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For publication

UniCredit reply to the Joint Committee of the European Supervisory Authorities Consultation Paper on Guidelines for Cross-Selling Practices

UniCredit is a major international financial institution with strong roots in 17 European countries, active in approximately 50 markets, with over 7,500 branches and over 130,000 employees. UniCredit is among the top market players in Italy, Austria, Poland, CEE and Germany.

UniCredit welcomes the opportunity to express its views and opinion on the consultation paper “Guidelines for cross-selling practices” issued by the Joint Committee of the European Supervisory Authorities: the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), hereinafter the “Joint Committee”.

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

According to the description proposed by the “Joint Committee”, in the proposed Guidelines any offer that puts one or more services together is seen as bundling or tying/conditional offering and thus should be subject to the proposed Guidelines.

In our view, the definition of “cross-selling” -in page 9- is a too wide and generic statement so that it can be extended to a large majority of the products or services that are normally sold to customers. For instance, this is the case when customers decide to open a current account and then subsequently purchase other products or services and link them to it (at a later stage of their business relationship). If one applies the definition as per page 9 to any “current account” sale, then such a sale could always be considered as cross-selling. UniCredit is of the view that only “simultaneous purchases” (products/services opened/purchased at the same time) should be within the scope of the proposed Guidelines. Otherwise any following purchases of additional, ancillary or otherwise separate products or services would fall into the scope of “cross-selling” and that would go beyond the aim of these Guidelines, which cover sales of packaged products or services, rather than several separate sales of different products or services.

The extension of the Guidelines to all products and services sold **by banks will be detrimental for customers**. From the point of view of customer protection, the Guidelines should not be drafted on such a very strict and inflexible way thus impeding financial institutions to develop and create product offers for the benefit of their customers.

The proposed Guidelines **should not have the unintended consequences to discourage and penalize the sale of products which are indeed convenient for the customer**. Bundling and tying give customers the opportunity to benefit from special offers according to their specific needs and preferences; they also offer customers “one-stop shop” purchases, where customers can find most of what they need, including legally required pre-contractual information (i.e. informative technical sheet, prospectus) in one place. Nowadays, customers expect these types of offers from the banking industry due to their practicality, affordability and convenience.

In addition, referring to page 10 (paragraph 4), contrary to the objective of consumer protection set out by these Guidelines, the possibility to extend their scope to non-financial products and services may have a negative impact by impeding financial institutions to develop and offer products that would best meet customers' interests and needs.

Furthermore, the proposed notion of "cross-selling" appears to be too generic also in respect of the European Commission's Communication "*Guidance on the Commission's enforcement priorities in applying article [102] of the [Treaty on the Functioning of the European Union] to abusive exclusionary conduct by dominant undertakings*" (hereby the "EC Communication")¹. According to the EC Communication, particularly, tying and bundling practices may lead to article 102 of the Treaty on the Functioning of the European Union ("TFEU") being enforced², where firms hold a dominant position³ on the relevant markets of products or services⁴.

Leaving aside any comment on the scope of abuse of dominant position (which is clearly outside the scope of this consultation), UniCredit strongly suggests the proposed notion of "cross-selling" to be coordinated and made consistent with the EC Communication. Otherwise, in UniCredit view, firms holding a dominant position would be prevented from (or strongly discouraged to) "cross-selling" *tout court*, in order to avoid in any case to bear the risks of the heaviest fines for the breach art. 102 TFEU. This would mean, however, that these Guidelines – practically – would have a limited scope, since they would only apply to some firms (i.e. those not holding a dominant position actually), rather than to all of them. UniCredit believes, on the contrary, that by these Guidelines the "Joint Committee" aims at providing common and standard rules, applicable to all firms without limitations.

For these reasons UniCredit believes that the scope and the notion of "cross-selling" should be clearly defined and coordinated with the EC Communication so that the compliance of the firms' commercial conducts with these Guidelines prevents article 102 TFEU (to the extent of the EC Communication) being enforced. In UniCredit's view, in fact, complying with these Guidelines ensures benefits both to customers and to competition, since the first would enjoy several advantages while firms holding a dominant position on the relevant market would actually be allowed to compete with other firms in cross-selling their products and services too.

On the other hand, should the Joint Committee disagree with this view, without prejudice to any of the comments explained in this document, UniCredit suggests to clearly state that in case of conflicts between these Guidelines and the EC Communication, the latter shall prevail, while these Guidelines shall not apply.

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

UniCredit agrees with potential customer benefits outlined by the "Joint Committee" in particular (a) financial benefits and (b) convenience benefits as proposed in the Guidelines.

However, as to the benefits identified on item (c) "access to a wider range of products", UniCredit is of the opinion that banks have no reason to persuade consumers to purchase bundled products over separate or single products. In fact, banks should offer products in both versions, bundled as well as separated. The customer should always be free to decide which offer suits his/her needs and preferences best (either the bundled packaged or the single product).

¹ Please refer to the Communication from the Commission of February 24th, 2009 (2009/C – 45/02) — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings.

² Pursuant to article 23, section 2, letter a) of the EC Regulation 1/2003, particularly, in case of infringement of article 102 TFEU fines up to 10% of groups' total turnover may be imposed by the European Commission.

³ As explained in the EC Communication, pursuant to article 102 TFEU.

⁴ To the extent the tying or bundling products or services are different from the tied or bundled ones, according to the notion of "different products" laid down in the EC Communication.

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

The existing/forthcoming legislations for financial products and services already take into consideration and address accordingly such potential sources of detriment. Hence, in UniCredit's view, the potential sources for consumer detriment examples do not appropriately address the current banking industry system and the regulatory framework in which we operate and do not equate to customer harm.

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.

UniCredit would like to share its view on examples 1 and 2. The situation described in example 1 is very unlikely to happen as it is neither our policy nor our interest to:

- a) "convince" a customer to make a purchase which will put him/her out of pocket; or
- b) make a negative impression in our business selling practices.

Indeed, it would make no sense for firms to bundle products at a higher price than the sum of the single price of the same products sold separately.

Regarding example 2, UniCredit is of the view that the situation described is not realistic because the pricing of products and services is normally performed periodically regardless of any cross-selling initiative. Furthermore, said example seems also very unlikely to happen, since such a "lack of information" vis-à-vis the customers (especially the consumers) is clearly prohibited by several EU (and EU member States) law provisions (please consider, article 4 of Directive 2008/48/EC, article 3 of Directive 2006/114/EC and articles 4 and 5 of Directive 2005/29/EC).

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.

UniCredit agrees with the proposed Guidelines and examples. However, we would like to point out that notwithstanding any intentional or unintentional detrimental practices, there are cases where the identification of the price of each components (products or services) when bundled in a package may result quite problematic due to the different pricing models/strategies that can be applied.

This would be the case for example when the price of a package consisting of a banking account, a securities account (custodianship), and a credit card. The price of the package is calculated as "*a forfait*". Unlike when distributing the three products on a standalone basis, when banks bundle the products in a package they might obtain synergy effects that can be passed on to customers in the form of a lower total price. Therefore, it is not possible to distribute the "discounting" effect amongst each of the products evenly under this type of pricing strategy.

Regarding the disclosure of the price in a tied package, UniCredit is of the view that the prices should be disclosed for each of the component following an add-on approach (i.e. as the sum of the prices of the single components). For example, a Bank offers a tied package of a residential mortgage with an insurance policy to a client who asks the bank to finance the insurance premium amount and paid the premium in several installments overtime. In this case the price of the insurance premium can only be disclosed as an add-on (price of the insurance premium), regardless of the amount of interests that belong to the premium financing.

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.

UniCredit would like to comment on Guideline 6 "Prominent display and timely communication of key information on non-price features and risks, where relevant".

We agree that the risks should be presented to the customers in a reasonable and visible way, where relevant for the purposes of the package. In view of this, we believe that risks **should not** necessarily be disclosed in all cases with the same prominence and weight, since the latter sometimes may not represent a “key” selling feature, especially where risks resulting from such a package are **not** likely to be higher than the risks associated with the components taken separately.

UniCredit is of the opinion that Guideline 6 should not bind firms to additional informative requirements vis-à-vis the customers than those laid down in the respective sectorial legislation (e.g. the requirements set out in Directive 2005/29/EC and in Directive 2006/114/EC, MiFID 2, etc).

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.

According to the Guidelines, prompting the customer to “opt-in” is not considered appropriate when he/she makes a purchase decision through the internet channel due to the default inertia factor (page 16 paragraph 13). However, the suggestion to set “opt-out” as the default option, in our view, **does not** offer adequate protection to the customer. In certain cases, the opt-out (pre-setting “no”) option cannot safeguard properly the customer. For example, components as a “cap option” in a “variable rate loan” when pre-set to “no” could make the customer reject that option due to the default inertia, without realizing the possible detrimental effects he/she would have faced if he/she had chosen the “opt-out” option instead.

UniCredit is of the view customers should be allowed to choose freely and voluntarily whether to include or not a specific component (product or service) in a bundled package.

Therefore, we recommend that neither “yes” or “no” pre-set option should be set by default in the internet channel therefore giving the customer a real opportunity to engage fully and proactively in the purchase decision.

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 proposed Guideline 8 is fully in line with general inter-sectorial requirements to act honestly, fairly and professionally and in accordance with the best interest of clients. Any diverging practice would be considered as breaking those rules.

Furthermore, existing/forthcoming EU legislation in specific sectors (e.g. MiFID II and IMD II) has already set out stricter requirements to guarantee that the offered bundled products are appropriate for client’s needs and risk tolerance.

UniCredit is of the view that the principle set out with Guideline 8 will further ensure a level playing field on cross-selling practices ruled by sectorial legislation providing for different levels of customer protection.

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.

UniCredit is of the view that the proposed Guidelines should not discourage the selling of bundled packages; on the very opposite, the Guidelines should discourage banks overselling bundled packages in comparison to separate products. In fact customers should always be free to decide which products to purchase.

On the other hand, Guidelines should avoid being too restrictive and therefore discouraging the industry from offering tied or bundled packages which have been created to benefit customers.

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.

UniCredit agrees with the purpose and rationale behind Guideline 11.

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.

UniCredit is concerned about the ease of comprehension from customers as issues may arise due to possible overlapping of disclosure documents which shall be provided to them, pursuant to both EU and national laws (e.g. *ad hoc* informative documents to customers are requested by Directive 2008/48/EC, MiFID II, etc).



Key Contributors

Please find below the list of the key areas involved in this work, whose contribution made possible to coordinate and provide UniCredit answers to this Consultation. Some others have been involved alongside the UniCredit Group, but are not listed below.

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