

# POSITION PAPER



## **The 2014-2020 EU consumer programme - evaluation**

ESBG (European Savings and Retail Banking Group)

Rue Marie-Thérèse, 11 - B-1000 Brussels

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**Dear Sir/Madam,**

**Thank you for the opportunity to provide feedback for the European Commission's consultation on the European Consumer Programme for the years 2014-2020.**

**The European Savings and Retail Banking Group (ESBG) would like to share the following comments, which we hope the Commission will consider.**

As ESBG, we support the objective of the EU Consumer Programme to holistically strengthen and promote consumer protection in the European Union. The aim of the eleven individual actions resulting from the programme was, in particular, to ensure that consumers have access to accurate information, understand their rights and are protected when they buy or use goods and services in the EU. Educated consumers know their rights and are empowered to enforce them on their own.

As a banking association, we are not the direct addressee of these financially supported individual measures, but we are the addressee of the consumer protection that is incumbent on us with regard to financial services. The comprehensive ex-post evaluation of the consumer programme should, therefore also include aspects such as effectiveness, efficiency and the added value of these measures with regard to consumer-contractual relations. The strengths and weaknesses of these individual measures only become apparent at the stage of the concrete conclusion of contracts and their implementation, which overall only allow for a sustainable, targeted evaluation - taking into account the developments in consumer protection.

As a banking association, we also see the need for adjustments in order to establish a modern consumer protection fit for the digital age and matching European values. Consumer protection concepts should strike a balance between protecting the rights and interests of consumers on the one hand and promoting a competitive and innovative business environment on the other. This approach would also be aligned with the objectives sought by the programme.

However, sustainable, fair and effective consumer protection across the Single Market also requires that the legislator has a common understanding of consumers and their need for protection. This essential target vision of the legislator ("who should be protected ideally and to what extent?") is often referred to as the "consumer model". In this respect, there is a lack of a uniform view and development of such a consumer model within the EU. When assessing the consumer programme, however, such a consumer model is absolutely crucial in order to be able to evaluate the individual measures and their eligibility for funding at all. A uniform, modern consumer model is also essential for the further development of the measures.

In its judgment of 11 September 2019 in the Romano case, the Court of Justice of the European Union defines the consumer model as the "average consumer who is reasonably well-informed and reasonably observant and circumspect" (hereinafter: average consumer).<sup>1</sup> Advocate General Giovanni Pitruzzella also advocated this concept in his opinion.<sup>2</sup> This understanding of the average consumer concept must be in line with current consumer policy approaches at the European level.

We interpret this statement in particular as meaning that consumers must be able to conclude contracts in a self-determined manner instead of being inundated with information. This applies in particular to the digital sale of financial services. To this end, the following five measures, in particular, are necessary/meaningful for the establishment of a modern consumer model:

### **1. Consolidation and harmonisation of information requirements**

After the statutory information obligations have been greatly expanded in recent years, consolidation and revaluation are necessary. Due to various legal requirements that are not sufficiently coordinated with each other, consumers sometimes receive multiple and differently prepared information on the same facts ("duplicate and triple information").

### **2. Strengthen digitisation**

Consolidation and harmonisation should take greater account of the increasingly digital distribution channels. When concluding contracts, e.g. via smartphone, an obligation to display several pages of information to the consumer does not make sense.

### **3. Limitation of the mandatory information to the essential ("less is more")**

The mandatory information should be reduced to the essentials. This so-called push information should only contain information on central aspects of the legal transaction: e.g. "What does it cost?", "When can I cancel?", "Where can I find further information?" The consumer should be able to access all other information as so-called pull-information, for example, via a hyperlink to a different page. This avoids information overload and gives the consumer an overview and the opportunity to decide for himself/herself, whether the push-information provided is sufficient or whether he wants to learn more about the product or service via the pull-information.

### **4. Respect the principle of proportionality**

The scope of the statutory information obligations should reflect the significance of the respective legal transaction for the typical consumer. For example, a less strict standard should be applied to standardised everyday transactions such as payment services in comparison to real estate loans.

### **5. Enable self-determined decision-making by the consumer**

The starting point for legally required information can only be the responsible consumer, who is capable of being informed and decides for himself how profoundly he wants to be informed. It is important to strengthen confidence in the

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<sup>1</sup> ECJ, Case C-143/18 (Antonio Romano, Lidia Romano/DSL Bank), ECLI:EU:C:2019:701, para 54f.

<sup>2</sup> Opinion of the Advocate General in ECJ Case C-143/18 of 28.03.2019, para.79 et seq;

consumer that he or she chooses for him- or herself whether he or she already feels sufficiently informed or whether he or she needs even more comprehensive information.

## **6. Promote financial and digital literacy among consumers**

Financial education promotes consumers' ability to make self-determined decisions. In view of advancing digitalisation, consumers' "digital literacy" should also be strengthened.



## **About ESBG (European Savings and Retail Banking Group)**



European Savings and Retail Banking Group – aisbl  
Rue Marie-Thérèse, 11 ■ B-1000 Brussels ■ Tel: +32 2 211 11 11 ■ Fax: +32 2 211 11 99  
Info@wsbi-esbg.org ■ www.wsbi-esbg.org

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