

GREEN PAPER ON RETAIL FINANCIAL SERVICES IN THE SINGLE MARKET

ABI'S REMARKS

1. GENERAL COMMENTS.

1.1. Integration of European Financial Services Market

The Italian Banking Association - Associazione Bancaria Italiana ("ABI") - expresses appreciation for having the opportunity to contribute to the consultation launched by the EU Commission on the Green Paper on Retail Financial Services in the Single Market and pays tribute to the Commission for the application of the principles of Better Regulation, which request open and transparent consultation of all stakeholders.

Consumer protection is at the core of market integration: in order to reach such integration further harmonization of these rules is in order, as specifically indicated by Commissioner KUNEVA in the Commission's Action Plan on Consumer Policy. In the field of financial services, negotiations of the Consumer Credit Directive ("CCD") have proven that targeted full harmonization in this field is no longer optional, albeit it can be accompanied by mutual recognition to favor convergence of Member States' legislation. The above-mentioned *Green Paper* must be considered taking into account the existing initiatives that the Commission has launched in the meantime (which the Green Paper refers to) with regard to specific areas of law, which affect customer protection rules. These initiatives may regard reviewing existing legislation, setting policies, or introducing a new legislation.

With regard to the field of financial services, it is therefore necessary to link the consultation with the modernization of the legal framework for consumer credit through the proposal of the Consumer Credit Directive, through the promotion of an open dialogue with consumers on mortgages and current accounts, and through the review of the distance marketing of financial services directive. It appears obvious that these initiatives are of great relevance and that they will have great repercussions on the overall scenario; moreover, they will represent the EU framework for fundamental consumer rights in the financial services area. This is the reason why ABI believes it necessary to contribute to the talks: so as to make sure that the development of the legal framework for consumer protections is in line with the overall development of the sector.

With regard to the EU Commission's Consumer Policy Action Plan, we very much appreciate the fact that the Commission has decided to abandon the previous approach based on minimum harmonization and is now focused on adopting measures aimed at achieving full harmonization. On the matter, Commissioner KUNEVA pointed out, in the above-mentioned Action Plan, that the minimum harmonization approach has not yet produced the expected outcomes (with regard to regulatory competition in particular) both in terms of consumer protection really enjoyed by consumers and in terms of market integration, due to the fact that local legislations' excessive fragmentation has hindered consumers' trust in cross-border activities.

The minimum harmonization approach was undoubtedly a failure also from the companies' point of view, since the existing fragmentation of consumer protection rules has discouraged cross-border activities owing to the lack of legal certainty with regard to the legal frameworks applicable in the different EU countries. On the matter, the Commission stated that: "*Existing consumer contract rules directives are also based on minimum harmonization, which means that Member States are allowed to adopt stricter rules in their national legislation as long as the minimum level laid down in the directives is respected. **That has produced a patchwork of different standards across the EU leaving business and consumers not sure of what standards will apply.***"

1.2. Full targeted harmonization and mutual recognition.

In this context, with reference to regulatory initiatives, ABI welcomes the idea of full harmonization of key retail services across the EU, the so-called *targeted full harmonization* concept. This actually means the harmonization of elements that are essential to foster cross-border competition, and only of these ones. On the matter, the mutual recognition principle plays a key role in fostering cross-border activities: the latter should be combined with the harmonization principle in the sense that the “mutual recognition” principle should apply to any non-harmonized issue, thus favoring cross-border activities and triggering competition mechanisms that promote market integration and allow consumers to “*reap the benefits of the Single Market*” – to use Commissioner KUNEVA’s words. The mutual recognition principle enjoys companies’ approval as well as the financial sector’s; in fact, during a hearing that was recently held to discuss the consultation, companies have expressed their support as follows: “UNICE¹ – Erik Jonnaert, Chairman of the Consumer/Marketing Working Group - *supports greater use of full harmonization mechanisms which should be assessed taking into account proportionality and the need, and combined with the application of the country of origin principle or mutual recognition arrangements.*” The Commission itself (PANTELOURI²), whilst restating the importance of the application of Better Regulation to this area, clearly affirms that “*There would still be scope for mutual recognition if the degree of harmonization was sufficient*”.

During the last years, a significant amount of EU regulations aimed at achieving minimum harmonization, as the Consumer Credit Directive (Directive 102 of 1987) that is currently in force. The study of the effects produced by this approach on the market (the majority of which were ordered by the EU Commission) revealed that there are two main issues:

- a) On one side, the minimum harmonization principle has not favored *cross-border* market integration yet; therefore, regulations do not provide consumers with sufficient certainty with regard to cross-border activities, so they tend to prefer the domestic market;
- b) On the other side, in most cases minimum harmonization has led to *goldplating* by individual Member States, i.e. the creation of excessive regulatory frameworks, both in terms of rules and operational procedures, which hindered efforts to create an EU framework and thwarted the benefits produced by a common EU policy applicable to individual Member States³.

Moreover, for what concerns those areas that the maximum harmonization principle doesn’t apply to, the mutual recognition principle allows to create a *level playing field* amongst market players that the minimum harmonization principle would not be capable of producing.

It should also be pointed out that effective harmonization will not be possible without Member States’ willingness to adjust certain practices and rules, by providing for timely and correct implementation of EU rules and by avoiding goldplating.

1.3. Better regulation approach and driven market solutions.

ABI agrees with the Commission’s approach based on which the initiatives should only be pursued where there is evidence of clear and concrete benefits for citizens and a strong economic rationale and that policies must be based on solid economic evidence and be subjected to thorough assessments, made on a case by case basis. New regulatory initiatives in retail financial services will be

¹ Union of Industrial and employers’ confederation of Europe.

² Agne Panteluri, Director of DG SANCO.

³ It must also be noted that, with regard to competition, the minimum harmonization principle penalizes companies operating in States where EU directives are implemented in a more rigid way.

undertaken if factors such as consumer confidence and cross-border activity can be improved. In concrete terms, this means that certain subject matters are best left outside the scope of Community action, for Member States or for all actors in the market to define them in the most appropriate manner.

This would leave space to an important tool for integration: self-regulation, which may operate at both national and EU level. Priority should be given to market driven solutions, recognizing the merits of self-regulation. Specific measures are being developed which stem from the banking sector's own initiatives. A good example of EU self-regulatory measures is the future implementation of the Single Euro Payments Area (SEPA).

1.4. Enhancing consumer confidence.

The Commission considers that European consumers need confidence to make the right choices, and that further efforts may be required to ensure that consumers are confident and enjoy the same rights, regardless of the location of the financial institution and of the selling mode chosen. ABI agrees with this approach and highlights that the Commission should pay attention to the following issues:

The “Safety Net” issue:

ABI considers that the settlement of the cross – border supervision matter and the related issues regarding the “Safety – net” (*Deposit Guarantee Schemes, Crisis Management, Lender of Last Resort*) is a tool which can enhance consumer confidence in acting in a integrated financial market. In fact, consumers can restrain themselves from vesting their savings to a cross-border intermediary, until they don't have clearness about the substantial equivalence of the protection granted in the different Member States (under the profile of the “supervision regulation” applying to the intermediaries) and about the supervision practices of the single national Authorities.

The ‘reasonable consumer’ model

In financial services, the notion of “average consumer” should be the benchmark to trace a distinction between consumers in general and those consumers who buy financial services and need an adequate level of protection. It is also important to refer to such a notion to brush off the impression that a consumer is a person that may not be in a position to take his own decisions with respect to the products he intends to buy. The consumer should be considered to be not only “reasonably well-informed” but also “observant and circumspect” and able to perform his role “as an active market citizen” in an economic and sensible manner on his own responsibility.

This definition was shaped by rulings of the European Court of Justice (ECJ), which for example, gears the use of bans on misleading behavior to the “presumed expectations” of an “average consumer who is reasonably well-informed and reasonably observant and circumspect” in order to avoid excessive restrictions.

This is also why education and empowering citizens to make the right choice is key. To make appropriate choices, a consumer must be given the necessary skills and knowledge. This was also underlined by Commissioner McCreevy encouraging Member States to consider how to improve consumer education on financial matters, and specifically on financial risk. We believe financial education should be included in school curricula.

Obstacles. Consumer policy should be designed to eliminate those market imperfections on the demand side. There is more than one party that can help achieve this goal. Providers themselves play

a key role in consumer policy of course. Proactive consumer protection measures, such as adequate product information or strict quality control, are in the interest of any company that hopes to ensure long-term commercial success.

In addition to providers, the regulatory authority could be considered as another party. However, in our view the limitations of consumer policy become clear even when authorities intervene. Excessive regulation not only means higher supply costs, which ultimately adversely affects the supply of goods, but also impairs independence.

While other channels of distribution might develop, allowing customers to compare offers at a distance, customers will also continue enjoying the proximity to their bank thanks to distribution through traditional local branches. Banks generally provide multi-channel methods of distribution and it is this characteristic which underpins competitive forces between providers in the retail financial services market.

On the banking industry side, benefits will accrue through greater diversification and increased efficiency driven by convergence of infrastructures, economies of scale and competition. Banking best practices will spread across Europe; the pace of innovation will accelerate with new products being introduced to many markets. Access to a larger market will also be a key benefit for many institutions. Finally, further progress in integration is crucial for fostering the international competitiveness of the banking industry.

Considering the concurrence with the Commission's approach to encourage cross-border trade, we believe it is important that products continue to be offered also by banks and branches located in the clientele's country, thus benefiting from elements of trust for consumers such as local banks' experience and geographic proximity with clientele. It is nonetheless essential to strive for full harmonization of the key elements of legislation in order to achieve synergies and efficiencies through centralized production of products that will be locally distributed.

It is just as impossible to deny that other obstacles originate from different tax legislations as well as from plurality of regulatory authorities. It is however necessary to consider that the will to create a single market cannot go as far as negotiating any legal pluralism, given that there could be local requirements that induce to choose one legal regime over another.

It is nonetheless crucial to remove those obstacles and those "national discretions" that have allowed member States to carry on goldplating activities by adopting specific national measures. This has caused operators great difficulties in penetrating foreign markets, particularly in terms of costs.

1.5. Wide variations in price.

The EU Commission affirms that, "In 2008, the Commission will study the price variations in Key retail financial services". With reference to this, we are eager to point out the complexity of making a comparison at the international level of banking service prices. As a matter of fact, various environmental factors (composition, population's lifestyles and consumption habits, bank access procedures, use of cash, etc.), which are deeply connected to the situation existing in different Countries, influence mediators' business models, and consequently also the solutions offered to the market and even the conditions of such offers. In addition to this, other factors such as level of taxation, remuneration of money holdings on current accounts and the occurrence of disputes should be taken into account in a possible comparison among service prices.

2. Specific Comments

(1) Do you agree with the objectives and priorities set out in this paper?

We believe, therefore, that in the area of financial services the Commission should optimize its action taking into account the current structure of the market whilst adopting an evolutionary perspective. This means that action – whether at EU or national level, by regulation or pursued on a voluntary basis by the industry – should reflect the actual needs of consumers and the market environment in which both consumers and providers shape their decisions and strategies.

The Commission's focus on the means of distance marketing as a tool for enhancing cross-border traffic may, for instance, be premature. Consumers' as well as providers' confidence in doing business cross-border should be enhanced by creating a market infrastructure within which any business can be carried out in safety. Also, the increase of distance marketing in financial services should be regarded as connected to the enhancement of electronic commerce per se: shifting from a minimum harmonization to a higher level of harmonization in this area has the potential for a positive rebound in financial services.

Albeit this does not mean that the Italian banks are not focused on the constant development of products, nor that it is not ready for the digital age, nor that companies do not eagerly compete among themselves for offering services that will enhance this sector of the market, we believe that integration will assume a specific dimension, being more supply-related, than demand related (considering also that part of the demand will remain local based). Integration on the supply side will be driven by the creation and growth of multi-country banking groups, which can associate local brands and distribution with centralized functions (product development, back-office, risk management) and group brand. Integration will anyway result in enlarged competitive pressures and, thus, in production technologies and competitive advantage sharing between countries.

(2) Are there issues that are not covered in this Green Paper, which are important for the integration of retail financial markets and to which the Commission's attention should be drawn? For example, are consumers in their everyday life confronted with requirements or limitations from either financial services providers or other stakeholders (employers, social security, administrations, businesses, etc.) which restrict their ability to use cross border financial services (such as an obligation to have a bank account or insurance policy in one specific country, etc.).

Certainly, retail financial market integration can also be achieved by encouraging virtual access of foreign suppliers and distance marketing of financial services. We therefore support the EU Commission's initiative to resume examining distance marketing of financial services directive (Directive 2002/65/EC), to which it is necessary to associate a review of the directives on e-commerce and on electronic signatures, in order to allow the last two directives to actually achieve their defined goals.

There are also other factors to take into account, such as language and culture issues, as well as genuine consumer needs. In this respect, we think that an independent impact assessment would be an important added value, particularly to assess which products have the most potential for cross-border growth based on genuine commercial opportunities for suppliers and consumer needs.

Allowing for cross-border bank accounts to be opened over the Internet without cumbersome need to furnish proof of identity by non-electronic means, would for instance make life considerably easier for both consumers and banks. This would require a legal basis permitting bank accounts to be opened throughout the EU with an advanced electronic signature.

We encourage the Commission to tackle these measures and favor their implementation, which in our view have not delivered their expected potential.

(3) The Commission has undertaken several initiatives to improve consultation with consumers and to secure their input into its policy making. Should further steps be taken and, if so, what steps?

With respect to consumers, we notice that the Commission has procured a significantly more intense participation of consumers to its initiatives. We hope that consumers' participation will progressively evolve into a more evidence-based input to be provided to the regulator.

With reference to this, ABI believes that stakeholders should be involved in all the stages that the issuing of provisions goes through: from the stages preliminary to the adoption of a proposal to the stages subsequent to the adoption of such provision. This requirement could be satisfied with the creation of a permanent Forum among the different stakeholders that encourages discussion among the parties

ABI agrees with the Commission's proposal to create an independent "Impact Assessment Board" pointing out that the opinions of the IAB must be disclosed to interested parties only following the adoption of the non-government bill. Stakeholders must in fact be given the opportunity to express their position on the results reached by the Board.

This might occur by applying Better Regulation principles, which would ensure, amongst other things, also the following:

- Involvement of stakeholders should be ensured in such a manner as to enable them to fully participate in the exercise. Representative associations of both consumers and providers can play an important role: the latter, in particular, should obtain appropriate guidance as to how they can safely conduct consultation of their members and treatment of the relevant data and information without infringing legislation (competition law in particular).
- Impact assessments by the Commission should apply to all pending legislation. This has not been done on proposals like the Rome I Regulation and the modified proposal of the Consumer Credit Directive.
- Moreover, the Commission should develop expertise to conduct not only ex-ante but also ex-post impact assessment to ensure that the quality of regulation remains current vis-à-vis the constant development of the market.

(4) Is consumer choice unnecessarily limited by restrictions on the providers and channels through which they access retail financial services? What are, in your experience, these restrictions?

ABI also sees a potentially negative impact on the availability of channels in the recent proposal of Regulation incorporating the Rome I Regulation into EU law (Rome I Convention on the law applicable to contractual obligations).

The choice made by the EU Commission to modify the regime created by the Convention for contracts concluded with consumers by providing that, under certain conditions, the law applicable to those contracts has to be the law of the consumer's country of residence (article 5), thus eliminating the possibility for the parties to determine which law is applicable to a contract, could cause supplier resistance to cross-border activities.

ABI advocates for the need to create an environment that facilitates cross-border provision of services and urges the EU legislator to ensure that full harmonization of consumer protection provisions becomes priority as soon as possible in combination with mutual recognition. Pending the gradual achievement of such a level of harmonization, a more flexible solution for providers than the one in the proposed Regulation should be found. Such a solution would consist of maintaining the Convention's wording on this point.

In doing so, the provider might continue to offer products in other jurisdictions based on his own appraisal that the relevant mandatory local consumer protection rules are respected without having to incorporate the specificities of the multiple domestic variations of different Member States. This solution does not seek to deprive the consumer of his national protecting measures, but it assigns the task of matching local mandatory rules to pan-European providers while allowing them to enter new markets.

As an alternative, the Commission could consider the exclusion of financial services from the scope of application of ROME I. Indeed, the rigid criterion under the proposed Art. 5 already clashes with existing financial services legislation (see, for instance, MIFID), in respect of which the Commission should provide guidance aimed at solving possible conflicts

(5) Despite efforts, in particular the creation of FIN-NET, the handling of cross-border consumer complaints in the field of financial services still remains problematic. The Commission would welcome input as to the ways to improve the current situation. For example, should Member States be obliged to ensure that alternative dispute resolution (ADR) schemes are in place? Should providers be obliged to adhere to an ADR scheme? Should they be contractually obliged to offer ADR mechanisms to their clients?

ABI supports FIN-NET as a flexible system which makes efficient use of existing national schemes, as opposed to harmonizing the existing bodies. More transparency and easier access should be ensured by each FIN-NET member at national level.

In addition, ABI asks the Commission to pay attention to the fact that there are many different types of ADR schemes currently in place in Member States. Imposing specific obligations on ADR would not bring any added value, especially as different models may have already proven their efficiency. We believe that an ADR scheme should exist in each Member State but that its form and organization should be decided at national level. Some countries might have already set more than one ADR scheme, among countries' peculiarities pluralism of existing ADR schemes should be guaranteed, as well.

(6) The creation of the Single Euro Payments Area (SEPA) offers challenges and opportunities for businesses and consumers alike. What do stakeholders think of SEPA's impact on consumers? Should consumers be more involved in the governance and the preparation of SEPA?

a) SEPA impact on Consumers:

Attention should be paid to the general attitude of the BAEG experts according to which the introduction of new legislation in this area should be assessed under Better Regulation principles and in consideration of the fact that legislation at both EU and national level is already in place to address some of the concerns expressed by consumer experts (this is the case, for instance, of transparency legislation, with respect to which the PSD solves most of the issues raised by consumers).

In particular, Banking industry experts believe that the PSD, which aims at creating a legal framework for the functioning of payment services markets, will eliminate some barriers to switching, such as closing fees, which, according to article 34, may no longer be applied by service providers.

Both consumers and suppliers of payment services will greatly benefit from SEPA. The former, in fact, will not suffer the disadvantages originating from making or receiving cross-border payments and the latter will benefit from the fact that SEPA represents a development opportunity for economies of scale.

It is likely that SEPA will determine an increase in the use of electronic payment solutions and at the same time a reduction in the use of cash.

Consumers will greatly benefit from SEPA. There will be no distinction between cross-border and national payments in euro within the EU. Consumers will be able to make (and receive) payments in euro all over Europe as easily as if they were making a payment in their home town (Consumers will have the possibility of their payment card acceptance in all ATM's and POS terminals).

The initial SEPA products and services will be based on the cooperation between providers of payment services in terms of standards, rules and practices.

b) Should consumers be more involved in the governance and preparation of SEPA?

Consumers have been extensively consulted during the planning of the SEPA schemes and framework. The contrary would have been very unusual as banks are commercial entities whose existence and prosperity depend on customers buying their products.

Consumer involvement takes place essentially at national level where SEPA implementation coordinating bodies liaise closely with consumer bodies. Stakeholders involvement is still possible - in this fase of implementation - through the stakeholders' forum, which EPC has set up to leave them the opportunity to propose changes or improvements of the scheme.

(7) With view to the launch of its study on credit intermediaries, later this year, the Commission would like to know whether stakeholders believe the current legislative framework to be sufficient and if consumers face any particular problems in dealing with credit intermediaries, particularly on a cross-border basis.

First of all, we would like to note that further clarification at EU level on the definition of credit intermediary is necessary. A first reference has however now been included in the proposed Directive on consumer credit.

The use of credit intermediaries is crucial to banks and financial intermediaries, in particular to those lacking their own network of branches. Regulation of these subjects is therefore a matter which must be handled very carefully in order to provide clients with all the necessary transparency and to avoid an excessive cost charge on the customer.

It is therefore necessary to define specific rules for credit intermediaries which, among other things, identify: a) terms and conditions for their business activity with respect to both lenders and borrowers, also through specific self-regulation initiatives; b) more stringent requirements for the enrolment in the specific Register, based on a training course with mandatory final examination; c) a code of conduct and a series of sanctions (up to the cancellation from the Register) for those credit intermediaries who do not behave properly with respect to customers.

A distinction should exist between banks, intermediaries and agents, where agents never conclude contracts and operate on behalf of a principal and should therefore be subject to a less stringent liability regime. In Italy there are regulations for parties who fall in the broader genus of credit brokerage (ex. the legislation on financial agents and on credit mediators). It is therefore necessary to keep in mind the regulations implemented in single Member States, in order to ensure that credit brokerage activities are carried out under predetermined standards. In case that brokerage activities should be opened to other categories, without prejudice to the above-mentioned criteria, we believe that the “same business, same risk, same rules” criterion should be applied, thus ensuring a level playing field among players.

As regards the possible content of any future EU policy on credit intermediaries, we recommend therefore the Commission to first launch a study as referred to in the White Paper on financial services Policy (2005 – 2010). In particular, we invite the Commission to consider self-regulation (code of conducts).

(8) The Commission believes that it has an important role to play in developing a competitive, open and effective market for long-term savings, retirement and pension schemes that meet consumers' needs. Do stakeholders agree and how could the Commission contribute? Could an optional legal EU-wide regime ("28th regime") for savings and/or 3rd pillar pension products be envisaged?

ABI supports the ongoing efforts in developing a competitive, open and effective market for long-term savings, retirement and pension schemes and wants to underline in particular the importance of providing a level playing field for the industry in the different Member States. Increasing consumers' awareness on the need for old-age provision seems also very important. Sustainable pension solutions that secure life-long retirement income for current and future generation have to be promoted.

According to “Eurofi”, trying out the 28th regime approach in the field of retirement savings would help solve the problem of pension financing in Europe. In September 2004, the EFR (European Financial Services Round Table) published recommendations on a Pan-European pension system based on the 28th regime idea, which would allow pension products to be sold everywhere in Europe while being subject to a single regulatory regime. According to this report, “finding a way to allow the same pension products to be sold anywhere in EU, subject to a single regulatory regime, should be a top priority”⁴.

We are aware of the advantages⁵ and disadvantages⁶ of the 28th regime, which have been discussed in the past and we believe that, before considering such a regime, some questions need to be further analyzed on a case by case basis⁷.

We believe that more attention should be devoted to the development of 28th Regimes in financial

⁴ “This Pan-European Pension Plan (EPP’s) would operate in parallel with existing national structures. It would allow employees to receive similar pension plans throughout Europe and enable mobile workers to keep their pension, which is currently impossible due to the lack of legislation harmonisation in European countries”.

⁵ Advantages of the 28th Regime: a) development of a modern legal framework without any encumbering burden of the past; b) advantages very similar to those of full harmonisation, but it’s easier and faster to implement, providing the regime is developed in a product-oriented manner; c) national rights continue to exist in parallel; d) undertakings and consumers have a choice between the national and the 28th regime.

⁶ Disadvantages of the 28th Regime: a) if it is applied only to cross – border marketing, this would mean a lot of effort for limited integration benefits; b) adjusting the national systems of the 27 Member States with a 28th regime will be complicated.

⁷ For instance how a 28th regime for product would fit into the non-harmonised national legislation like civil law and procedural law or considering that the 28th regime is to be applied to some products, which will be the criteria of selection?

services. From their point of view, providers are not ready yet to make a decision on the opportunity to adopt individual 28th regimes in specific areas, such as pension funds, because there is no clarity as to how a 28th regime would work and its relation with national regimes. It is necessary to analyze what the concept's precise definition of the 28th regime could be, its legal basis, how to install this regime (by regulation or directive) and if there are any retail banking products/services that are more appropriate than others.

However, in principle, the industry is in favor of any means through which it can expand its business, so it would be useful to encourage the Commission to work together to determine whether there is a business case or not, perhaps by establishing a group of experts; for instance, in the area of simplification it could be useful to invite the Commission to pursue pilot cases in financial services along the lines of what the Commission is doing, for instance, with regard to the adoption of a European Bank Arrestment procedure or with regard to the European Order for Payment Procedure.

(9) Do you think that there could be benefits for both banks and consumers, if banks would have the opportunity to offer an optional simplified standardised product, which would have a good level of consumer protection, would be easy to understand, and could be offered across borders without the need to be modified to fit local rules?

ABI discourages the introduction of standardized products or services through legislative measures as it is likely to lead not only to market distortions but to a decrease in product innovation. Financial institutions should be free to design products in response to customer needs and the economic realities of the market.

In any circumstances, potential developments of this type of products should be left to the market and based on real demand. In addition, it is necessary to take into account that the introduction of standardized products requires the existence of consistent regulations among the different Member States, which is currently lacking.

As for what regards the reference to the basic bank account, its concept and its purpose are not really clear and would need to be clarified. However, if it aims at providing basic banking services to financially excluded persons, we'd like to point out that the creation and development – in Italy – of Basic Banking services is due to the presence of self-regulation initiatives (**Patti Chiari**). Moreover, with regard to the principle of subsidiarity, we believe that financial services accessibility does not need to be addressed at EU level since it is an issue that should be regulated mainly at domestic level. (Qui il DG mette un punto interrogativo, ma lo stesso orientamento è presente anche nel draft EBF).

A different profile for this analysis is offered by the option to standardize specific aspects of a different subject matter in order to facilitate provision of a given product and/or set of products. The use of standardized information sheets, such as the ESIS used for mortgage credit, carries a great potential to improve consumers' understanding of information provided and should simplify information regimes from a substantial – as well as formal – point of view.

We believe that the 28th regime may play a positive role in the area of simplification, rather than standardization.

(10) The Commission believes that more could be done to improve consumers' financial literacy and capability. Possible measures include developing guidelines or promoting best practices. The Commission would welcome input on how this policy should be further developed at the European level.

ABI considers financial education as a key element to allow citizens to make appropriate choice, using the necessary skills and knowledge. We believe, for instance, that financial education should be included in school curricula. In Italy, a pivotal project about financial education at school has been tested and has led to significant results. In particular, PattiChiari signed an agreement with the Ministry of Education. In 3 years, banks' financial experts have spent over 20,000 hours teaching financial education in schools.

ABI also believes that financial literacy must not result in excessive information generating confusion for the consumer.

Financial education is however primarily a matter for Member States to handle and we believe that the Commission should take into account the existing different cultural and economic backgrounds, accordingly, an overall policy at EU level may prove difficult. Measures to improve consumer education and financial literacy are currently decided by the relevant national entities and should therefore remain at national level.

This being said, ABI fully recognizes the importance of increasing consumers' financial capability, and takes part in reaching this objective.

As regards possible measures to be adopted by the Commission, the promotion of best practices in this field could be one of these and there might be scope for coordinated action in this area on a voluntary basis between the public and the private sphere.

(11) Do you think that, as they stand, the provisions on consumer information contained in financial services directives are adequate and consistent with one another? Were it not the case, how could the Commission ensure that information requirements are set at the right level, ensuring proper information but without creating any overload? Do you think that informing consumers is sufficient or that advice should also be provided? If yes, should that be compulsory or on request?

Information "overload" should at any price be avoided even though complete, understandable and clear information should be provided. Consumers should not be overloaded with information. What is important is the quality of information and not the quantity of it, which often disorients and does not lead to achieving the result of making consumers truly aware of product or service characteristics.

From a substantial point of view, we call for thorough review of information requirements by the Commission with the aid of stakeholder experts in order to achieve: (i) consistency between requirements where the same information must be provided for different services; (ii) clear evidence that all information currently required under EU legislation is really needed by customers in the sense that it is necessary to place them in a position to make informed decisions; (iii) provide for carve-outs, as in the PSD, that enable providers to further simplify information to companies, which constantly request not to be flooded with too much information; (iv) attentively consider whether substantial simplification of information can effectively contribute to solving the issue of information overload, often raised by consumers, and information asymmetry alike (quality versus quantity also works for consumers better understanding what they are dealing with).

We urge the Commission to work towards full harmonization of pre-contractual information for financial services. This should not necessarily be done in one single way for any product available on the market but it should at least be harmonized by sector. Information necessary for one product (e.g. mortgage credit) might be redundant or, on the contrary, not sufficient for other products (e.g. bank accounts or investment services).

A different matter is the provision of advice, which has to be recognized as a service *per se* and cannot be mandatory. It indeed represents an added-value service and should be considered as such. We consider this as a crucial point that has not always been taken into consideration by EU legislation.

Consumers should be properly informed about a financial product at a pre-contractual and contractual stage. Accordingly, providers have to deliver all the necessary information for this purpose. On the contrary, it remains the consumer's sole responsibility to take the final decision on whether to buy a product or not and what product to buy from which provider.

Clearly, financial institutions have already a high number of stringent duties to comply with within the framework of prudential supervision rules and client risk assessment that oblige them to avoid any exposure of their clients. In addition, according to current customer care policies already observed by any financial institution, information and product feature explanations are delivered upon request. Imposing a mandatory obligation to deliver advice to a client would only contribute to unbalance the contractual relationship with adverse consequences for both parties. Providers would refrain from engaging in market activity that might expose them to a liability risk beyond the current level or would tend to cover such a legal risk by imposing higher prices, to the detriment of all consumers that would not receive cheaper offers anymore.

We ask therefore the Commission to consider the matter of advice very carefully.

With reference to the MIFID, investment advice is labeled by MiFID as it follows: “a provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments” (article 4 (1) (4) of the Directive no. 2004/39/EC) and “For the purposes of the definition of ‘investment advice’ (...) a personal recommendation (...) must be presented as suitable for that person, or must be based on a consideration of the circumstances of that person (...)” (article 52).

Thus, one of the main features of investment advice as such is the suitable recommendation given to the client. Such a suitability requirement may be satisfied whereby the client or the potential client reveals information concerning his knowledge and experience regarding the specific financial instrument, his financial situation as well as his investment objectives. If the investment firm is not able to obtain such information, it shall refrain from performing any investment advice activity.

Thus, it is of the utmost importance that, in order to ensure the creation of a level playing field, it must be made clear at European level (i.e. CESR) that the scope of investment advice shall be well separated from the scope of placing financial instruments. In fact, even if the latter implies a personal relationship between the investment firm and its client it does not imply a suitable recommendation that is - as already noted - one of the peculiar features of investment advice.

Such apparently subtle distinction may avoid that other distinctive investment services could be absorbed by investment advice with its stringent requirement of a suitable recommendation.

(12) Measures to improve lenders' access to credit data will be discussed in the context of the forthcoming White Paper on Mortgage Credit. The Commission believes that more could be done to promote the accessibility of credit data, in particular on a cross-border basis. Who should be able to access consumer credit data? How could the cross-border transferability of consumer credit data be improved, ensuring in particular that mobile credit data follows increasingly mobile consumers? Could a memorandum of understanding, ensuring smooth data circulation between credit bureaus, be a workable solution?

Accessibility of credit data is strictly necessary to evaluate obligors' creditworthiness also in light of what provided for by the Capital Requirement Directive 2006/48/CE. Full accessibility of both public and private databases, also on a cross-border basis, allows retail clients to have easier access to financing and at better conditions.

ABI supports non-discriminatory access to positive and/or negative public/private credit registers. It would be important to create terms for access to obtain credit history, but also to ensure (mutual) contributions to the same registers. Nonetheless, it is essential to consider that a "non discriminatory" access to credit data can only realistically happen in an integrated market. In such context it is possible to anticipate a system of mutual access to data held both by and private public registers; this system could, for example, be based on an agreement among those in charge of these registers, and would regulate procedures and access conditions.

There should not be any obligation to establish new databases.

The issue of cross-border transferability of consumer credit data, e.g. if the consumer moves into another country is a very complex issue related to fundamental data protection considerations, which also implies important aspects regarding competition among financial institutions. Any initiative in this area should therefore, in our view, be submitted to an in-depth cost/benefit analysis.

It is also worth noting that existing national data protection legislations do not allow credit providers to efficiently fight against fraud (in particular theft identification). In our view, the set-up of fraudster database should be allowed.

(13) Fragmentation of retail insurance markets, for example in the field of motor insurance, does not allow consumers to reap full benefits of EU integration in this area. Do you think that more should be done at EU level to address this fragmentation?

The issue of insurance is outside the competence of ABI

(14) Customer mobility and competition are closely associated. The Commission would welcome input as to how customer mobility could be enhanced. In particular, in the field of bank accounts, and as a follow-up to the Expert Group's work, would stakeholders see merits in, for example, having EU wide account switching arrangements? Will SEPA have an impact on customer mobility?

Accordingly, industry experts who currently participate in the Bank account Expert Group (BAEG) established by DG MARKT have supported the view that further evidence should be provided on the alleged lack of customer mobility for the reasons put forward by the Commission and that in any case customer mobility should not be an objective per se.

They predict that there can be two main effects of SEPA on customers mobility. First, it will decrease the need for consumers to open a bank account in another Member State if they move (especially for a limited period of time), since they will, in principle, be able to carry out all transaction from their home Member State bank account. This may decrease user demand for cross-border opening or switching of bank accounts. Second, consumers will have the opportunity to shop around and open a bank account in another Member State, if a bank of that State offers better conditions than those offered by providers of their home Member State.

Indeed, according to the BAEG report individual Member States have adopted regulatory measures that enhance mobility and, moreover, the local banking community has adopted a significant number

of initiatives that pursue mobility from several perspectives. These initiatives range from national Codes to switching procedures, mobility guides, partnerships with Governments and local authorities to improve consumers' literacy on their ability to switch and the means through which they can do that.

We believe therefore that the Commission should primarily rely on voluntary initiatives at local levels.

Concerning the national situation, the data on Italy reported in the Sector Inquiry on retail banking, disproves the idea of low mobility of the bank clientele both with reference to the retail segment and to the small business one. The observed mobility rate is in fact 7.68% per year (every year over two million clients change banks); this value is in line with the weighted average for the EU-15 population (7.55%). Furthermore, with regard to small businesses, it is necessary to observe that the small size of Italian firms compared to the European average justifies the fact that the Italian mobility rate is a little less than the EU-15 one (11.23% in Italy against 12.21% in Europe and closer to that of consumers).

Widespread feeling that cross-border services/products are issued by financial intermediaries which have the same level of supervision is to be considered as a relevant condition to promote cross border services.