



**Response of Deutsche Bank to the
„Green Paper on Retail Financial Services in the Single Market“**

I. General remarks

Deutsche Bank welcomes the publication of the European Commission's "Green Paper on Retail Financial Services in the Single Market". We appreciate the Commission's intention to give an overview of the state of integration of EU retail banking markets, the objectives of the Commission's integration efforts, and ongoing as well as future regulatory initiatives. A systematic approach of the kind is a necessary prerequisite for developing a target-oriented, promising policy strategy geared at eliminating barriers that hinder the emergence of a pan-European market for retail financial services.

As Deutsche Bank already offers retail banking services in several EU member countries, we are regularly confronted with the consequences of the fact that EU retail banking markets indeed are far less integrated than wholesale banking markets. Therefore, we agree with the Commission that EU regulation can and should make an important contribution to removing obstacles that stand in the way of a deeper integration of EU retail banking markets.

Nevertheless, we would like to highlight two basic caveats, as we think that only prudent regulatory steps can be beneficial. Otherwise, new regulation would do more harm than good.

- **Modest cross-border activity is not necessarily a sign of low integration.** Repeatedly, the Commission has taken the currently low level of cross-border business as evidence of a low level of market integration. In our view, it is questionable to draw this conclusion, both on a theoretical and on a practical level: Theoretically, there can be market integration even with a low level of cross-border trade. For instance, this can be the case if markets are sufficiently contestable so that the threat of new market entries keeps incumbent suppliers efficient. On a practical level, as regards retail financial services, market integration will not primarily stem from customers' engaging in the cross-border sourcing of retail financial services. While there is undeniably a small and growing segment of customers that are willing and able to contract with non-domestic suppliers, the more important channel for realising the benefits of market integration will be on the supply side. In other words, the European integration of retail financial services must not be restricted to the distribution of products to end customers. Instead, it should focus on the whole value chain: Pan-European business models will be based on pan-European banks distributing their centrally produced and processed products via their own branch networks, or, alternatively employing local intermediaries. Against this background, EU regulatory initiatives should primarily be geared towards making it easier and more profitable to develop multinational business models instead of focusing on customers buying financial services from providers residing abroad.
- **More and tighter consumer protection rules do not necessarily bring about more consumer protection.** The financial industry is among the sectors where existing consumer protection rules already are far-reaching. Thus, refining and expanding

consumer protection rights could merely lead to stricter rules at the national level while making no contribution to further market integration:

- *Higher demands on pre-contractual information do not necessarily bring about better informed consumers:* If they are provided with too much and too detailed information, average customers will feel overpowered by a deluge of information and will refrain from using any of it. As a consequence, they receive less instead of more information. For instance, the current proposal for a Consumer Credit Directive (CCD) requires banks to provide customers with four pages of basic pre-contractual information. In contrast, the „European Standardised Information Sheet“ (ESIS), that is handed out to consumers interested in a mortgage loans, only consists of one page. We are sure that the one-page ESIS better serves the information of customers than the four pages prescribed by the CCD.
- *Well-intentioned regulation of product characteristics is not necessarily in the consumers' interest:* if requirements become too strict, suppliers may refrain from offering these products altogether; this would be negative for consumers as it would limit product choice. For example, if EU regulation prevented banks from charging an early repayment fee in case of a premature redemption of fixed-rate mortgages, banks would face difficulties in managing their interest rate risk. They would have to bear additional costs which would make fixed-rate mortgages more expensive and less popular. At worst, banks would stop offering this kind of products and/or customers would not buy fixed-rate mortgages any more – as happened in Spain where today nearly all mortgages are adjustable-rate mortgages. In this case, a product that is very popular among consumers would have been regulated out of the market.
- *Consumer protection might make serving certain customer segments unattractive for banks:* For example, if excessively tight usury rules prevented banks from fully factoring credit risk into their rate calculations, they would be unable to offer loans to subprime borrowers at risk-adequate prices, and would be forced to stop serving this customer segment.

The so called Rome I convention that stipulates the consumer country principle, could endanger the supply of retail financial services by foreign providers; this holds particularly true for small member states. If a financial services provider decided to offer products abroad, local consumer protection regulation would apply. Thus the provider would have to bear additional cost for complying with the local rules. This would make offering products in small member states especially unprofitable, as the largely fixed costs of getting acquainted with local rules would have to be covered by a smaller business volume.

Therefore, we would like to recommend adhering to the following basic principles:

- **EU regulation should concentrate on full harmonisation of core issues, combined with mutual recognition of non-core issues.** This so-called targeted harmonisation approach should apply to consumer protection, in particular. If core consumer protection rules were harmonised fully (while all other provision were subject to mutual recognition), banks could build pan-European product and process platforms that would enable them to offer the same product in several EU member countries. Yet providing retail financial services touches upon a broad variety of legal provisions beyond the scope of this Green Paper – e.g. tax law, contract law, foreclosure law and basic civil law. This limits the effectiveness of harmonising consumer protection provisions. We therefore advocate going for gradual full harmonisation not only of core consumer protection rules but also of the mentioned areas of law that are relevant for establishing pan-European business models, too. This process might ultimately culminate in the creation of a uniform body of European contract and civil law.

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- **While deliberating proposals for regulatory measures, the European Commission should pursue a better regulation approach.** The proposals made should be subject to a comprehensive impact assessment and only be taken if the assessment points to a net positive welfare effect.
 - **All regulatory steps should be exclusively geared towards correcting market imperfections.** Measures proposed by the Commission should focus on setting a framework for a competition-driven approach towards more integrated EU retail banking markets. We agree with the Commission's prediction that EU integration should lead to a wider variety of products at low prices. These will materialise in particular, if financial services providers are enabled to realise economies of scale and scope by building up multinational business models. However, we would like to emphasise that lower prices as well as product range are the result of market-based processes; they are not an aim that can be decreed.
 - **Consumers' and banks' interests have to be balanced.** Consumer confidence is a pre-condition for the successful development of Europe's financial markets. An adequate level of consumer protection is a prerequisite for consumer confidence. Yet, at the same time it must be realised that the competitiveness of the EU financial industry is also a legitimate and important objective, not least with a view on ensuring that the financial sector can play its role in fostering growth in the EU and in increasing the EU's international competitiveness. Financial institutions will only engage in cross-border business, will only develop pan-European business strategies and will only offer a wide range of competitively priced products if it is commercially attractive to do so. Hence, stronger integration of EU financial markets is desirable and supported by Deutsche Bank, provided that the integration efforts are based on sound economic principles that respect the interests of banks to be profitable.

II. Comments on specific statements made in the Green Paper

- On page 5 („Restricted product diversity and choice“) the Commission states that „In certain Member States long-term fixed rate mortgage products ... may be difficult to obtain.“

We fully agree with this statement. Fixed-rate mortgage products are – for instance in Spain and Portugal – difficult to obtain, because national regulation on early repayment makes it more difficult for banks to manage liquidity and capital, especially with an eye to prepayment risks (see above). The public debate in the UK, where fixed-rate mortgages are difficult to obtain as well, shows the importance of product variety in the mortgage sector both for consumers and for the economy as a whole.

We think that a broad variety of mortgage products can be best achieved by allowing for an open competition between banks which offer their products in order to optimally serve the customers' interests. Thus, the Commission should refrain from cutting back on the freedom of contract in this field.
 - On page 10 („Ongoing and planned initiatives“) the Commission states that it „will review the role of non-banks in mortgage markets, in order to assess whether appropriate EU intervention is needed“.
- We feel that there is no need for action regarding the role of non-banks in the mortgage business, because the current state of regulation reflects sound principles of financial supervision as well as competition law. As said above, the integration of EU retail banking markets should be pursued on the basis of a competition-oriented approach. Sound competition requires a level-playing field. Non-banks do not have to meet the high standards that banks have to comply with. Thus, non-banks would be given an advantage in terms of lower costs resulting from less tight regulation regarding capital requirements and so on.

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- On page 11 („Ongoing and planned initiatives“) the Commission states „that there could be benefits for both consumers and financial services providers, if optional simplified, standardised financial services, such as basic bank accounts, could be offered. These would be less complex than other products and would meet a European standard of consumer protection.“

First, we would like to emphasise the Commission’s related statement, that „banks would not be obliged to offer them, and would only do so where there was a business case.“

Second, we think that in the long-term efforts of the kind should not be restricted to simplified products. Instead, it should be the Commission’s major goal to design a basic European standard of consumer protection (combined with mutual recognition of further provisions) so that financial services providers can distribute *all* of their retail banking products multinationally.
 - On page 12 (paragraph 27) the Commission states, that „the modified proposal for a revised Consumer Credit Directive, . . . , seeks to promote the emergence of a genuine single market in consumer credit while ensuring a high level of consumer protection.“

The current version of the CCD, agreed upon by the Council in May, is not suitable for achieving these goals. Instead, it will raise consumer protection requirements – and hence costs – at the national level to the detriment of consumers’ interests and without promoting pan-European business models. In our view, a major revision of the CCD will be needed in order to achieve a truly integrated EU market for consumer credit.
 - On page 13 (paragraph 31) the Commission deals with the law applicable to contractual obligations (as currently regulated by the Rome I convention of 1980).

As mentioned above, we do not share the Commission’s position that the consumer country principle „will provide more legal certainty for the consumer“. Instead, it will prevent banks from distributing their products abroad, because a provider willing to offer in the whole EU would have to comply with 27 different bodies of consumer protection rules. As a result, market integration would be hindered rather than fostered.

From a consumer perspective, the consumer country principle has adverse effects, too. For instance, an Italian public official working in Brussels for a limited time-period, would not be able to maintain his relation with his Italian bank, because it would be too onerous for the latter to comply with Belgian consumer protection laws.

III. Answers to selected questions (of the ones raised in the final part of the Green Paper)

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

See our general remarks above. We think that the Green Paper should emphasise more strongly (1) the importance of targeted full harmonisation combined with mutual recognition, (2) that all measures proposed should be – in accordance with the better regulation principle – subject to a thorough impact assessment, and (3) that the Green Paper should be focused on setting a market-oriented framework for a competition-driven integration of EU-retail banking.

(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.)

Providing retail financial services touches upon a broad variety of legal provisions beyond the scope of this Green Paper – e.g. tax law, contract law and basic civil law

(see above). For example, integrating mortgage markets requires harmonising national provisions on, among others, access to land registers, transfer of collateral, insolvency remoteness of special purpose vehicles, and forced sales procedures. The example indicates the importance of harmonising certain core issues of national law. We therefore advocate going for gradual full harmonisation of the areas of law that are particularly relevant for cross-border transactions, and the establishment of pan-European business models, respectively, while applying the mutual recognition principle for those areas not fully harmonised. This process might ultimately culminate in the creation of a uniform body of European contract and civil law.

(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?

Consumer choice would be severely limited if the consumer country principle would be established, because banks would be effectively prevented from offering their products abroad (see above).

Regarding specific restrictions, Deutsche Bank advocates paving the way for opening accounts online. Today, national legislation requires that accounts must be opened in written form, because banks have to meet certain „know your client“- and anti-money-laundering requirements. Yet written form is not necessary in order to meet these requirements— provided the existence of a digital signature mechanism. EU regulation should therefore concentrate on digital signature solutions. Otherwise, a very important distribution channel – that is especially important for the cross-border business – could not be used efficiently.

(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?

Although we regard alternative dispute resolution schemes (ADR) as a tool that is suitable to help solving disagreements between customers and enterprises in many cases, we advocate refraining from enforcing the establishment of ADR in all member states. We do not think that the absence of ADR schemes in some member states deters customers from shopping abroad. We recommend a best practice approach: The Commission should make model examples for ADR schemes public to customers and enterprises in all member states so that good solutions can emerge on a voluntary basis.

(6) The creation of the Single Euro Payment 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?

Deutsche Bank has been an active promoter of the SEPA project and is committed towards actively offering SEPA services starting in January 2008. We are firmly convinced that the introduction of pan-European payment schemes will be a major step towards a further integration of EU financial markets, including retail markets. We expect that SEPA will intensify competition between suppliers of payment services markedly, as the existence of SEPA payment schemes will make it easier for customers to change their supplier of payment services, even and in particular on a cross-border basis.

SEPA has been a successful self-regulatory initiative of the EU banking industry. The success has not least been possible because banks have charted the course for SEPA based on their practical experience in payment services, taking into account in equal measure the demands and requirements of their clients (both corporate and retail) as well as technical and economic realities of the payments business. Payment services are not a completely new market segment; in other words, banks have sufficient knowledge of their clients' needs in order to take the initial steps on SEPA. Indeed, users' expectations have already been incorporated in the design of the schemes adopted in March 2006. EU banks, and certainly Deutsche Bank, has actively informed, and interacted with, its corporate and financial institution clients about SEPA.

Deutsche Bank, along with other EPC members, supports the idea that the EPC, now that SEPA standards have been finalised, reach out to other stakeholders – users and public authorities on both the European and national levels – to broaden knowledge on the SEPA project. In several member states, SEPA national implementation committees already exist in various formats and with different memberships. Given the fact that economic, banking and payment structures vary between member states, different national characteristics need to be respected in any information and implementation campaigns; this should caution against an overly ambitious consultation project on the European level.

(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?

We advocate promoting a European market for retirement and pension schemes. In particular, we think that the Commission should focus on occupational pensions in this respect.

Regarding the feasibility of a „28th regime“, we welcome the Commission's intention to research into and consult upon such an approach. However, while we would not deny that the concept has potential, the benefits of introducing core legal rules for the distribution of retirement and pension products that would be used on a voluntary basis seem to be quite limited. The cost for financial services providers to offer an additional regime would be substantial, while it is doubtful whether customers would actually make use of such a regime. Deutsche Bank therefore suggests initially focussing on research on this topic, before starting regulatory action.

(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?

See above: We are not convinced that it would be useful to focus efforts and resources on the development of such optional products. Instead, it should be the Commission's major goal to design a basic European standard of consumer protection (combined with mutual recognition of further provisions) so that financial services providers can distribute *all* of their retail banking products multinationally. Each product should, in principle, be allowed to be offered across borders without the need for the product to be modified to fit local rules.

(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.

We think that the Commission should carefully evaluate the state of financial literacy in the member states as well as the financial industry's involvement in the respective programmes, before it launches additional initiatives. We therefore agree that developing guidelines and promoting best practices is a good starting point for tackling this issue. The evaluation will reveal, that the German financial industry is already very active in the field of financial literacy programmes.

(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 propering 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?

See our basic caveats above. We think that many provisions in this field raise costs of financial services providers without promoting the integration of EU retail banking markets. The Commission should propose a concrete list of core information to be harmonised fully while applying mutual recognition regarding non-core information requirements. We do not think that the financial services industry should be obliged to offer advice to customers. Instead, consumers – as mature citizen who are able to take responsibility for their own actions – should be provided with the mentioned list of core information that enables them to make sensible decisions on their own.

(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 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?

At present, credit bureaus provide cross-border credit status reports on the basis of bilateral agreements but such agreements are not in place everywhere in the EU. In many cases foreign banks have no possibility at all to obtain information about clients' creditworthiness. This is a serious obstacle to cross-border offerings of financial services as well as to pan-European business processes.

We think that access to credit data bases should be organised on a reciprocal basis: Every financial services provider, no matter whether foreign or domestic, should have access to national credit data bases given the provider complies with the rules of usage and – above all – reports all relevant information to the data base in return.

We feel that a memorandum of understanding is a good first step on the way to full reciprocal access to national credit data bases.