

ERFF Discussion Paper

Meeting expectations on the consumer journey in financial services July 2019

The European Retail Financial Forum (ERFF) is a pan-European forum that brings together, through technical workshops and events, consumers, business and policymakers to support the opening up of retail financial markets in Europe. Representing all aspects of the retail sector - traditional, wider investment and digital - we are citizens-focused, favour removing key barriers and increasing choice and transparency for all consumers across borders in ways that keep Europe competitive.

Introduction: the ERFF 2019 Consumer Journey

2019 is a year of change and renewal for the European Union institutions. As such, it is a moment to review what has gone before and what is to come. ERFF's 2019 'Consumer Journey' aims to do this in the context of retail financial services. During this journey, we have reached out to consumer organisations to jointly explore the consumer experience of retail financial products and services that citizens use over the course of a lifetime from payments and credit to investments, insurance and pensions.

At two round-table dialogues with consumer organisations in January and May 2019, ERFF and European consumer representatives identified where consumer expectations are being met and where this is not yet fully the case in the context of EU retail finance, including cross-border services (see Annexes 1, 1A and 2). We also discussed possible areas for action to improve the consumer experience, particularly where these relate to EU policy and legislation (e.g. cross-border services, payments, Consumer Credit Directive, PSD₂, PEPP, etc.).¹

This discussion paper captures some of the key issues and potential solutions that emerged from this Consumer Journey process, focused on three different stages in a consumer's lifetime financial services journey: opening a bank account and cross-border banking; obtaining credit; and deciding on investments, insurance and pensions.

Along the way, we have shared drafts of the text with the consumer representatives to invite their feedback and input. However, the final text represents the views and is the responsibility of ERFF and its members alone – we do not claim to speak for any of the organisations who kindly participated in our dialogues on the Consumer Journey.

The paper and the topics raised will be presented for discussion with consumers and EU institutions at the 2nd annual ERFF conference on 'Consumers at the heart of finance in Europe', taking place in the European Economic and Social Committee (EESC), Brussels, on 5th November 2019.

¹ PSD₂ – Payment Services Directive 2, PEPP – Pan-European Pension Product

EXECUTIVE SUMMARY

While EU regulation such as SEPA, PSD₂, MiFid₂ and PRIIPS² assist in the provision of retail financial products, consumer expectations of access to financial services across the EU are often frustrated. Individuals who want to open a bank account in another Member State (MS) or use 'everyday' financial services across borders frequently face difficulties, and consumers may be affected by inconsistencies between MSs in application of EU regulations. These issues reportedly arise, among other things, due to a lack of supervisory and regulatory convergence within the EU.

However, in an increasingly digital, mobile world, consumers and industry want to ensure that citizens have access to information, products and services across borders, with services adapted to digital channels and information delivered clearly and succinctly. It should also be noted that despite the GDPR³, consumers remain concerned about privacy and data usage, underlining the constant need for trust, transparency and security.

This paper explores the issues outlined above focused on three key stages in the consumer journey: opening a bank account and cross-border banking, obtaining credit and investment, pensions and insurance.

Annexes:

1. Notes from 1st ERFF Consumer Dialogue 30th January 2019: Issues for consumers in retail financial services in the context of EU legislation
 - 1A. ECC-Net Belgium's wish list for consumers in Europe regarding financial services – January 2019
2. Notes from 2nd ERFF Consumer Dialogue 21st May 2019: review of draft ERFF Discussion Paper and discussion of potential solutions to issues
3. Limitations to SEPA and cross-border services: examples
4. Example of problem encountered by customers related to MIFID 2

The Consumer Journey

1) Opening a bank account and cross-border daily banking

Issues in opening a bank account

Opening a bank account is a key example of where inconsistencies within national regulatory frameworks create practical obstacles for European citizens. Often customers still need to go to the bank in person to sign documents or provide personal information. In other words, consumers may not be able to open an account without being physically present in the specific member state. And while 'onboarding' via digital signature or video identification is becoming more widely possible, progress in this direction is slow.

² SEPA – Single Euro Payments Area, PSD 2 – Payment Services Directive 2, MiFid 2 – Markets in Financial Instruments Directive 2, PRIIPS - Packaged retail investment and insurance products

³ GDPR – General Data Protection Regulation

Cross-border issues in daily banking

The issues around cross-border daily banking are particularly relevant for citizens who move between MS. For example, a citizen who moves to another EU country may find themselves obliged to open a new local bank account because companies in that country require a local IBAN number.⁴

But, in today's mobile, digital world, consumer expectations of retail financial services are changing. Both consumer groups and industry see an increasing demand for banking services and financial products such as car insurance across borders. However, besides difficulties in opening accounts, in certain instances consumers may find that they cannot access online services across borders because of 'geo-blocking' (limiting services to a particular MS). See Annex 3 for an example. At the same time, service providers face challenges in offering cross-border services, leading to higher costs for developing cross-border digital financial services and apps for mobile citizens in Europe.

In addition, consumers report that not all credit and debit cards are recognized equally across the EU, for instance, for car hire. And in cases of credit card fraud, there is no uniform 'charge back'. Indeed, this mechanism does not at present exist in all MSs. Furthermore, some MSs are still charging for ATM withdrawals despite legislation to the contrary.

Suggestions for way ahead / further discussion

Areas to look at in terms of making life easier for consumers and harmonizing requirements and processes for opening bank accounts (onboarding) / daily banking cross-border:

- consistent application of existing regulations in all MSs;
- doing more to ensure that the SEPA-Regulation (Art. 9) is applied and in case of violations, these are sanctioned in a uniform and effective way, to prevent situations where consumers are unlawfully obliged to have a domestic IBAN;
- an EU-wide e-ID; and more broadly, support for online identification, digitalization and security of consumer data including for banking apps that would allow citizens to open bank accounts in another country;
- prevention of geo-blocking and ensuring consumers can use banking apps cross-border;
- further harmonization of Anti-Money Laundering (AML) requirements EU-wide to support consistent processes;
- greater uniformity regarding debit and credit cards, and application of charge-back;
- bank statements in all EU MSs to provide clear trader information so people can see easily who they are doing business with
- EU-wide regulation for innovation where relevant, e.g. for smart contracts based on blockchain.

⁴ Technical issues related to the use of IBAN numbers as set out in the Euro system can mean that local IBAN numbers are still required and these cannot be used for cross-border transactions. See Annex 2.

2) Obtaining credit

Issues in obtaining credit

Many citizens will borrow money at some time in their lives. Ensuring that they can afford the repayments is important for their own financial well-being and for a stable financial system. Assessing this 'creditworthiness' is considered a duty of 'responsible lending' and is included in two European Directives: the Consumer Credit Directive and the Mortgage Credit Directive.

Consumers are assessed for creditworthiness by financial institutions based on data such as their repayment history information of their credit accounts, including home loans, any personal loans, and any credit cards. This allows prospective lenders to ascertain whether consumers are likely to be a reliable payer. Consumers are also positively assessed if payments were made on time.

There are consumers who have, however, a limited credit history. Think of younger people or migrants. For these consumers, some lenders may consider other payment information not included in credit reports.

Nonetheless, despite the GDPR, consumers remain concerned about what data is being used and whether citizens' rights to a private life are being protected. Some consumers also fear that credit decisions based on automated scoring processes may lead to the risk of financial exclusion and over-indebtedness. All of which indicates the continuing need to build trust and understanding between industry and consumers.

Suggestions for way ahead / further discussion

Ways to improve access to the right credit for each consumer while preventing over-indebtedness and misuse of data could include:

- making the process of selling credit to consumers clearer with more 'digestible' information;
- monitoring creditworthiness assessment procedures;
- balancing 'sufficiency of information' and 'relevance of information' in improving consumers' chances of obtaining credit and / or better terms;
- improving financial literacy and providing tools to help consumers understand loans / credit;
- promoting the availability of consumer credit data across borders;
- making appropriate use of external databases as a way to help providers assess consumers' creditworthiness and ensure consumers get the best deal.

3) Investments, pensions and insurance

Cross-border issues

The Capital Markets Union (CMU) and the digital single market should allow consumers to access the best financial options for their specific needs, regardless of the jurisdiction in which they reside. In reality, the retail financial sector has remained largely national with very few truly cross-border financial products.

Fragmented markets result in stifled competition and considerable differences in price and choice for consumers across EU member states. EU consumers tend to rely on bank-based finance and do not take advantage of a more diversified financial system. EU consumers mostly choose to save in deposits and may not choose to invest directly in shares, bonds, stocks or pensions which influences the allocation of finance in the bank-based system and the capital markets system in Europe.

These barriers in accessing cross-border investment opportunities exist because of a variety of factors including cultural and individual preferences, national differences in taxation, consumer protection and supervision arrangements. Thus, while there are huge opportunities for European consumers and companies in new and innovative products in retail financial market space, different interpretations of EU rules may create market fragmentation and challenges for harmonized investor protection across borders. To give some examples: internet-based financial retail businesses need to design a variety of national marketing strategies; different technical requirements in MSs require different IT implementations; and lack of tax harmonization across the EU results in differing taxation requirements.

Information overload

Regardless of whether a product is sold in a single MS or cross-border, consumers and the industry share concerns about the volume of technical information and required documents associated with investments, pensions and insurances. There is significant evidence that providing too much information creates a form of 'decision paralysis', stifling individuals ability to make the right choice when presented with large quantities of information. Furthermore, some industry players note that MiFiD 2 requirements may leave consumers ill-informed about certain risks, while also leading to a reduced product offering and a reluctance among bank employees to offer products. See Annex 4.

Consumer education may help, but it is not a silver bullet. Technical information is valuable, but above all, consumers need greater clarity on the risks involved in investments, expressed as clearly and simply as possible. Information should be available across borders and designed for ease of reading digitally as well as on paper.

Indeed, digitalization of financial services is a key consideration for the future. Competitive online platforms and robo-advisors can be expected to overtake existing sales channels for investment products, particularly among young Europeans. Online comparison sites are also

valuable consumer tools; however, transparency and clarity are crucial. For many consumers, especially those who have only limited familiarity with computer technology, such sites may be confusing and comparison results mis-leading. For instance, sites may filter exclusively on price, without comparing the overall benefits offered by each product. In addition, consumers may not understand how their data is being collected and used by these sites.

Appropriate products

In terms of products, the ability to save and access savings on a pan-European basis is clearly interesting for certain consumers. The proposed PEPP is a step forward, but it does not fully factor in the scale of options available across the EU and in some MSs consumer choice is limited. For example, in some countries consumers are only allowed to buy annuities with any pension lump sum they may have.

Product providers need to be flexible in what they offer consumers, without consumers being put at risk through inappropriate product-offerings. And consumers should be able to switch between products and providers to prevent people being locked into unsatisfactory products. This switching would also encourage competition and keep costs under control. In addition, security is essential because consumers are looking for trustworthiness, as well as transparency and cost effectiveness.

Suggestions for way ahead / further discussion

Improvements in this area could come from, among others:

- increase regulatory, supervisory and administrative convergence across MSs to ensure EU consumers can buy retail financial services in other MSs and take products with them if they move from one MS to another;
- a review of the added value of current legislation from the perspective of consumer needs;
- re-assessment of 'know your customer' (KYC) and identification of what information is both enough and pertinent (PRIIPS, KID);
- in particular, re-assess how information is presented, in what context and through which channels e.g. digital media / small mobile devices. Bearing in mind that most people make financial decisions without any form of professional support – how can they be helped to make the best decision possible in these circumstances?
- information on online comparison websites should be clear and transparent, and the results provided should be based on impartial criteria without influence from advertising interests;
- ensuring that consumers in all MSs have access to a range of information sources including across borders, and that these are not completely reliant on firm data that can be biased or selective;
- transparency of algorithms used as basis for providing online advice to consumers;
- a strengthening of EU-wide actions to promote consumer knowledge and financial education while being realistic about the limits of financial education, especially where the information provided is complex and technical.

Date: 11 July 2019

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About ERFF

The European Retail Financial Forum (ERFF) is a pan-European forum that brings together, through technical workshops and events, consumers, business and policymakers to support the opening up of retail financial markets in Europe. We represent all aspects of the retail sector – traditional, digital, FinTech, investment, asset management and insurance. Focused primarily on consumers, ERFF favours further market integration across Europe to increase choice, transparency and competition for the benefit of all. www.erff.eu

ERFF Members and associates:

Aviva, Barclays, Commerzbank, Erste Group, ING, KBC, NN Group, PIMFA; ACCIS, BPFI, Eurofinas, FECIF.

Consumer organisations who participated in sessions related to this paper: Alliance of Lithuanian Consumer Organisations; ArbeitKamer Wien, Austria; COFACE – Families Europe; EEC-Net Belgium, Austria, Germany; Organization of Consumers & Users (OCU), Spain; Romanian Consumer Association; Norwegian Consumer Council.

Annex I

Notes from 1st ERFF Consumer Dialogue 30th January 2019: Issues for consumers in retail financial services in the context of EU legislation⁵

The dialogue was held under the Chatham House rule, so the summary does not attribute remarks to specific participants.

Issues raised by consumer organisations

Credit and consumer data

Concerns over how credit is sold to consumers – should be as transparent as sale of any other commodity (e.g. limit bundling credit with other benefits or services); process should be clear and simple; creditworthiness assessment procedures must be monitored (providers should be legally liable for bad / insufficient credit assessments). Peer to peer and pay-day loans should be under scrutiny by EU.

How and which data is collected (e.g. via social media) is key - potential risk of exclusion, intrusion into private life and move away from socialisation of risk in insurance, as well as over-indebtedness.

Also concerns related to proposals on sale of Non-Performing Loans.

Simpler, clearer products

For credit, and other products, consumers face complexity (which may hide bad products). Call for conditions to be simple and clear. Need independent, trustworthy comparison tools to enable consumers to make good choices. Consumer education can't do all the work.

Sustainable finance

Interested in providing consumers with eco-labelling and good choices as there is growing demand. EU should focus not on wider SDGs (Sustainable Development Goals) not just climate change.

FinTech

Business models should offer better deals for consumers, not just add another layer of intermediaries.

⁵ For a list of participants in the 1st Dialogue, please see the end of this Annex

Variation in implementation of regulations / treatment by banks

EU regulations are not applied uniformly. Geography matters: banks do not always treat customers the same way in every country e.g. consumers in smaller EU states and/or in Central, Eastern and South-eastern Europe (CESEE) countries specifically may not be compensated for mis-selling and more often suffer unfair treatment from financial institutions as compared with bigger/ Western European Member States.

Attitudes and practices of banks and service providers vary in Member States.

Specific enforcement & cross-border issues

Despite SEPA, consumers still obliged to open bank account in country of second residence, cross-border direct debits also a problem (can limit access to cross-border services such as insurance). SEPA doesn't adequately protect consumers from fraudulent direct debits⁶.

Call for a uniform 'charge back' in case of credit card fraud – still not possible in all Member States. Also, variation in ATM withdrawal charges e.g. IT and SP are still charging – legislation needs to be clearer.

Often, opening /closing bank account in another MS requires going in person. Closure in case of divorce or succession is not harmonised across EU. Moreover, not all credit & debit cards recognised equally across EU e.g. for car hire.

Bank statements should be harmonised, in particular to provide same trader information.

Trust

There is an issue of consumer trust in financial services and their providers, but also in public authorities and in the capabilities of bank supervisors and enforcement of EU legislation in certain Member States.

Need stronger consumer protection and enforcement mechanisms in Europe, not yet possible. EU proposal to allow for 'class actions' to be brought may be helpful.

Issues raised by organisations via email ahead of the meeting / from organisations not able to join on the day • Mis-selling of financial services products • Unfair practices in payments (e.g. Dynamic Currency Conversion) • The Consumer Credit Directive, personal insolvency, over-indebtedness and the NPL secondary market • 'Eco labelling' for financial products • eID and data, ensuring consumers benefit from FinTech and cross-border services

⁶ This was raised as an issue for consumers, even though in principle both SEPA (8 weeks 'no-questions-asked', unconditional refund right) and PSD 2 (13 months rectification right in case of fraud) protect consumers against fraudulent direct debits (ex-post).

Issues raised by ERFF members

Balancing expectations and dealing with complexity

Challenge to meet consumer expectations, while conforming to complex legislation.

Are the Consumer Credit Directive, PRIIPs, KID etc. helping or hindering getting the right balance between protection and clarity?

Sustainable finance will also require disclosure on social and governance issues of investments. What level of information is useful and digestible for consumers?

Digitalisation

EU is exploring how to put consumers at the heart of the digital agenda, AI and related policy measures.

Again, questions of data arise e.g. how to ensure data protection / minimization without losing the value of data to provide consumers with products and services tailored to their personal situation?

Concerns about credit

Recognition of consumer concerns about creditworthiness assessments and use of non-traditional data to build up credit scores. But credit reporting systems can also facilitate financial inclusion, help prevent over-indebtedness and contribute to reducing cost of credit.

Independent research on the role of comprehensive data in the ability of credit reporting systems to fulfil their core functions is underway. The view of consumers will be actively collected.

Variation in implementation of regulations

Industry also recognises issues of varying levels consumer protection, and supervision and enforcement across Member States.

Pensions and investments

Can FinTech provide a way for consumers to engage more fully in savings and invest? Good models exist in the Netherlands and Australia.

A lot of uncertainty still including application of PEPP. UK citizens living in the EU and drawing a pension will be affected by Brexit, as will their rights to bank accounts in the event of a no deal scenario.

In attendance

Consumer organisations: Martin Schmalzried, COFACE – Families Europe; ERFF: Isak Bengtzboe, Eurofinas; Fiona Murray, ERFF; Daniel Rysavka, Erste Group; Enrique Velazquez, ACCIS (Association of Consumer Credit Information Suppliers); Susan WILD, ERFF; Ayesha Xa Ghafoor, Barclays

Dial-in

Consumer organisations: Jorge Jensen, Norwegian Consumer Council; Kęstutis Kupšys, Alliance of Lithuanian Consumer Organisations; Miryam Vivar, OCU (Organisation of Consumers and Users), Spain; Karolina Wojtal, ECC (European Consumer Centre) Net, Germany. ERFF: Maja Erceg, PIMFA (Personal Investment Management & Financial Advice Association); Simon Harrington, PIMFA; Suresh Weerasinghe, Head of EU and Brexit Public Policy, AVIVA

END ANNEX 1

Annex IA

ECC-Net⁷ Belgium's wish list for consumers in Europe regarding financial services – January 2019

Based on the questions and complaints received by the ECC-Net over the last years, we have made a list of issues we consider worth improving. Consumers want to shop cross border, travel to different EU countries and therefore access to financial services is key.

Issues / Topic Details

Direct debits

Companies are limiting direct debits to national bank accounts and are ignoring Art. 9 of the SEPA regulation

Now, with Article 9 of the SEPA-regulation in force, consumers with a second residence in a different EU country, would like to have direct debits taken from whatever SEPA account, for example the one in their home country. But reality shows that this is not possible in many cases and that traders (for example insurance companies) are still refusing to execute direct debits from bank accounts in another EU member state and are "forcing" consumers to open a new bank account in the country of the second residence.

Insufficient protection of consumers against fraudulent direct debits⁸.

On the other hand, there is not in all countries a good system to protect consumers against fraudulent companies. With the SEPA regulation traders can place a direct debit on the account of the consumer just by knowing the IBAN number. No European solution was put into place for fraudulent use of direct debits. Please find additional information on this topic from France by following this link: <http://questions.assemblee-nationale.fr/q15/155827QE.htm>

Fraudulent financial investment services

No protection of consumers against fraudulent financial services websites

⁷ The ECC-net provides information on consumer rights and assists in resolving disputes when the consumer and trader involved are based in 2 different European countries. https://ec.europa.eu/info/live-work-travel-eu/consumers/resolve-your-consumer-complaint/european-consumer-centres-network_en

⁸ This was raised as an issue by consumers even though in principle both SEPA (8 weeks 'no-questions-asked', unconditional refund right) and PSD 2 (13 months rectification right in case of fraud) protect consumers against fraudulent direct debits (ex-post).

We receive regularly complaints about fraudulent financial services online. We had companies offering bitcoins and gold, requesting investment from the consumer and in the end the companies disappeared with all the money.

Chargeback: No harmonized system of chargeback in all EU member states

For our consumers who face rough online traders, in many cases chargeback is the only possibility to get their money back. Paying by credit card is therefore the most recommended payment method online. We need to improve this system, so consumers are legally entitled to chargeback in all EU countries, the way it is already in some countries. This report was made to by ECC Norway for the ECC-net: <https://www.eccbelgie.be/brochures/detail/ecc-net-report-chargeback-in-the-eueea-asolution-to-get-your-money-back-when-a-trader-does-not-resp>

Unclear bank statements

Information about traders on bank statements should be more detailed

Knowing that there are rough traders who can have access to consumers bank accounts via direct debits or that there still are subscription traps online etc. It is important for consumers to have clear bank statements. There are member states where the name of the trader is not always the name of the account holder on the bank statement. In our view, there should be new rules to have more information about traders on bank statements.

Opening / closing bank account /Update of information at the bank

Opening/closing of bank accounts and updating information relating to them is still too complicated and an obstacle to the internal market

Consumers might want to open a bank account in a different country and would like to be able to do this from a distance without the need to travel to the bank. At this moment this is not yet possible in all countries. We had cases from consumers with a bank account in a different country, who received the request to update their information and the only way to do this, is going to the bank branch in person. For some consumers this is not feasible.

Also the necessary steps and documentation needed to access to an account after a succession/divorce/etc. ... are not harmonized within the EU or even within the same country or within a bank.

ATM withdrawal charges

Some member states still impose additional ATM withdrawal charges on consumers

According to EU legislation, charges to withdraw money at an ATM should be the same in the country of issuance of a card as in a different EU country. However, we have noticed that both

Spain and Italy are taking a different approach. Consumers are complaining about charges they had to pay, whereas for example in Belgium it is mostly for free. Italy and Spain say that there is no discrimination as the fees are for all users of the ATM's. This limits the use of financial services within the EU. Consumers are not prepared to pay in order to get access to their own money.

Diversity of bankcards

Too much diversity of payment cards across Europe

As there are no uniform 'debit and credit cards' in the EU, consumers might face problems when they want to pay in a shop abroad. For example, in some countries there are "Visa cards" who are no real credit cards but simple debit cards. However, at the same time they are not accepted as debit cards in another member states. Another example is that not all credit cards are embedded in relief, so they cannot be used for instance as a deposit in some car rental agencies although they are real credit cards.

New bank apps

New financial players at the horizon

The number of players in the market for financial services is increasing, with for example new banking apps on the market. We don't have complaints about these applications at the moment as consumer might not know they can turn to the ECC-Net in case of problems. But as consumers need to give access to their bank accounts in order to be able to use those apps, data protection and information to the consumers as to which level of security is offered by those players should be closely monitored.

END OF ANNEX 1A

Annex 2

Notes from 2ND ERFF Consumer Dialogue 21st May 2019: review of draft ERFF Discussion Paper and discussion of potential solutions to issues⁹

The dialogue was held under the Chatham House rule, so the summary does not attribute remarks to specific participants.

The dialogue began with discussion of the draft the ERFF 'Consumer Journey' discussion paper, no major objections to the text.

Some additional issues from a consumer organisation, particularly complaints from consumers about fees and costs of bank accounts, as well as costs for ATM withdrawals. Also a call for all European banks to be required to provide basic bank accounts (clarification by EU regulation), and that supervision and enforcement regimes should be improved in this area.

Both consumer organisations and ERFF members asked about how cross-border issues should be handled in the text of the ERFF discussion paper. Should there be specific remarks in each section, or a separate section for cross-border issues? Do people think about cross-border issues when they first open a bank account? Do digital apps make cross-border services and avoidance of geo-blocking more important?

Linked to this, there was discussion about the title of the 1st section ('Opening a bank account') since this section covers daily banking as well, and much of its content relates to cross-border issues. A solution could be to create sub-heads in this section.

For the other sections, cross-border is less of an issue, although ERFF members noted there is demand for cross-border credit and investments. ECC-Net noted consumers also ask for cross-border car insurance and mortgages. However, in areas such as PEPP and investments, national taxation and other national regulations are still barriers to cross-border products. PIMFA will supply further content on investments and pensions for the paper. Maja Erceg also stressed the importance of clarity of information, the right amount of information and access to information cross-borders.

Several ERFF members mentioned the importance of financial education, although a consumer organisation noted that financial literacy was not a 'wonder weapon' and banks should provide clear advice and information. This organisation added that it was too soon to see whether KID and PRIIPs were leading to high quality documents, but asked banks to integrate such information from the start of the sales process and not to burden consumers with unnecessary advertising information.

⁹ For a list of participants in the 2nd Dialogue, please see the end of this Annex

Participants also agreed information has to be fit for digital channels and for reading on mobile devices particularly.

Several ERFF members also asked for a scene-setting introduction to the text, referring to the context of fast-changing innovation. Other potential topics raised by an ERFF member were harmonization of AML regulation and use of eID particularly for cross-border services.

In attendance

Consumer organisations: Karen Ghysels, ECC-Net Belgium. ERFF: Isak Bengtzboe, Eurofinas; Karel Bollen, ING; Maja Erceg, PIMFA; Mark Foster, Barclays; Roman Hametner, Erste Group; Fiona Murray, ERFF; Chris Muyldermans, KBC; Niamh O'Donnellan, BPF; Daniel Rysavka, Erste Group; Enrique Velazquez, ACCIS; Susan Wild, ERFF.

Dial-in

Consumer organisations: Monica Calu, Romanian Consumer Association; Christian Pranter, ArbeitKamer Wien, Consumer policy / Financial services; Miryam Vivar, OCU Spain; Karolina Wojtal, ECC-Net Germany. ERFF: Suresh Weerasinghe, Aviva.

END OF ANNEX 2

Annex 3

Limitations to SEPA and cross-border services: examples

1.a A credit institution based in a country of the Euro zone intends to provide financial services, within a number of other countries of the European Economic Area, without having a physical presence in these countries. Instead, it will use a centralized platform in its home country and modern communication technology to offer the payment and other products to SMEs.

In order to have access to the domestic clearing and settlement in each country, the credit institution needs for each country:

- a payment account identifier (IBAN) with a **National Bank Code, allocated by the local supervisor** (e.g. BE followed by a protocol number between 0 and 999); and
- a BIC, allocated by SWIFT.

Though the vision of SEPA as fully endorsed by the Eurosystem envisages no need for the use of local IBANs in the cross-border context, it has proven difficult, if not impossible, to get this done. There are still issues with regard to the use of non-domestic IBANs .

1.b A European citizen still needs different accounts in different countries when staying there for a longer period.

For example: when moving to France, opening a bank account is usually a necessary step. It is essential in order to receive money, withdraw money or pay for products and services

So, despite SEPA, consumers are still obliged to open bank account in country of second residence.

But why?

According to the ISO IBAN standard the country code used must be the country where the payment service provider is in residence. A derivation of an IBAN where the bank does not have a residence in the issuing country would seem not to be in line with the standard.

The legal basis for this statement is the SEPA regulation (EC Regulation 924/2009 respectively EU Regulation 260/2012 Article 2 (15)), in which the ISO-Standard 13616-1 (Financial services – International bank account number) is stated to define the elements of the IBAN. Thus, ISO-Standard 13616-1 is mandatory and defines under point 5 (a): “the first two letters (2!a) shall always be the two-character country code (alpha-2 code), as defined in ISO 3166-1, of the country in which the financial institution servicing the account resides”

2. In 2016, Deutsche Bahn was taken to the European Court of Justice by the Austrian consumer protection association over its online payment system which offered the direct debit option — in which the payee requests the payment from the customer’s bank account — only to people who live in Germany. The Austrian association argued that Deutsche Bahn’s restriction breached the EU’s Single Euro Payment Area (SEPA) rules, which allow EU citizens to pay for products and services in euros anywhere in the EU from a single account.

The court gave a nonbinding opinion which supported the Austrian association’s position. In a statement, it said that while Deutsche Bahn did not require customers to have their account in any particular member state, the residency requirement had an equivalent effect.

No company is legally required to offer direct debit payment options to clients. “However, once it has decided to provide customers with such a possibility, it has to offer that service in a non-discriminatory manner,” the statement added.

END OF ANNEX 3

Annex 4

Example of problem encountered by customers related to MIFID 2

Written options should always be considered in combination with the underlying coverage (written calls are related to the underlying shares; written puts are related to the underlying cash). The problem arises in the case of a more than 10% loss. This communication does not take into account the underlying coverage.

Holding shares is more risky than writing options with the same exposure:

- the writing of puts based on cash: the customer receives a cash premium and shares if a certain strike price is reached. Many customers hope that their cash will give a higher yield and that the shares will reach lower prices.

- once the shares become part of the portfolio, calls can be written based on these shares: the customer receives a cash premium and has to sell shares if a certain strike price is reached. Many customers are interested to offer their shares for sale and to receive in the meantime a cash premium.

Although holding shares in your portfolio is more risky than holding writing options with the same exposure, under MIFID 2 customers do not have to be informed by a letter of the fact that they hold certain shares in their portfolio but do receive letters for the writing options that are less risky.

Issues for further discussion

Avoid too much of a good thing or the 'regulation paradox'.

Overly demanding regulators and supervisors can **end up with the opposite of what they aim for**: shift of activities to non-regulated sectors, overly risk-averse banks leaving customers with unhedged risks and unfulfilled credit needs.

END OF DISCUSSION PAPER