

Re: Joint Committee of the European Supervisory Authorities - Consultation Paper on guidelines for cross-selling practices

20 March 2015

Dear Sir/Madam,

Eurofinas, the voice of consumer credit providers at European level, welcomes the opportunity to contribute to the Joint Committee of the European Supervisory Authorities' (ESAs) Consultation Paper on guidelines for cross-selling practices.

Eurofinas brings together associations throughout Europe that represent consumer credit providers. The scope of products covered by Eurofinas members includes all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, furniture, electronic appliances, education etc. By providing access to finance to individuals and households, consumer credit supports the social and economic well-being of millions of consumers across Europe. It also benefits manufacturers, motor dealers and retailers as a key tool for their sales. It is estimated that together Eurofinas members financed over **321.7 billion Euros worth of new loans** during 2013 with outstandings reaching 827.9 billion Euros at the end of the year.

Introductory remarks

Consumer choice, sustained innovation and access to financial services products within the internal market, are key priorities for both the European Commission and the Eurofinas members. Against this background, we see proper and transparent commercial practices as particularly valuable for a sustained relationship between retail financial services firms and consumers based on trust.

We want to emphasise that cross-selling practices are greatly appreciated by many customers. In fact, these customers often expect to be given the opportunity to purchase a bundled package, such as a financing solution and an insurance. The retail financial services sector is one of many sectors, which utilises cross-selling practices to offer customers better products and services and increased convenience, in a cost-effective manner. In this context, we also want to highlight the free choice of the consumer.

On a general note, we want to stress the importance to ensure consistency between the work of the ESAs and “level 1”-regulation.

The ESAs are to comply with Article 24(11) of the Markets in Financial Instruments Directive¹ (MiFID II) which requires them to develop guidelines for the assessment and the supervision of

¹ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJEU L 173, 349–496.



cross-selling practices. However, such an obligation has not been included in other recently adopted legislative acts of the EU Institutions, such as the Mortgage Credit Directive² (MCD) or the Payments Accounts Directive³ (PAD). We question the extension of clear investment product regulation to the rich variety of retail financial products without the intention of the legislator.

In addition, the recast of the Insurance Mediation Directive⁴ (IMD II) is still subject to on-going negotiations and the final provisions are yet to be confirmed. Therefore, the guidelines may appear premature.

Key messages:

1. A distinction must be made between i) aggressive commercial practices and provision of misleading information on one hand and, ii) cross-selling practices on the other. Although we understand the background of the Consultation and recognise the importance of consumer protection, **no cross-selling practice should be considered as unfair *per se*.**

2. Cross-selling practices should be assessed on a case-by-case basis. We want to call attention to the principle of proportionality, particularly with regard to product complexity and potential risks. This is especially crucial given the wide application of the guidelines. **A one-size-fits-all approach does not allow for the necessary distinction that must be made in relation to differing product characteristics.**

3. As acknowledged by the ESAs, numerous sources of EU legislation currently provide – varying - rules on cross-selling practices:

- The Markets in Financial Instruments Directive
- The Mortgage Credit Directive
- The Payment Accounts Directive
- The on-going recast of the Insurance Mediation Directive

In addition to the above-mentioned, the Consumer Credit Directive⁵ (CCD) also provides for rules on the selling of ancillary services in relation to credit agreements, and the Unfair Commercial Practices Directive⁶ (UCPD) prohibits unfair commercial practices between firms and consumers (incl. provision of misleading information and aggressive sales practices).⁷ The European Commission regularly provides updated guidance on the UCPD to take due account of current market realities as well as the jurisprudence developed at EU and national level.⁸

We believe that the ESAs should provide clarifications to existing frameworks. We fully believe that focus and efforts should be directed towards correct and swift enforcement of the existing frameworks against any existing mis-selling practices, and efforts to aid consumers' understanding and ability to assess a product.

² Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, OJEU L 60, 34-85.

³ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, OJEU L 257, 214-246.

⁴ Proposal for a Directive of the European Parliament and of the Council on insurance mediation, COM (2012) 360/2.

⁵ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (The Consumer Credit Directive) 22.5.2008, L 133, 66-92.

⁶ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council, 11.6.2005, L144, 22-39.

⁷ Practices shall be considered as unfair where it is misleading or aggressive, Articles 5-7 of the UCPD.

⁸ Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices, European Commission, http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf.



4. Simple measures can address a number of the issues pinpointed in the Consultation Paper. Where possible, firms can make further attempts to limit the use of jargon to avoid the use of difficult technical or legal language. In addition, they can enhance the comparability of their offerings, i.e. packaged and stand-alone products, and remind customers to give sufficient attention to the coverage of their current products.

1. Practice of cross-selling

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

We generally agree with the description of cross-selling practices. More specifically, we welcome the clarification that the guidelines are not to prevent the offering of products, in particular multi-risk insurance policies, which are an “inherent or indivisible package, which cannot by its nature be offered or sold separately because the components are a fully integrated part of the package”.⁹

However, the very broad concept of cross-selling practices risks to capture the situation in which a customer acquires separate products from the same provider but where the products are not packaged by the provider. For example, the situation where two products are sold to a customer, on its own initiative, at different occasions or through varying sales channels

2. Potential benefits and detriments of cross-selling

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

We generally agree with the benefits as identified by the Joint Committee. However, we want to point out the unbalanced analysis of benefits and detriments in the Consultation Paper. The benefits connected to cross-selling practices are covered very briefly while the described detriments are analysed over three and a half pages. In our view, this does not provide for a proportionate and accurate picture.

It is clear that there can be many benefits connected to the provision of bundled and tied products for both consumers and firms. Consumers can be provided with greater convenience through a one-stop shop and potential financial as well as other advantages. As stated, tying and bundling practices are common in many sectors to meet customers’ expectations and needs for tailor-made products and convenience. The selling of two or more products together is also often cheaper for the provider, because there is only one set of material to go through in the sales situation, etc.

As pointed out by the industry in the context of the European Commission’s 2007 sector inquiry on retail banking, some products and services may simply not be viable to provide on a standalone basis, but only as part of a package. This is notably the case of basic accounts and payment facilities. This can offer consumers a greater selection of products and suppliers. The wide choice enables competition, which in turn improves efficiency, lowers prices and drives product diversity and innovation.

Also, by building on a long-term relationship between a credit provider and a customer, a higher degree of efficiency can be achieved to the benefit of all parties. While providing ease for the consumer, the credit provider may offer even more tailored and accurately priced products to a returning customer.

In the field of credit transactions, we see that one of the most beneficial offerings is the combination of insurance products linked to a loan. Such a package enables firms to provide consumers with better deals, while, at the same time, it reduces risks for all parties concerned. In the case of loan insurance, it allows consumers to protect themselves against potential financial liability in the case of unforeseen events, such as unemployment, relationship breakdown or illness. This in turn allows providers to offer lower rates. Other packaged products include insurances linked to the asset financed, for example:

⁹ Joint Committee of the European Supervisory Authorities’ Consultation Paper on guidelines for cross-selling practices, p 19.



guaranteed asset protection (GAP insurance), motor insurance (Third Party liability [compulsory cover] and driver coverage), and legal protection insurance.

Another benefit that must be highlighted in this context is that cross-selling packages often make consumers aware of the existence and advantages of certain products, which the consumer was not familiar with before.

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

Eurofinas generally agrees with the possible consumer detriments identified by the ESAs. Nonetheless, we firmly believe that the benefits outweigh the potential detriments. As stated above, we firmly believe that the Consultation Paper does not provide for a balanced picture of the potential benefits and detriments connected to cross-selling practices. Also, Eurofinas questions the assumed increased complexity of a purchasing situation due to the purchase of tied or bundled products. Such a situation does not *per se* lead to a more complex situation than if the products are bought separately.

Also, existing and forthcoming legislation provides for clear rules on information to consumers. For example, the CCD requires clear information on ancillary products related to a credit agreements to be included in both advertising and pre-contractual information where these ones are compulsory to obtain the credit or to obtain it on the terms and conditions marketed. In addition, the Directive provides for clear rules on how the total costs for a credit, including costs for ancillary products, are to be presented.

In our opinion, such provisions allow consumers to effectively compare between different offers and packages. This, in turn, enhances both their choice and mobility. As long as consumers are provided with clear and transparent information on both the product characteristics and pricing, we believe that consumers are provided with sufficient opportunity and flexibility to select the offer they find most attractive in line with their expectations. In this context, we also want to stress that consumer credit agreements are generally only of relatively short duration.

Eurofinas believes that existing legislation provides the necessary framework and that focus should therefore be on proper enforcement of these rules. Indeed, swift actions should be taken against any breach of these provisions. In this regard, we want to stress that compliance with both national and European legislation is a priority for our members. Moreover, in many cases our national associations work closely together with both consumer organisations and local supervisors through self-regulatory measures. The financial services industry has taken many steps to rectify previous issues in connection to cross-selling practices.

In this context, Eurofinas wants to stress its commitment to the important role of financial education and initiatives to help consumers to increase their financial literacy.¹⁰

Furthermore, as mentioned, we want to stress that long-term relationships can bring benefits to both consumers and firms. The guidelines presuppose that mobility is a key benefit. However, we do not think this is the case *per se*. The benefits of long-term relationships in the retail financial services sector should not be over-looked. It allows a firm to provide products that are more tailored and more accurately priced to a well-known customer. Also, in a competitive market, firms must always remain innovative to retain a loyal customer.

Eurofinas wants to stress that additional non-financial factors may also be decisive factors for a client to remain with a firm. It can acquire additional products and services with greater ease in the process, avoiding the need for extensive searches or burdensome administrative procedures. In addition, factors such as geographical location and built up trust, etc., may also be important factors.

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

¹⁰ This was also highlighted by the European Banking Authority's Consumer Trends Report 2014, p. 36f.



Example 1:

Pricing is not regulated by the governing frameworks. We believe that pricing should be at the full discretion of the provider. We want to point out that, in addition to potential monetary benefits, the packaging of several products can also bring other benefits, such as convenience at the entry in to an agreement as well as in relation to post-sale services (e.g. only one contact-point, etc.). A customer which is provided with clear and accurate pre-contractual information will be in a position to properly assess a package.

Example 2:

We consider this to be an unfair commercial practice, i.e. the provision of misleading information, which is clearly covered by the UCPD.¹¹

Example 3:

The example requires clarification.

Example 4:

The example makes sense for long-term commitments, but less so for a short term credit. This clearly shows that there is a need to assess practices on a case-by-case basis.

Example 5:

We believe that there is a need to distinguish between eligibility and redundancy. We want to emphasise that products should not be sold to people who cannot claim the benefits. However, it must be a customer's duty to know the cover of his or her products. Firms may remind consumers to control their current coverage, but further requirements would be disproportionate in our view.

3. Guidelines

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.

Guideline 1, paragraph 13 & 14:

We firmly believe that consumers should receive the necessary information to allow them to take informed purchasing decisions. However, we want to stress that information provisions should not lead to an information overload for the consumer. Moreover, disclosure requirements should be compatible to both consumers' needs as well as operational business reality. In our opinion further-reaching requirements are not necessary. The existing rules in, for example, the CCD as well as the Council's proposed provision on cross-selling in the IMD II provide the right balance with the adequate explanations of benefit to consumers.

Guideline 5, paragraph 19:

The proposed guideline appears to be mainly directed to investment products. If applied to retail products, the requirements would prove to be both artificial and disproportionate. It should be made clear that the guideline is targeted only on investment 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, paragraph 15:

¹¹ See Article 6 of the UCPD.



Eurofinas completely shares the ESAs' view that consumers must be informed about the products they are purchasing. The provision of pre-contractual information in relation to price, relevant cost, in good time before the customer is bound to an agreement, is clearly required for by existing legislation, for example in relation to the distribution of credit.¹²

Guideline 3, paragraph 16:

We fully agree that consumers should be informed about the products they are purchasing, the characteristics of these products as well as the price, as set out in sectorial and product related requirements. However, we want to draw the ESAs' attention to the fact that technical terms may be required by law. Technical and legal jargon cannot therefore always be avoided or simplified.

Guideline 3, paragraph 17 & example 1:

We want to point out that the costs of all the products in a package may not be known in advance.

Eurofinas agrees that consumers should be provided with information regarding price in a prominent and accurate manner. Existing legislation, such as the CCD, contains clear provisions on the advertising of products.¹³ The information is to be provided "in a clear, concise and prominent way". However, we question the proposed requirement that equal prominence is assigned to the price and cost of all components in a package. Furthermore, example 1 prohibits that information concerning one of the components products is given more emphasis with the use of a bigger or bolder font. We strongly believe that the guidelines should not be more restrictive than the "level 1"-regulations.

While the information in question should certainly be clear for the consumer, we find that firms should be allowed to highlight certain aspects, in particular for marketing purposes. Existing legislation provides adequately detailed rules and also the UCPD is applicable.

Moreover, a package may also be advertised in addition to another product, for example a car. The proposed guideline could create a situation with an advertisement containing a considerable amount of information, which, due to technical or format limitations, must be presented in a very small print. We believe that the focus should be on clear and relevant information instead.

Advertising and marketing should not be confused with contractual information. A too stringent framework will just lead firms to advertise on the basis of their brand or the generic product rather than their offers. The tying and bundling of products allow firms to differentiate their offerings and to compete on the merits, and increasing their attractiveness to specific customer segments. A too stringent framework could hurt smaller firms and recent market entrants who can only compete with their actual deals.

Guideline 4, paragraph 18:

We fully agree that consumers should be presented with information in a way that is not misleading or which distorts or obscures the real cost to the customer or prevents meaningful comparison with alternative products. We fully believe that existing legislation, including the UCPD, is sufficiently clear on this subject-matter and that focus should be on swift enforcement at the national level.

Guideline 6, paragraph 20:

As previously stated, we want to draw the ESAs' attention to the fact that technical terms may be required by law. Technical and legal jargon cannot therefore always be avoided or simplified.

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.

¹² The CCD, Article 5.

¹³ The CCD, Article 4.



We support that firms should be required to inform customers regarding the cost of the components of a package, and whether it is possible to buy the components separately. As previously stated we believe that this is already sufficiently required of market players and that focus should be on proper enforcement of existing legislation, including the UCPD.

Also, Eurofinas fully believes that the proposed guidelines on how firms are to design their internet default options are excessive. Firms should be able to create their own internet pages as they see appropriate.

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.

The guideline reflects market reality and is in line with existing legislation.

In this context, we also emphasise the importance to clearly distinguish between advised and non-advised sales. Depending on product and distribution model, some firms limit their activity to the provision of information and specific explanation of the products. In our opinion, advice should be viewed as a distinct service. Suitable products must also in the future be possible to provide to customers without advice.

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, paragraph 26:

The guideline corresponds to existing provisions in existing legislation. We certainly share the view that relevant staff in charge of distribution should be adequately trained to fulfill the requirements set out in existing legislation. **In this context, we want to stress that any training requirements should be proportionate to the products sold.**

Guideline 10, paragraph 27:

In relation to responsible business conduct we agree with the proposed guideline. We support sales practices that are fair and reflect responsible business conduct. However, remuneration models and levels, already subject to "level 1"-regulation, should remain at the discretion of market operators, and incentives to sell more should, by definition, not be treated as inadequate sales remuneration structures.

Also, there should be a clear distinction between advisory functions on behalf of a customer and execution only function – i.e. distribution. As previously stated, we want to emphasise the difference between advised and non-advised sales.

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.

Guidelines 11, paragraphs 28 & 29:

The proposed guideline is in line with the consumer's right of withdrawal from a credit agreement.¹⁴ However, we do have potential concerns relating to the wider context. The products in a bundled or tied package are normally 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, it may lead firms to withdraw certain products entirely.

¹⁴ The CCD, Article 14.