own and control them, rather than to provide a return on investment” European Commission, website “Enterprise and industry” as archived on 02.02.2015



The EACB finds that some of the detrimental effects as attributed to the practice of cross-selling are reflecting unfair commercial practices (e.g. misleading representation of prices) or are indeed general in nature (e.g. information overload, withdrawal from the market because of negative experience).

As such, these examples do not provide for a proper and/or proportionate introduction to the specific topic of cross- selling

Likewise, the level of customer- mobility does not necessarily say something about (i) availability of choice (ii) possibility to switch (iii) lack of competition or (iv) unfair treatment of the customer.

The EACB also believes that customer mobility cannot be an aim in itself.

Co-operative banks are by their very nature focused on long-term contractual relationships the latter having a positive effect on elements such as (i) trust and (ii) knowledge of the customer; which are key in co-operative banks' individualised approach to retail banking.

**Question 4:** *Please comment on each of the five examples in paragraph 13, clearly indicating the number of the example to which your comment(s) relate.*

As a general remark, we are not convinced that the provided examples help to better understand the purpose and application of the presented Guidelines, either because they seem to describe unfair commercial practices in general or because they are not entirely clear.

Example 1:

The first example constitutes in our view a practice already prohibited by the Unfair Commercial Practices Directive (see article 6 of the UCPD on 'misleading actions') and thus not a proper introduction or clarification to the detrimental effects of cross- selling.

Example 2:

Also this example would constitute a practice already prohibited by the Unfair Commercial Practices Directive (see article 6 of the UCPD).

Example 3:

Example 3 is not entirely clear as in some cases the insurance might be kept while the main product related to it has been cancelled (for example keeping a home insurance while cancelling a mortgage credit).

Example 4:

The use of the words '*disproportionate charges*' seems misleading as charges addressed to the customer would be determined by recognised actuarial calculation methods.

**Question 5:** *Please comment on the proposed guidelines 1 and 5 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.*

In general, it shall be clarified that references to "cost" and "price" in these guidelines should be understood to refer to "*the cost for the customer*" and "*the price paid by the customer*" (and not: the cost for the financial institution) as those would be the costs/prices relevant from a consumer- perspective.

Guideline 1.14: it is not always possible to separate products and prices. Therefore, the following amendment is suggested:



14. Competent authorities supervising firms that distribute a tied or a bundled package should ensure that, **when available separately**, customers are provided with a clear breakdown and aggregation of all relevant costs associated with the purchase of the package and its component products - such as administration fees, transaction costs, and exit or pre-payment penalty charges.

Guidelines 1, 3 and 4 on “full disclosure of key price and cost information” and “prominent display and timely communication of key price and cost information” → the guidelines should not have as negative and unintended consequence that banks are no longer allowed to promote the convenience- advantages of a package with the same prominence and weight as the promotion of other key selling features

Guideline 4: the illustrative example as provided does not clarify which cases may be considered to fall under information to be presented in a misleading way/ distorting or obscuring real costs vs. the presentation of information in an attractive way so as to underline the consumer benefits resulting from the package deal. In other words: to what extent is it still possible to come with promotional offers?

Guideline 5.19: This guideline raises questions as to the applicability of the provision of “all relevant information” (relating to the non-price features and risks) in case of relatively simple financial products.

**Question 6:** Please comment on the proposed guidelines 2, 3, 4 and 6 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 3.16 and 6.20: It should be recognised that technical and legal jargon cannot always be avoided or simplified as such terminology may in fact be required by law. Moreover –and in order to avoid the “information overload” as acknowledged to be a potential detrimental effect to consumers- the EACB is of the opinion that it shall be considered as sufficient to comply with the information requirements as set out in the sectorial legislation.

**Question 7:** Please comment on the proposed guideline 7 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 7.23: The Guideline seems to do away with the “pre-ticked” boxes practice as studied in behavioral economics. The way the Guideline is drafted, however, goes into a too detailed level of prescriptiveness as to how a financial services provider should go about in designing its website in general.

**Question 8:** Please comment on the proposed guideline 8 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 8: this guideline specifies that firms distributing bundled or tied packages are to ensure that the overall package and the component products are distributed in accordance with any applicable requirements to meet the demands and needs of the customer or to assess suitability or appropriateness.



Indeed, there is certain legislation [forthcoming] to which the above mentioned requirements (assessment of suitability and/or appropriateness) apply. The illustrative examples 1 and 2 to Guideline 8, however, presume that the assessment of suitability/appropriateness and/or the requirement to distribute in accordance with demands and needs will apply across the board i.e. also without existing applicable requirements. This seems to be inconsistent with the Guideline itself.

With a reference to the examples having regard to the interest rate-swaps we wish to emphasise that it cannot be known beforehand whether a customer is interested in paying off its loan early or not.

In Spain, for example, banks have the legal obligation<sup>3</sup> to offer an interest rate hedging product before granting a floating rate mortgage. When distributing these Interest Rate Hedging products that are linked to the mortgage loan, the bank is only able to calculate on the basis information that is available at that very moment, such as the contractual maturity of the floating mortgage loan. To impose other criteria would be impractical/unreasonable as any interest rate swap could have a negative value in the case of falling interest rates, and the customer might always argue that he had the "interest" to pay off the loan early.

**Question 9:** *Please comment on the proposed guidelines 9 and 10 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.*

Guideline 10.27: We support sales practices that are fair and reflect responsible business conduct, as also laid down in a couple of (forthcoming) legislative texts on which these guidelines are based. However, the design of remuneration models and -levels should remain at the discretion of market operators to the fullest extent possible giving due regard to the principle of proportionality. In addition, we find that the guideline goes into a too detailed level of prescriptiveness when also setting out the role that senior management should play in this regard.

**Question 10:** *Please comment on the proposed guideline 11 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.*

Guideline 11.28 and 11.29: The proposed guideline is in line with the consumer's right of withdrawal as provided for in existing legislation. However, the products in a tied or bundled package are usually designed to be sold together and the possibility for the consumer to cancel parts of the package during the duration of the contract may prove both complicated and costly. In fact, some products may be withdrawn in their entirety. Moreover, if the components of the package do not exist as a stand alone product, terminating one agreement will necessarily impact what the other product is able to offer on its own.

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<sup>3</sup> see Ley 36/2003, de 11 de noviembre, de medidas de reforma económica