

POSITION PAPER



European Supervisory Authorities' Joint Committee Consultation Paper on guidelines for cross-selling practices

ESBG (European Savings and Retail Banking Group)

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General comments:

ESBG appreciates the opportunity to respond to European Supervisory Authorities' Joint Committee (hereinafter **JC**) Consultation Paper on guidelines for cross-selling practices (hereinafter the "**Guidelines**").

Responses to the questions:

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

Regarding the description of cross-selling ESBG asks the JC to take into account some additional points:

Scope of the guidelines

Firstly, ESBG would like to point out that the definition of *'customer'* under 6. of Annex 1 (*'the natural or legal persons to whom bundled or tied packages, as defined in the guidelines, are proposed'*) is not fully consistent with the content of the Guidelines. Several provisions or examples in the Guidelines refer only to *'customers'* in the sense of *'consumers'*/ natural persons. For instance pursuant to the Guidelines *'customers'* are:

- Page 11: facing a *'more complex purchasing decision'* and they are unable to *'effectively process the information given to them by firms'*;
- Page 12: *'reluctant to spend the necessary time and cost to shop-around for alternative components'*;
- Page 13: *'ill informed'* about prices and costs and they subscribe *'to another product because it is cheap'* and do not pay *'sufficient attention to decide whether they really need it'*;
- Page 13: experiencing barriers such as limited mobility which *'can be incompatible both with fair competition and with other consumer rights such as rights to switch payment accounts or other products and services'*;
- Page 13: at risk of withdrawal from the market *'as a result of the negative experience of being sold an expensive or unsuitable product'*;
- Page 17, footnote 6: pursuant to *'consumer behavior evidence'* not having *'the confidence to de-select a pre-ticked option'* and they *'are reluctant to override the perceived 'authority' of a firm'*.
- Also, the cost-benefit analysis (paragraphs 35 to 40 of Annex 2) refers to Directives as MCD, PAD or PSD which only or mostly aim at consumer protection in the area of retail products.
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Therefore, the scope of the Guidelines should be reduced to cross-selling practices with consumers, defined in turn as a *"natural person who is acting for purposes which are outside his trade, business, craft or profession"* (as stated in PAD, and similarly in MCD or PSD). Otherwise, ESBG would like the JC to explain why the guidelines shall be applicable to legal even though the vast majority of examples for detriments are not applicable in their cases.

Secondly, ESBG would like the JC to clarify the following point.

Paragraph 4 of the Guideline states:



‘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.’

Moreover, the Guidelines contain the following statement:

‘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.’

The purpose of this provisions is blurry. Therefore, ESBG urges the JC to clarify that firms can cross-sell packages of products which include non-financial services or products, if they apply the Guidelines. Such a clarification is necessary to avoid different interpretations of national authorities which might lead to local differences in Europe and consequently to competitive disadvantages of companies based in certain Member States. It should be considered that, from a practical point of view, it is of utmost importance for ESBG that the European savings and retail banks are not prevented from cross-selling with non-financial products. In the same way, it should be clarified that other firms (such as Google, Apple or other large cooperation with various sales channels) can also only cross-sell financial services and products, if they apply the Guidelines.

Finally, ESBG refers to Annex 1 no. 4 on the product that can by its nature not be offered or sold separately. ESBG asks the JC to explicitly state that such products are not within the scope of the Guidelines. The current wording (*‘Nothing in the guidelines is intended to prevent the offering of products [...]’*) is rather vague and leaves room for interpretation, which should be avoided.

Definition of cross-selling

Finally, ESBG thinks that cross-selling in the sense of the Guidelines shall only occur when two or more products are sold simultaneously/at the same time as a part of a package. Therefore, ESBG would like the JC to ensure that for instance the common practice to grant a loyalty bonus when customers come back again to buy further products is out of the scope of the Guidelines. Loyalty bonuses do not bear the typical risks identified as ‘behavioral drivers of potential consumer detriment’ (for instance: customer’s main focus on the primary product, customers unable to differentiate provided information, customers reluctant to spend the necessary time to shop-around). Against this background ESBG proposes to amend the Guidelines as follows:

*‘Generally, cross-selling is the practice whereby firms group, and sell **at the same time**, two or more separately identifiable products or services in a ‘package’.’*

Additionally, packages in which one of the components is free for the consumer should be outside the scope of the definition. A package that only adds one free product to another does not, again, bear the risks identified as “behavioral drivers of potential consumer detriment” (see examples above).

Furthermore, the tied or conditional offering mentioned under 3. b. does not reflect that some products can only exist as a complement of another product.



Finally, ESBG would like the JC to clarify in the Guidelines (and not only in footnote 4 of the executive summary) that products which fall under PRIIPs are not seen as ‘tied or bundled packages’ in the sense of the Guidelines.

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

ESBG agrees with the identified potential benefits of cross-selling practices. Most advantageous for customers are the one-stop-shop approach and reduced prices for products in packages. Generally, cross-selling practices help to enable banks to supply the customer with tailor-made products, adapted to the customers’ current living conditions.

The accompanying product can in many cases also help to minimize the customer’s financial risks (for instance a consumer credit in package with an unemployment insurance; a credit on real estate in a package with default risk insurance).

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

As a general remark ESBG would like the JC to note that, though, potential risks for consumers are existing, on regulated markets these risks have decreased significantly. ESBG thinks that the requirements regarding information and transparency which are existing are already well suited to protect consumers. For instance the ‘*European Standardised Information Sheet*’ (ESIS) informs about the general conditions of related agreements.

ESBG doubts that a customer’s focus on a main primary product has any impact on his/her willingness to purchase an additional product. The decisive point for the customer is whether the costs are reduced in the end. Even if products in bundles are not easily comparable, customers choose products based on their needs as well as the overall costs.

The JCs’ analysis regarding the decision making of the customers does also not yet reflect adequately that customers in the normal selling process receive detailed and transparent information regarding the products they are interested in. Thus, customers already can make informed decisions and at the same time act as ‘responsible consumers’. If, however, customers do not base their buying decision on the information they have been provided with, any risk resulting from their product choice lies in their own area of responsibility (as long as the information is generally understandable).

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.

ESBG has several comments regarding the examples of detrimental cross-selling practices:



Example 1:

ESBG seriously doubts that this example reflects the practice of the European savings and retail banks. Therefore, ESBG would appreciate that the JC carefully reviews this example.

Example 2:

ESBG considers this example of action to be an unfair commercial practice which is clearly prohibited by law.

Example 3:

Please note, that generally the insurance in such a package is not a product to be pre-paid. In cases where actually a proportional part of a pre-paid premium of an insurance component would not be returned to the customer who cancelled the main product, such a measure would have been put down in the agreement between customer and the savings and retail bank (including respective methods of calculation). Thus, a responsible customer would know in advance what impact a later cancellation could have.

Example 4:

ESBG likes to point out that an early termination does not result in 'disproportionate charges'. The charges that a customer needs to pay are determined by recognised actuarial calculation methods. Also, it should be taken into account that before the purchase the customer receives clear and transparent information regarding any early termination charges. Finally, ESBG would like the JC to note that this example is not relevant for card and account products. For instance, if a customer purchases a credit card 'Gold' in a package with special insurance the customer has the possibility to withdrawal if he/she recognises after the purchase that he/she has no need for the respective insurance. In this case the customer will instead receive a 'normal' credit card and will also receive the related fees pro rata.

Overall, it should be taken into account that, depending on the economic conditions negotiated between the firm and the providers of the different components of the package, the firm that cross-sells could be obliged to apply an additional charge in the case of an undone package by the client.

Example 5:

Firstly, ESBG would like to mention that no customer needs to re-buy a product just to be able to purchase another product. Secondly, guidelines for sales employees as well as restrictions in the system prevent the sale of products that are not suitable for the customer.

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.

Generally, ESBG thinks that customers need to receive information on product features and pricing which enables them to individually select the offer that is most suitable for them. In this respect, existing and forthcoming legislations already contain various information obligations for the consumers' benefit (Consumer Credit Directive, Mortgage Credit Directive and Payment Accounts Directive).



ESBG likes the JC to clarify that the Guidelines do not refer to cases in which products are inseparable and where consequently the price of tied/bundled packages and the price of their component products cannot be determined.

Regarding Guideline 5, it is unclear what exactly is included in the scope of ‘non-price features and risks’. The terminology of ‘non-price features’ is rather vague and very wide. ESBG thinks that an information obligation regarding ‘price and risks’ is clearer and sufficient to enable the customer to take an informed buying decision.

Additionally, it should be clarified whether the terms “*cost*” and “*price*” have the same meaning or not. In this sense, cost and price seems to be used as synonyms in paragraph 7, but paragraph 8 refers to “*information on price and cost*”. In this context, ESBG would like to point out that consistency should be ensured between the terms referred to in the Guidelines and those used in “Level 1” legislation. Therefore, ESBG urges the JC to use the same terms referred in “Level 1” regulations (e.g. MiFID), in the meaning and scope of each regulation; especially regarding the “*transaction costs*”.

Guideline 1:

ESBG welcomes the Guideline which ensures that the firms distributing tied or bundled packages are able to provide the customer with all necessary information on the 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 2:

ESBG likes to stress that the delivery of pre-contractual information has already been addressed in various directives such as MiFID, prospectus, UCITS KIID and PRIIPs KID. Against this background ESBG does not see a need for further regulations in that respect.

As already mentioned above, the terminology ‘key non-price information is blurry and should be clarified or be replaced by the term ‘risks’.

Guideline 3:

Again the Guideline overlaps with MiFID provisions and regulations on advertising as well as pre-contractual information on credits.

Furthermore, would like the JC to recognize that technical terms may be required by law. In practice technical and legal jargon cannot always be avoided or simplified. Additionally, ESBG thinks that the terminology ‘*in a simplified or jargon-free language*’ might lead to different interpretations in the Members States. The Guidelines lack consistency with the existing European regulatory framework. For instance, regulation 1286/2014 on Key Information Documents (KID) for Packaged Retail and Insurance-based Investment Products (PRIIPs) refers in this respect to ‘*clear*’ and ‘*succinct*’ information.



ESBG would welcome the JC to follow a consistent approach and to standardise the used terminology whenever possible.

Regarding the way of communication ESBG would welcome that firms are able to, firstly, simply present the major features of a product and then as a second step add a more detailed explanation.

Guidelines 3 and 6:

Although there is no reference in the summary, the proposed Guidelines require distributors of products to provide customers with information ‘*in a simplified or jargon-free language*’ (paragraphs 16 and 20). ESBG believes that this expression is unclear and could lead to different interpretations in the Members States. Furthermore, the Guidelines lack consistency with the European regulatory framework. For instance, regulation 1286/2014 on Key Information Documents (KID) for Packaged Retail and Insurance-based Investment Products (PRIIPs) states in this respect:

*‘It shall: [...] be clearly expressed and written in language and a style that communicate in a way that facilitates the understanding of the information, in particular, in **language that is clear, succinct and comprehensible**’*

To avoid confusion during the implementation process and to promote consistency between the Guidelines and the existing European regulatory framework ESBG supposes to replace ‘*jargon-free*’ and ‘*simplified*’ by ‘*clear*’ and/or ‘*succinct*’ information.

Guideline 4:

Generally, savings and retail banks already follow this approach. However, there are scenarios where certain costs are depending on third parties, in these cases a comparison is not always possible.

Guideline 6:

The Guideline lacks a definition of ‘non-price features and risks’. Thus, it is unclear what this requirement means for financial institutions.

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.

It is essential that the concept of the responsible customer needs to be properly included in the Guidelines. Meaning that after the customer received the respective product information it is him/her who makes the final decision upon which option to take and which product to buy.

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.

Please note that with MiFID similar regulations are already existing. ESBG hopes that overlaps and discrepancies in the provisions will be avoided.

Furthermore, the scope of the Guideline is unclear. In the Summary of the Guidelines it says under 17:

*'This guideline requires competent authorities to monitor that, **where firms are subject to such requirements through sectorial legislation**, the demands and needs of customers or **suitability/appropriateness** are adequately assessed by firms which distribute tied and bundled packages and that these cross-sold packages of financial products are placed in the interests of customers.'*

Guideline 8 (paragraph 25) does not refer to sectorial legislation but to '**any applicable requirements to meet the demands and needs to the customer or to assess suitability or appropriateness**' (which describes an even wider scope). Additionally, the examples in Guideline 8 seem to indicate the need for a sheer unlimited individual assessment before the sale of a product:

*'1) [...] **Regardless of the nature of the service offered** (i.e. whether or not advice is being provided), firms need to consider the **potential for costumers** to actually benefit from the tied or bundled products that they offer. So, a firm should not cross-sell a product to an individual customer where the firm is (or should be) **reasonably aware** that the **costumer is not able to benefit** from the additional product [...]'*

ESBG asks the JC to clarify this point. A reference to the sectorial legislation makes sense from a practical point of view. It is not possible, though, to take into account for each product sale every customers' individual preferences and their situational circumstances. Moreover, an assessment of the individual benefits of a product for a consumer would be a standard which is in contrast to the requirements of directives such as MiFID II, MCD or Consumer Credit Directive where the necessary assessment varies depending on the type of product (solvency, suitability or appropriateness; assessments for investment, banking or insurance; complex or simple products etc.).

To conclude, ESBG would like the JC to note that in practice tools such as overviews of product features as well as socio-demographic and behavioural characteristics of customers are used.

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 9:

The ESBG acknowledges that adequate training of staff is extremely important. However, to ensure that the staff is able to communicate along the lines of a vague criteria such as plain and non-technical language would require an assessment of each employee's individual communication skills which is an almost impossible task in large entities. Against this background, ESBG is critical of the '*obligation to train the staffs*' communication skills and doubts the necessity of this provision. In any case, ESBG would like the JC to ensure that such communication training is required by any directive or regulations referred to.



Furthermore, the reference to *'plain language'* (Guideline 9, paragraph 26) is ambiguous and could lead to different interpretations in the Members States. Furthermore, there is a lack consistency in wording between the Guidelines and the already existing European regulatory framework. [For more details see above under question 6.]

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.

ESBG would like the JC to reflect in the Guidelines that, naturally, whenever a savings and retail bank offers a bundle/tied packaged with the benefit of reduced costs to the customers this is based the expectation to make a higher profit themselves due to the sale of more products. If the customer now makes use of her/her cancellation right, they must be able to compensate that loss. Such a 'give and take' which is in the nature of the markets should not be forbidden.

Furthermore, it is possible that if the customers exercises his/her cancellation right the savings and retail bank that cross-sales the package needs to pay charges to another firm that had provided one or more products of the package. In such cases, the customer is informed in advance that the cancellation would lead to charges. The customer is then free to take an informed decision and to decide whether to accept possible penalties in exchange for a better price.

Question 11: Please provide any specific evidence or data that would further inform the analysis of the likely cost and benefit impacts of the guidelines.

To conclude, ESBG likes to draw the JCs' attention to the fact that measurable costs would occur for amended website information, brochures, sales processes and documents as well as for any trainings of staff.



About ESBG (European Savings and Retail Banking Group)

ESBG brings together savings and retail banks of the European Union and European Economic Area that believe in a common identity for European policies. ESBG members support the development of a single market for Europe that adheres to the principle of subsidiarity, whereby the European Union only acts when individual Member States cannot sufficiently do so. They believe that pluralism and diversity in the European banking sector safeguard the market against shocks that arise from time to time, whether caused by internal or external forces. Members seek to defend the European social and economic model that combines economic growth with high living standards and good working conditions. To these ends, ESBG members come together to agree on and promote common positions on relevant matters of a regulatory or supervisory nature.

ESBG members represent one of the largest European retail banking networks, comprising of approximately one-third of the retail banking market in Europe, with total assets of over €7,300 billion, non-bank deposits of €3,480 billion and non-bank loans of €3,950 billion (31 December 2012).



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