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**BANKING STAKEHOLDER GROUP**

CONSULTATION ON JC/CP/2014/05 ON  
“GUIDELINES FOR CROSS-SELLING PRACTICES”

# General Comments and Replies to Questions

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BY THE EBA BANKING STAKEHOLDER GROUP

London, March 20th, 2015

## Foreword

The EBA Banking Stakeholder Group (“BSG”) welcomes the opportunity to comment on the Consultation Paper 2014/05 “Guidelines for cross-selling practices”.

This response has been prepared on the basis of comments circulated and shared among the BSG members and the BSG’s Technical Working Group on Recovery, Resolution and Systemic Issues.

As in the past, the BSG supports an initiative that aims at harmonizing supervisory rules and practices across Europe, in order to ensure optimal conditions of consumer protection. The initiative of the Joint Committee of the three ESAs to consider the risks arising to consumers when facing cross selling practices is especially supported as it aims at harmonising practices between the different regulations and supervisory authorities. Indeed, a joint approach from the European authorities is in the best interest of consumers.

This response outlines some general comments by the BSG, as well as our answer to the questions indicated in the Consultation Paper.

## General comments

Several EU legislations include explicit focus on cross-selling practices:

- Directive 2014/65/EU on Markets in Financial Instruments (recast) (MiFID II),
- Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property (so called Mortgage Credit Directive - MCD),
- Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (so called Payment Accounts Directive - PAD), and
- the planned revision of Directive 2002/92/EC on Insurance Mediation (IMD II).

Therefore, joint definitions and a joint initiative for guidelines regarding these practices in the domain of financial services is of great importance and is fully supported by BSG.

## Replies to Questions

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

Cross-selling is a general term in the language of marketing or sales practices which designs a pricing strategy and customer service model geared towards multiple product purchases by customers. These products may or may not be ‘packaged’<sup>1</sup>. In general marketing terms, it may only mean the sale of two or more products to the same customer, whereas in the Guidelines and in the related Directives, the term is confined to the sale of products in a ‘package’. Therefore, it would bring additional clarity to the text to draw a distinction between the general use of the term and the use as defined in the Guidelines.

In addition, it would be useful to remind whether or not tying practices are allowed: whilst under the MCD (Art. 12.1.) it is stated that ‘bundling practices shall be allowed whilst tying practices shall be prohibited’, this does not seem to be the case under Guideline 1. If the provision in the MCD is an exception, it would be useful to mention this in the explanations and a comment such as, for example, Recital 81 of MIFID II<sup>2</sup> as quoted in the Consultation Paper p. 32 might be a useful explanation.

Finally, it is questionable what quality the comment under 4. on page 10 has. On the one hand the guidelines are supposed to aim at cross-selling involving financial services and products. On the other hand the Joint Committee mentions in the Guidelines: *‘If competent authorities decide to apply cross-selling standards more widely than cross-selling practices only*

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<sup>1</sup> Packaged in the sense of bundled or tied.

<sup>2</sup> MIFID II, Recital 81: Cross-selling practices are a common strategy for retail financial service providers throughout the European Union. They can provide benefits to retail clients but can also represent practices where the interest of the client is not adequately considered. For instance, certain forms of cross-selling practices, namely tying practices where two or more financial services are sold together in a package and at least one of those services is not available separately, can distort competition and negatively affect clients' mobility and their ability to make informed choices. An example of tying practices can be the necessary opening of current accounts when an investment service is provided to a retail client. While practices of bundling, where two or more financial services are sold together in a package, but each of the services can also be purchased separately, may also distort competition and negatively affect customer mobility and clients' ability to make informed choices, they at least leave choice to the client and may therefore pose less risk to the compliance of investment firms with their obligations under this directive. The use of such practices should be carefully assessed in order to promote competition and consumer choice.

*involving financial services and products, then they should apply these guidelines*'. It is unclear which legal quality this comment shall have.

Therefore, it would be useful to specify that it should be mandatory to apply these guidelines for products involving financial and non-financial products if they belong to the same group (e.g. a bank and a real estate agency or a bank and an insurance).

In addition, certain products, such as pension products, may not be harmonised, but they should be included in the definition of cross-selling.

## 2. Do you agree with the identified potential benefits of cross-selling practices?

Yes, in general these are the perceived benefits. However, this is not always the case:

Financial benefits are not necessarily transparent and comparable when products are sold in a package because of lack of other information or complexity of the package. The financial conditions may therefore not necessarily be superior. This may be the case when a payment protection insurance and a credit card is incorporated in the price of a loan and the interest and costs are added to the monthly repayments. Some clients may potentially perceive the additional products as being received for free.

Considering the convenience benefits, these benefits shall not result in the fact that the customer is “trapped” into buying the additional product despite a regulation for untying.

In addition, as stated under paragraph 4.3.c and d of the Consultation Paper, customers may be unable to differentiate or to determine from the information given by the firm whether (c) the purchase is “optional” or “compulsory” or (d) they are reluctant to spend the necessary time to shop-around for other options.

## 3. Do you agree with the identified potential detriment associated with cross-selling practices?

Under the behavioural drivers, financial incentives given to bank relationship officers are a very important element which drives mis-selling

and cross-mis-selling practices. This practice has been discussed in detail in several reports by both regulators (FCA) and consumer organisations<sup>3</sup> (Consumer International).

For employees, especially low earners, these incentives are often not only an important element in their remuneration, but also a prerequisite to keep the job: in case employees do not meet sales targets, they may not only face financial detriment, but also fear for their job. The catch 22 effect of sales pressure and incentives schemes has been studied by European trade unions in a joint European project on MIFID in 2011<sup>4</sup>.

The Guidelines do not yet adequately reflect that customers in the normal selling process<sup>5</sup> receive detailed information regarding the products. Thus, the consumer already has the opportunity to make an informed decision and to act as a 'responsible consumer'.

Besides that, BSG agrees with the mentioned identified potential detriment associated with cross-selling.

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.

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.

The Guidelines should ensure that the information is properly disclosed and not too complicated to understand. A reference to the KID for PRIIPS should be made here concerning the disclosure standards.

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<sup>3</sup> Dominic Lindley (2014), Risky Business: The case for reform of sales incentive schemes in banks, Consumer International, FCA, 2014; Risks to customers from financial incentives - an update (TR14/4)

<sup>4</sup> European project lead by APF-FIBA/CISL with the participation of BBDZ (Hungary),CFDT (France), FES-UGT (Spain), OSPPP (Czech Republic),OTOE (Greece),OZPPaP (Slovakia),UNITE (UK),UNI Europa. <http://apf.fiba.it/mifid.nsf>.

<sup>5</sup> The case where the financial institution complies with relevant regulation and acts honestly, fairly and professionally.

6. Please comment on the proposed guidelines 2, 3, 4 and 6 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 2: ‘information made available in good time’: this is an important requirement. However, in the case of tied or bundled products, the purchase decision depends often on the primary product (see paragraph 4.3.a. of the Consultation Paper). Therefore, even timely information on the secondary product may not be looked at with the same attention as the information on the primary product.

Please note that the delivery of pre-contractual information has already been addressed in MiFID, prospectus, UCiTS KiD and PriiPs KiD. Overlaps and contradictions of regulations should be avoided.

Guideline 3: It is important that price and cost information is readily available.

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

Guideline 4: Even if presented in a detailed way, price and cost information may be very difficult to compare. This is especially for instance the case with packages for payment accounts under PAD: although information is provided in a clear and understandable form, the variety of services and the multitude of packages make comparisons extremely difficult. But of course BSGs judges that information’s should not be deliberately presented in a misleading way which distorts or obscures the real costs or prevents meaningful comparison.

Guideline 6: The Guideline lacks a definition of ‘*non-price features and risks*’. Thus, it is unclear what this requirement means for financial institutions.

In some cases, features of bundled/tied products are clearly mentioned, but not really understood or internalised by customers. Travel insurance by credit cards is an example: often, travellers may buy an additional insurance (sometimes provided as an option in addition to the purchase of the travel document) and thus have an unnecessary coverage. In the sale of financial products, psychological factors also play an important role: the relation of the bank employee with his customer is often longstanding and

based on trust and/or dependency which may in some cases induce that customers do not seek the best possible deal for themselves<sup>6</sup>.

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.

Art. 22: The choice of buying separately or bundled may be very complex for certain products (as in the example). In such situations, it may very much depend on the selling practices of the financial institution rather than on the product itself. As quoted above, many products are sold on a relationship basis. However, the concept of the responsible customer needs to be properly included in the Guidelines: this means that after the customer has received the product information it is for him/her to make the final decision about which option to take and which product to buy.

This leads to art. 23 and art. 24 which are both essential regarding responsible customers' decision-making on an informed basis.

8. Please comment on the proposed guideline 8 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Please note that with MiFID similar regulations already exist. Overlaps and discrepancies in the provisions should be avoided. These provisions give at least a minimum standard when selling financial instruments. For the purposes of these Guidelines, these provisions should be extended to other financial services which may be cross-sold, such as payment accounts, credit cards, credits, etc.

However, it should be noted that it is difficult to assess the suitability/appropriateness of a product as relationship officers may not be aware of every customers' situational circumstances.

Also, when client relationship officers are given high sales objectives, advice may be given in a less efficient, focused and appropriate way<sup>7</sup>.

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<sup>6</sup> A. Christofilou (2014): Cross selling practices in insurance products in the IMD2 proposal; <http://www.erevija.org/eng/articl.php?id=163>

9. Please comment on the proposed guidelines 9 and 10 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Guideline 9: BSG supports the requirement to provide adequate training to staff responsible for distributing each of the products sold, including cross-sectoral training when relevant.

Guideline 10: Conflicts of interest in the remuneration of staff are of utmost importance, see also response to question 3.

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.

BSG supports this initiative to cancel components of the product if sold on a stand-alone basis and to split it without disproportionate penalties.

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

Competent authorities should be invited to gather and provide detailed data on the cost of products and commissions and on remuneration and inducement schemes.

Submitted on behalf of the EBA Banking Stakeholder Group

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Chairperson

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<sup>7</sup> J. Lazarus (2012) : L'Epreuve de l'argent - banque, banquiers, clients ; Calmann-Levy. (p. 87)