

EMF-ECBC Response to the European Commission

Green Paper on Retail Financial Services: Better Products, More Choice, and Greener Opportunities for Consumers and Businesses

Brussels, 18th of March 2016

The EMF-ECBC¹ welcomes the opportunity to provide the European Commission with its feedback on the Green Paper on Retail Financial Services: Better Products, More Choice, and Greener Opportunities for Consumers and Businesses which was launched on the 10th of December 2015. The EMF-ECBC would also like to thank the European Commission for their ongoing commitment to a constructive dialogue.

Specific Comments

Question 2A: What are the barriers which prevent firms from directly providing financial services cross-border?

The Mortgage Industry is not opposed in principle to having a more integrated cross-border market. However, it is important to bear in mind that there are several factors that prevent cross-border supply. Firstly, if a credit institution decides to enter a market, the decision is based on an economic evaluation of the advantages and disadvantages. Factors which prevent credit institutions from offering a product at cross-border level can be very different, such as lack of demand, high costs linked to different regulations, different mechanisms in Members States (e.g. length of foreclosure procedures) that influence pricing and the ability to offer a product in an efficient way for the entity and for consumers, and so on.

Most of the obstacles listed by the European Commission play a role in a financial services provider's decision to service – or not to service – a market. In the end, the final decision rests upon whether or not there is a potentially economically viable business. For cross-border activities which imply operating in a market without establishing a physical presence there, economies of scale are hard to achieve.

When it comes to cross-border activities, the mortgage sector is a particular case. This is due to the essential character of the mortgage product, which is intrinsically linked to the location of the property, and will, therefore, to a certain extent, always be subject to the national framework. Consumer demand is also intrinsically linked to the features of the product. Consumers want to be comfortable with their supplier, as financing the family home is likely to be one of the most significant financial commitments a household will ever engage in.

Credit risk policies (risk borne by banks in case of default on loan repayments) or even conversion across multiple currencies in particular for non-Eurozone countries (e.g. definition of foreign currency loans for

¹ Established in 1967, the European Mortgage Federation ([EMF](#)) is the voice of the European mortgage industry, representing the interests of mortgage lenders and covered bond issuers at European level. The EMF provides data and information on European mortgage markets, which were worth over 6.9 trillion EUR at the end of 2014. As of March 2016, the EMF has 19 members across 14 EU Member States as well as a number of observer members. In 2004 the EMF founded the European Covered Bond Council ([ECBC](#)), a platform bringing together covered bond issuers, analysts, investment bankers, rating agencies and a wide range of interested stakeholders. As of March 2016, the ECBC has over 100 members across 25 active covered bond jurisdictions and many different market segments. ECBC members represent over 95% of covered bonds outstanding, which were worth over 2.5 trillion EUR at the end of 2014. The European Mortgage Federation - European Covered Bond Council (EMF-ECBC) is registered in the European Institutions' Transparency Register under ID Number 24967486965-09.

mortgages for residents who work abroad/receive the majority of their income in another currency) or exchange rate risks to which the consumer might be exposed represent other concrete examples of cross-border barriers. The cross-border provision of financial services naturally represents a higher risk for providers, especially in the case of loans; encouraging service providers through EU regulation to grant loans cross-border will inevitably increase credit risk in the banking sector of the EU.

The special features of cross-border mortgage lending are elaborated in our answer to question 29.

We would like to take this opportunity to highlight that the lack of harmonisation in targeted areas of legislation across EU Member States represents an obstacle to cross-border mortgage lending (please see later in our response for more detail), however, at the same time, it is important to recognise that markets cannot be made through regulation alone. Business must respond to the demand for different types of products. Lack of product diversity and indeed supplier diversity would be to the detriment of consumers.

As a final consideration, we would like to note that many directives that have entered into force in recent years have regulated banking and financial markets with the aim of building a common framework to the benefit of consumers. Very soon after their adoption, concerns have been expressed about the ability of the Directive to achieve integration and to foster competition. It is necessary to consider that the costs that the Industry faces play a role in the supply of products. In this respect, reopening discussions on measures which have been just introduced results in additional costs for the Industry which is unacceptable. The Mortgage Industry furthermore faces different costs depending on the level of gold-plating at national level and an entity which decides to enter a different market has costs deriving from its own legislation and the legislation of the host country; different regulatory frameworks can affect the certainty of the recovery costs in case of litigation or in case of customers' default.

Question 3.1: Can any of these barriers be overcome in the future by digitalisation and innovation in the FinTech sector? Please specify which of these barriers can be overcome in the future by digitalisation and innovation in the FinTech sector.

The European Commission should focus on how the regulatory environment can better support a digital mortgage market. With consumers keen to research and manage their financial services online, yet with regulation seemingly one step behind, it might be possible to improve competition by ensuring that online channels are able to compete effectively with face-to-face environments. Similarly consumers would benefit from being able to interact with lenders and intermediaries through a number of channels at different stages of the transaction. Streamlining the advice process would reduce costs and the friction that prevents consumers from switching to another provider.

There are potential market opportunities in the area of digitalisation of financial services. In this respect, the advantages of developing a digital data system, a kind of financial passport, which would allow consumers to easily change banks by facilitating transfer of information, may be helpful. This would increase competition between financial services providers.

However, in our view, the mortgage granting process cannot be entirely digitalised. The assessment of the creditworthiness of the borrower, the valuation of the property and the intervention of a notary in a number of Member States, for example, remain key elements of the process which require physical presence or action of various actors in the chain.

Question 6: Do customers have access to safe, simple and understandable financial products throughout the European Union?

The EMF-ECBC would like to recall the significant body of retail financial services legislation that already exists, both at national and EU level, to appropriately and adequately protect consumers. The Mortgage Credit Directive (MCD), as an example of recently adopted and soon to be implemented EU legislation, provides for extensive requirements relating to conduct of business, knowledge and competence of bank employees, pre-contractual information, explanation to consumers, and credit intermediaries, all of which is intended to provide prospective borrowers with safe and understandable products.

The simplicity of the product naturally depends on the type of product itself: there is clearly a difference between complex investment products, for example, and mainstream, well-established retail financial services products, such as mortgages. In this respect, the EMF-ECBC questions whether simplicity should, in itself, be an objective. Rather the information and explanation provided to the consumer should be appropriately adapted to address the features of a given product, as is the case for mortgages in the context of the MCD. The risk of focusing on simplification of products is that this results in standardisation, which is not in the consumer interest.

As a general remark, we would like to point out that it would be inappropriate to reopen discussions in the areas highlighted above in relation to mortgage credit so soon after the adoption of the MCD and before it has been implemented for any length of time.

We would also like to take this opportunity to recall the recently adopted ESA Guidelines on Product Oversight & Governance, which set out requirements for manufacturers and distributors when designing and bringing to market mortgages and other retail financial services products and therefore reinforce the already existing level 1 product legislation.

Question 8: Is there other evidence to be considered or are there other developments that need to be taken into account in relation to cross-border competition and choice in retail financial services?

Price & Choice Differentials

We would like to draw your attention to the issue of price differentials highlighted by the European Commission in the Green Paper:

There are several reasons which do not depend on the banking industry but that influence pricing including but by no means limited to:

- Level of taxation;
- Cost of funding;
- Length of foreclosure procedures;
- Lower level of average income and lower value of consumer assets in some Member States;
- Different mortgage market regulations in Member States (i.e. early repayment fees, free mortgage switching procedures, etc.).

All of these elements have an impact on the competitiveness of banking entities (i.e. in terms of pricing of credit products) and influence the ability of banks to offer cross-border products.

The impact of some of these variables could have been reduced through full harmonisation in specific areas, such as early repayment, in other words, full targeted harmonisation, as requested by the EMF during the MCD negotiations.

As a general remark, we would like to insist that the price of retail financial services in general should be determined by market forces, and not by regulators.

Changing Landscape

We recognise the fact that the retail financial services sector is experiencing change with the entry of new providers into the market, whose primary business model is perhaps on-line only and/or is not always financial services. These new players can indeed present new opportunities for consumers and could potentially drive cross-border solutions, for example. However, it is vital that, in order to ensure a level-playing field and provide for healthy competition in the mortgage sector for example, these new entrants are subject to the principle of “same business, same rules”.

Question 9: What would be the most appropriate channel to raise consumer awareness about the different retail financial services and insurance products available throughout the Union?

Financial education is an additional instrument which can help consumers to understand and select retail financial services products.

Question 10: What more can be done to facilitate cross-border distribution of financial products through intermediaries?

Above all, any success will depend on the existence of a business case for the providers of financial services.

Question 11: Is further action necessary to encourage comparability and / or facilitate switching to retail financial services from providers located either in the same or another Member State?

The MCD provides extensive requirements in relation to advertising & marketing and pre-contractual information in the form of the European Standardised Information Sheet (ESIS) in order to encourage comparability and therefore shopping-around, on both a national and cross-border basis. The MCD furthermore includes requirements in relation to tying & bundling practices and early repayment modalities to ensure that consumers are able to switch suppliers without undue hindrance. With these requirements in mind, we do not believe further action is necessary in relation to mortgages.

Furthermore, as far as mortgage credit is concerned, switching can be possible only when you have a mature cross-border mortgage market. In any case, obstacles and costs are so significant as to preclude competitive cross-border offers.

Question 13: In addition to already existing disclosure requirements, are there any further actions needed to ensure that consumers know what currency conversion fees they are being charged when they make cross-border transactions?

The MCD provides extensive requirements in relation to mortgage loans in a foreign currency, in which case disclosure requirements should not be extended further. In fact, unfortunately, in this area the MCD has produced unintended consequences. The MCD has created an unworkable or at best very expensive compliance regime, which is forcing lenders to withdraw from markets which were never the intended target of the legislation, for example, this is particularly detrimental to UK residents employed in the Republic of Ireland and paid in Euros, and vice-versa. Similar concerns have been highlighted in relation to Swedish resident working in Denmark and being paid in Danish krone.

Question 14: What can be done to limit unjustified discrimination on the grounds of residence in the retail financial sector including insurance?

As a general observation, discrimination on the grounds of residence is not necessarily automatically unjustified. The decision about whether or not to provide financial services in another country is based on a commercial assessment. In the case of a mortgage loan, the physical location of the collateral is crucial to the terms and conditions of the loan agreement. This commercial decision, moreover, is affected also by the existence of different debt collection practices that make the recovery of the debt more difficult.

Question 17: Is further action at the EU level needed to improve the transparency and comparability of financial products (particularly by means of digital solutions) to strengthen consumer trust?

The MCD provides for extensive pre-contractual information requirements in the form of the European Standardised Information Sheet (ESIS), as well as requirements regarding adequate explanations to consumers. This disclosure ensures that mortgage products are transparent and that consumers are able to compare the different features of a variety of products available to them. We would like to take this opportunity to underline that it would be inappropriate to reopen discussions in the areas highlighted above in relation to mortgage credit so soon after the adoption of the MCD and before it has been implemented for any length of time.

We would also like to reiterate that what is important in relation to transparency and comparability is appropriate information and not product standardisation. Invariably, product standardisation would lead to less product diversity and thus less choice for the consumer.

Question 18: Should any measures be taken to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation?

We support improved access to justice through extra-judicial authorities that operate according to simplified, fast and less costly procedures. Typically, traditional legal systems are unable to adequately resolve low-value disputes, disputes concerning on-line contracts, and particularly cross-border disputes.

Regarding the latter specifically, we support the FIN-NET initiative as a way of facilitating the resolution of cross-border disputes in the area of financial services through cooperation between member ADR schemes.

The EMF believes there should be specific promotion of FIN-NET and its members' schemes. The European Commission and the Member States which are members of FIN-NET could launch campaigns to increase consumers' awareness of FIN-NET and its member ADR schemes. The EMF also sees a role for financial services providers themselves in this regard, and suggests that financial services providers could be invited to publicise the relevant ADR schemes in their MS as well as their membership of FIN-NET, via their website and in their branches by way of brochures and/or flyers, where this is relevant and consistent with national practice.

Question 19: Do consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance?

Any financial compensation is based on the general rules of applicable private law and such rules should apply in all areas of damage compensation. There should not be different rules for damages in relation to

particular. Such an approach would disrupt the existing systems of private law and such arbitrary exemptions are not justifiable under the principles of rule of law.

Question 21: What further measures could be taken to enhance transparency about ancillary insurance products and to ensure that consumers can make well-informed decisions to purchase these products?

Article 12(4) of the MCD already ensures consumers are well informed about ancillary insurance offered by creditor. This article also ensures that consumers have the opportunity to explore the market in order to find a different insurance policy from a different supplier that the creditor should accept as far as this policy has a level of guarantee equivalent to the one that the creditor has proposed.

Question 22: What can be done at the EU level to support firms in creating and providing innovative financial digital services across Europe, with appropriate levels of security and consumer protection?

- The European Commission should focus on how the regulatory environment can better support a digital mortgage market. With consumers keen to research and manage their financial services online, yet with regulation seemingly one step behind, it might be possible to improve competition by ensuring that online channels are able to compete effectively with face-to-face environments. Similarly consumers would benefit from being able to interact with lenders and intermediaries through a number of channels at different stages of the transaction. Streamlining the advice process would reduce costs and the friction that prevents consumers from switching to another provider.
- There are potential market opportunities in the area of digitalisation of financial services. In this respect, the advantages of developing a digital data system, a kind of financial passport, which would allow consumers to easily change banks by facilitating transfer of information, may be helpful. This would increase competition between financial services providers. It would be necessary to ensure that any intervention in this area consisted of minimum standards in order to respect the well-functioning digitalisation which has already occurred in Member States.
- It would be particularly useful to allow credit institutions resident in any Member State to cross-check information about potential consumers, in order to reduce the risk in providing financial services cross-border. In Italy, for example, a fraud prevention system with specific reference was recently established by Ministry of Economy and Finance to identity theft (SCIPAFI). This system of prevention enables firms to cross-check information submitted by applicants for services regarding their personal data and personal identification documents and incomes, without prejudice to consumers' privacy. If such a system were to be introduced at EU level, it would be easier to ensure a sufficient level of security to provide financial services across Europe.
- In our view, the complexity of legal practices means that the mortgage granting process cannot be entirely digitalised. The creditworthiness assessment of the borrower, the valuation of the property and the intervention of a notary in a number of Member States for example remain key elements of the process which require physical presence or action of various actors in the chain.
- The use of enabling technologies for innovative financial services (e.g. electronic signature services) should be promoted.

- As far as AML customer due diligence is concerned, a specific regulation could be developed on digital customer due diligence. It should be different from the non-face to face customer due diligence, setting up a specific and harmonised set of rules, based on the solutions developed in the banking sector.
- Security awareness campaign should be organised for clients of financial services.

Question 23: Is further action needed to improve the application of European Anti-Money Laundering legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?

- Further actions should be considered in order to harmonise AML EU regulation on non-face-to-face customer due diligence. In particular, the use of digital tools that can ensure the identity of the customer should be strengthened. Specific harmonised provisions should be considered at EU level in order to introduce instruments such as e-documents, e-signature, etc. as a means to comply with customer due diligence requirements. E-signature possibilities certified and issued at national level should be recognised at EU level (in all other Member States). To this end, a set of rules and criteria should be put in place. As for the previous question, it would be necessary to ensure that any intervention in this area consisted of minimum standards in order to respect the well-functioning digitalisation which has already occurred in Member States.
- The creation in all Member States of a public system collecting information on personal identity throughout verifying the data collected by bank for the AML customer due diligence.
- In order to improve the application of EU Anti-Money Laundering legislation and to facilitate identification of customers at distance it would be important that financial information units and national authorities of all Member States cooperate and work together to develop a valid identification system at EU level. Some procedures of identification at a distance already exist (for example wire transfer to identify customers through the banks where they have an account), but these procedures are difficult to apply between a firm of one Member State and a consumer of another Member State across the EU. It would be useful to define an EU system of identification that could be used by all EU firms without difficulties. In this way, an important barrier preventing firms from applying identification obligations of EU Anti-money Laundering legislation would be overcome.

Question 24: Is further action necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards?

See response to 23.

Question 25: In your opinion, what kind of data is necessary for credit-worthiness assessments?

A variety of data are necessary to conduct creditworthiness assessments, for example, level of indebtedness, relationship between income and debt, punctuality in reimbursement of instalments related to existing loans etc. Information on anti-money laundering, customer due diligence and terrorism financing is also relevant. We would like to take this opportunity to recall that, in relation to mortgage credit specifically, the EBA has already provided extensive guidelines in relation to creditworthiness assessment, over and above the requirements in the MCD, which are - rightly, in our view - principles-based in this area, and we believe that no further prescription is required.

One way to facilitate access to cross-border financial services would be to provide for minimum standards at least in respect of the main characteristics of the information collected in credit bureaus that already exist in the different MS and in respect of the modality of access to credit bureaus. The EMF-ECBC is supportive of existing industry-led initiatives to improve access to and sharing of cross-border data.

There are significant differences between Member States in terms of access to databases for the purposes of verifying the credit history of potential customers. This is becoming a bigger issue as employment transiency increases. Where individuals increasingly move across borders for employment, their credit footprints will increasingly become disparate, dis-jointed. The differences between Member States make cross border credit reporting very challenging, because it requires convergence between definitions, thresholds, periods of data retention etc. There would be merit in establishing a link between the principle of reciprocity and the non-discriminatory access to databases. Considering the differences in nature and content of the national databases, great care however would need to be taken to ensure that the way in which the principle of reciprocity is implemented does not de facto undermine the objective of non-discrimination.

As the European Commission is aware, however, this is a particularly sensitive area as evidenced by the difficulties in reaching agreement on many key issues related to access to credit histories experienced by the Expert Group on Credit Histories established by the European Commission in 2009.

Question 26: Does the increased use of personal financial and non-financial data by firms (including traditionally non-financial firms) require further action to facilitate provision of services or ensure consumer protection?

Providers of credits must be able to independently verify income/expenditure of the client by contact with employers, national authorities and other banks /creditors (exception in consumer data protection). Furthermore, the credit history of clients in other EU Member States must be accessible.

Question 29: Is further action necessary to encourage lenders to provide mortgage or loans cross-border?

The Industry is not opposed, in principle, to the prospect of increased cross-border activities, however, in our view, this potential is mainly relevant for other types of financial services products that are simpler to provide than a mortgage loan. For mortgage loans, the provision of the product, including the funding, is complex. In order to offer attractive interest rates, banks must keep funding costs low and to keep funding costs low banks need large volumes and a broad international investor base. In other words, there are huge economics of scale involved in the “production” of mortgage loans.

Furthermore, as indicated earlier, mortgage loans are inevitably linked to the location of the property and the national legal framework. Mortgage products are also inextricably linked to housing policy, taxation and national economic policy. When a mortgage loan is tailored to the legal framework of a specific country, offering that same product in another country for the same price and under the same conditions is not possible. The fact that there is a business-case in one country for a particularly designed product does not necessarily mean that this is the case in another market with a different legal, cultural and commercial context.

More specifically, as explored by the Forum Group on Mortgage Credit established by the European Commission back in 2003, various obstacles stand in the way of successful cross-border market penetration and raise doubts about whether the necessary revenues can be generated:

- Language barriers
- Lack of distribution channels

- Distance to the customer (travel costs for inspection, service and foreclosure)
- Question of applicable law (according to art 6 par 2, foreign consumer law is applicable, thus forms had to be provided and kept up-to-date for different legal systems: knowledge of property law, enforcement law, family law, law of succession etc.
- Creditworthiness assessments are more difficult: foreign language, handling of foreign credit registers (different types of information), credit scoring models have to be adapted to foreign requirements, extra costs
- High processing costs, as business is not standardised
- Handling of foreign market and property risks
- Different valuation standards and methods: the need for knowledge of foreign property markets and construction methods, experts have to be familiar with different valuations standards and methods, extra costs
- Different securities and registration procedures
- Different foreclosure proceedings and treatment of securities in insolvency proceedings (legal framework, duration and costs), therefore different risk costs)

In our view, EU intervention could only eliminate a limited number of these obstacles. This therefore gives rise to the question of which business model could be suitable to generate a significant cross-border business volume. Currently, if credit institutions do offer cross border residential mortgage credits, they usually do so in neighbouring Member States. Others cooperate with local credit institutions acting in their own name or offer residential real estate financing through local subsidiaries. In this case, however, they do not do business on a cross-border basis but as local competitors, offering the financial products that are customarily provided and legally permissible in the respective market.

Ultimately, the final decision rests upon whether or not there is a potentially economically viable business. For cross-border activities, which imply operating in a market without establishing a presence there, economies of scale are difficult to achieve.

Question 30: Is action necessary at the EU level to make practical assistance available from Member State governments or national competent authorities (e.g. through 'one-stop-shops') in order to facilitate cross-border sales of financial services, particularly for innovative firms or products?

This is not an important barrier for cross-border provision of financial services.

Question 31: What steps would be most helpful to make it easy for businesses to take advantage of the freedom of establishment or the freedom of provision of services for innovative products (such as streamlined cooperation between home and host supervisors)?

The concept of the freedom of provision of services is in this respect still legally unclear. The first step should be clarification and clear definition of conditions for the freedom of provision of services without establishment of a branch.

Question 32: For which retail financial services products might standardisation or opt-in regimes be most effective in overcoming differences in the legislation of Member States?

Product standardisation should not be an objective of any EU intervention. Invariably, product standardisation would lead to less product diversity and thus less choice for the consumer. The emphasis should rather be placed on appropriate information and adequate explanations of the different features of



products in order to enable consumers to make an informed choice about which product best suits their needs.

Concluding Comments

The EMF-ECBC stands ready to assist the European Commission in its role of market catalyst and think-tank. We very much hope that you will take our remarks into consideration. Please, do not hesitate to contact us, if we can be of any assistance or if you would like to receive further clarification or elaboration on our views.