

Comments of the Czech Republic on the Green Paper on retail financial services

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Department of Financial Markets II*

GENERAL COMMENTS

The Czech Republic believes that more in-depth conceptual discussion on main foundations of regulation of internal retail financial services market is necessary and desirable.

However, a set of questions should probably be discussed at a later time in the future, when cumulative impact of the recent European law on retail financial services (MiFID2, PRIIPs, IDD, MCD, ADR) is appropriately analysed and assessed. Without such an assessment made across the EU, it will hardly be effective to build a new conceptual regulatory framework (as the Green Paper does).

The Czech Republic is very reserved to the Green Paper's interpretation of the current state of being on the internal market, of its causes and steps which should be made in order to reach desirable objectives - better products, more choice, and greater opportunities for consumers and businesses.

Some legislative initiatives – all the made, ongoing, upcoming and considered (typically pan-european pensions, credit databases) – appear to be very ambitious regulatory projects with sure large costs and quite unsure benefits.

That is why we recommend that European Commission would be quite restrained in the following period of its legislative works in the area of retail financial services so that regulatory stability is reached (which seems to be very necessary for enforcing the European citizens' trust in European law as well as in the European Union as a whole).

The preferred types of legal acts adopted by the European Commission should reflect the objectively limited possibilities of harmonization of Member States' national law so that diversity in retail financial markets jurisdictions – which is natural and does not bring any detriment to consumers – can be held. In this sense we stand up for keeping directives (rather than regulations) under the minimum harmonization approach as the prevailing legislative measure.

As a serious problem which emerges about the new retail financial market legislation we see the significant 'timing mismatch' between the issuance of Level 1 and its implementing legal acts. This effectively prevents Member States from appropriate and timely implementation of the European law. It also prevents regulated subjects from appropriate testing of the new regulation.

On the contrary, the Czech Republic welcomes the adjustments made lately by the European Commission, which results in the intense cross-sectoral integration of legislative preparatory works in the field of financial services. We strongly support this approach and hope it will be reinforced and enhanced further.

In our view, consumer protection policies should always be based on thorough foregoing analyses of possible regulatory tools so that the resulting regulation can be effective and appropriate to aims it follows. Here we would see as desirable if the EC carried out a complex revision of disclosures to

consumers included in the legislation in force. The aim of it would be to identify overlaps and inconsistencies in the legal (retail financial) acts and to analyse – using knowledge of behavioural economics – the real benefit of information provided to consumers.

When it comes to consumer protection, we generally see as unacceptable that EU citizens are granted weaker rights when buying financial products on cross-border basis (than they have guaranteed by domestic national law). Thus consumers would have to face the risk of cross-border disputes resolution which would surely be more complicated and expensive for them.

Some questions anticipate the existence of some problem without any appropriate reasoning (typically the question no. 14 regarding discriminatory practices).

The questionnaire format – as the only accepted – prevents respondents from commenting problem in its full extent and depth as it provides both limited scale of answers and limited space for additional remarks.

RESPONSES TO CONSULTATION QUESTIONS

1. For which financial products could improved cross-border supply increase competition on national markets in terms of better choice and price?

Internal market and cross-border sales of retail financial services have their limits which reflect the diversity of national (local) markets. We believe that such diversity is exogenous and natural to some extent. It seems neither reasonable nor effective to make any regulatory effort for removing obstacles for business if the potential for such business is generally quite low because of objective (exogenous) factors. Services (in comparison with goods) are generally known as less interchangeable. Moreover, the business in retail financial services is strongly associated with language comprehensibility and with trust in enforceability of law, which makes consumers' propensity to national markets and reluctance to cross-border shopping even stronger.

We are not aware that consumers consider the limited cross-border supply to be such an issue (as the European Commission presents). The restrained demand for foreign financial products seems to be conscious consumers' decision rather than a result of their unawareness. That is why the Czech Republic pleads for a reserve in regulatory actions aimed at strengthening the internal market. Moreover, we are of the opinion that the retail financial services supply available on local markets is sufficient and competitive. The desirable element of foreign countries competition may get to Member States immediately – through the international financial groups (conglomerates) and their subsidiaries.

We consider the current strength of regulation and degree of harmonization as sufficient. That is why the Czech Republic recommends the European Commission to enhance the implementation of legal rules in force (especially consumer protection) rather than to make ambitious steps in favour of encouraging cross-border business.

2. What are the barriers which prevent firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border?

See the answer to question 1.

3. Can any of these barriers be overcome in the future by digitalisation and innovation in the FinTech sector?

We expect that despite ongoing innovation and digitalisation which is desirable, still there will be wide range of financial products and services (typically long-term investments, house loans, life insurance policies), where consumer traditionally prefer/require present and individual (face-to-face) communication with a distributor. We see no space for regulatory steps which would change this status-quo and which would be effective.

4. What can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate?

See the answer to question 3. The problem of exclusion should be tackled generally (within other EU policies) as it does not relate only to financial services.

5. What should be our approach if the opportunities presented by the growth and spread of digital technologies give rise to new consumer protection risks?

See the answer to question 3.

6. Do customers have access to safe, simple and understandable financial products throughout the European Union? If not, what could be done to allow this access?

We are of the opinion that the offer of retail financial products is wide and varied within the Czech market (see answer to question 1). However, we see some space for making disclosures more simple, consistent, comparable and thus more efficient for consumers (in accordance with behavioural economics postulates).

7. Is the quality of enforcement of EU retail financial services legislation across the EU a problem for consumer trust and market integration?

See the answer to questions 18 and 19.

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?

See the answer to question 1.

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?

See the answer to question 1.

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

See the answer to question 1.

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? If yes, what action and for which product segments?

See the answer to question 1.

12. What more can be done at EU level to tackle the problem of excessive fees charged for cross-

border payments (e.g. credit transfers) involving different currencies in the EU?

In case of transactions executed in a currency which is not the currency of a Member State, the settlement is often made by correspondence banks outside the EU. In such cases it seems difficult to ensure appropriate disclosures regarding all the fees which are claimed by the correspondence banks. The 2nd payment services directive partially extends the provision of information to transactions made in the currency other than the currency of a Member State. The information requirement, however, will apply only to those parts of a transaction which are carried out within the EU. Generally, we see no reason for additional regulatory steps here in this time. On the contrary, more regulation could further increase fees for cross-border transactions, which are excessive already in the current state of being.

13. In addition to 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?

It seems very difficult to ensure that in case of a card based payment transaction a consumer is informed about the exchange rate at the time of a payment initiation as the exchange rate is derived from the exchange rate applied by the payment card scheme operator. The exchange rate is subject to constant change. In some cases the currency of a transaction is converted to a so called reference currency and subsequently to the currency of the payer's payment account. In overall, we consider the regulatory measure regarding the exchange rate disclosure at the point of sale as hardly applicable. Too strict regulation of the currency exchange process relating to card-based payment transactions could cause substantial difficulties and inefficiencies which is not desirable. The disclosure of information regarding the so called „dynamic currency conversion“ is already required by the payment services directive.

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

See the answer to question 1. Moreover, it should be taken in mind that price discrepancies are logically determined by prices of related goods and services – in case of motor insurances by different prices of car services, components and etc. For making risk assessments for property insurances it is crucial, where the property is located and where main risks may appear. Thus it can hardly be marginalised as it could lead to unprudential performance of insurance undertaking and to its inability to manage risks effectively. When it comes to liability insurances, the extent of coverage required by national law also matters, especially regarding the redress for detriment on life and health. Regarding the life insurance policies, every local market is characterised by different extent of social security, propensity to save, demographical conditions etc., which all is objectively determined by historical, cultural and other social aspects. Also profitability structures of insurance undertakings may be historically significantly determined.

15. What can be done at EU level to facilitate the portability of retail financial products – for example, life insurance and private health insurance?

We see no reason for such regulatory measure. Passporting is a sufficient measure for reaching the objective. See answer to question 1 for other reasoning of the problems of internal market performance. The possibility of the portability of insurance products between insurance undertakings (both intra- and interstate) we see as very limited as the insurance is rather quite complex and long-term based financial product.

16. What can be done at the EU level to facilitate access for service providers to mandatory professional indemnity insurance and its cross-border recognition?

We see no reason to change as the Regulation Rome I is in force. Moreover, there is no harmonization of the obligatory insurances contract law other than those regarding to motor vehicles and travel agencies, so that it is regulated on the national level.

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

We are of opinion that appropriate product disclosure covering all key product features (especially its costs, benefits and associated risks) and its implementation is crucial for enhancing product comparability and rationality of client's decisions.

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?

Yes, the consumers' awareness about FIN-NET working is still relatively low, which should be changed. Beside FIN-NET members, regulated subjects and other market participants should also assist in the enhancing of awareness consumers about the existence of out-of-courts redress schemes. Most of that (e.g. to organize information campaigns, public hearings etc.) could be done, however, also by the European Commission.

19. Do consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance? If not, what could be done to ensure this is the case?

Basically they do. The European Commission, however, should focus on in depth on the monitoring of the state of being regarding the transposition of the ADR directive, which sets requirement on existence of ADR mechanism for all the services, including the financial ones. We are of opinion that all bodies operating national ADR schemes for financial services should be obliged to join FIN-NET.

20. Is action needed to ensure that victims of car accidents are covered by guarantee funds from other Member States in case the insurance company becomes insolvent?

The problem does not arise in the CZ as the law guarantees that claimants are entitled for compensation even in case of such inability of insurance undertaking. That procedure should be coordinated within the EU so that it is clear, which guarantee scheme is to pay out claims when insurance undertaking gets insolvent. The assurance of the claims itself in insolvency of the insurance undertaking is already subject of rules by Solvency 2.

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? With respect to the car rental sector, are specific measures needed with regard to add-on products?

Generally (i.e. not only in case of complementary insurances), consumers should be guaranteed the right for complete, transparent and comparable information about total costs of financial products. We are of the view that the new directive on insurance distribution (together with the PRIIPs regulation) covers that disclosure, the way of presentation, expected to be specified in Level2 measure will be important, though.

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

No answer.

23. Is further action needed to improve the application of EU-level AML legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?

No answer.

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?

No answer.

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

The Czech law envisages that credit-worthiness assessment should be used to analyse whether a consumer has predisposition to cover his obligations. The key factor for such assessment should be – in our view – regular income and expenses, both the current and reasonably expected (e.g. revenue from heritage proceedings, from sales of immovable real estates, insurance settlement etc.). Creditors should primarily use information provided by consumer, but in case of need they may/should consult additional sources as databases etc. So that the duty of credit-worthiness assessment made on incomes and expenses does not cause detriment to consumers, we see as appropriate that such assessment may also reflect the value of consumer's property, if the credit agreement sets that part of the credit liability is to be redeemed by selling this property, not by regular instalments.

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?

No answer.

27. Should requirements about the form, content or accessibility of insurance claims histories be strengthened (for instance in relation to period covered or content) to ensure that firms are able to provide services cross-border?

According to the Czech law, policyholders have a right to ask their insurance undertaking for information of their claim performance. However, every insurance undertaking follows its own approach to policyholder's risk assessment, including bonus- malus system. We do not see it as possible that any pan-european bonus-malus system can be created. The possible harmonization seems relevant only to insurances harmonised by the European law, as the individual insurance contract parameters (e.g. definition of loss occurrence, exclusions) may vary both among Member States and within a Member State.

28. Is further action required to support firms in providing post-contractual services in another Member State without a subsidiary or branch office?

No. It is not acceptable that the reduction of consumer rights should be sacrificed just in the interest of improved internal market performance – e.g. that client would have to accept communication in foreign language in the host Member State. Thus the risk of cross-border disputes significantly

heightens which is not desirable.

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

No. See the answer to question 1 for reasoning.

30. Is action necessary at 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?

No. See the answer to question 1 for reasoning.

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?

No answer.

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?

We are not of the opinion that regulation should be the tool for innovating financial products. Innovation should be primarily induced by market participants, not by decisions of authorities.

33. Is further action necessary at EU level in relation to the 'location of risk' principle in insurance legislation and to clarify rules on 'general good' in the insurance sector?

The area of insurance is one of a few, where the risk location and the point of (insurance) service is clearly defined. There are uncertainties regarding the definition of permanence (of providing services), i.e. whether the FOS or FOE regime is due, which make opinion on the law applicable, quite complicated. Until the insurance contract law is not fully harmonised in EU there will always be a bundle of provisions differing among Member States due to general good reasons. We do not see the space for substantial harmonization of the general good requirements because of the difference between consumers and insurance markets across the EU.