

UNI Finance, TUAC and ITUC joint comments to FSB Consultation Document Draft of 21st September – Consumer Finance Protection with particular focus on credit

UNI Finance, TUAC and the ITUC welcome the opportunity to comment on the FSB Consultation Document Draft – “Consumer Finance Protection with particular focus on credit”. Issues of consumer finance protection are of key importance to our organisations and our respective members. We strongly believe that our organisations have an important input to contribute to the policy process as representatives of employees in the financial sector and of workers who are customers of financial institutions. As the direct providers of financial services, employees and their representatives have an invaluable inside knowledge and expertise which in combination with input from consumer groups is crucial to ensure a complete assessment of consumer protection issues. Our comments below should be taken in conjunction with the joint TUAC/ITUC/UNI contribution to the OECD public consultation on their draft high level principles (see Annex I). UNI Finance has also been highly active in the policy process of the current EU proposal for a Directive on Credit agreements relating to residential property and the comments below reflect some of that input. UNI Finance, TUAC and ITUC believe the current EU draft proposal for Credits Relating to Residential Property is a very good starting point to address issues of consumer protection in the mortgage market.

General remarks

Ensuring responsible lending is a key factor to stabilising financial markets and to guaranteeing a sustainable finance sector in future. The FSB report provides a useful stock-take of the current level of regulation and consumer protection frameworks across the FSB jurisdictions.

However we believe the key role played by finance employees in ensuring high levels of consumer protection has not been adequately addressed.

It is of utmost importance that employees in the finance sector provide customers with clear information and prudent advice on the products they are selling. Our view is that consumers need to receive accurate and trustworthy information when they set out to buy services and are looking for the best deal. This means that finance sector employees have an important role to play and will be major providers of consumer education. The use of sales targets and remuneration structures rewarding sales are counterproductive to this aim and increase the risk that products are being sold to customers who cannot afford it.

We are concerned that financial institutions aggressively marketing credit facilities to people without actively considering whether the product offered best suits the needs of the customer; without adequately assessing whether the customer understands the terms and conditions of the proposed credit, or whether they understand the consequences of borrowing, or whether they have the capacity to service the debt in a range of plausible circumstances.

Unfortunately, the inherent problem of mis-selling is not solved by defining advice standards and information provisions. The inherent problem is that the sales culture governing the practices in the companies is very unsound and in particular focused on a pressure to sell. If this culture is not

changed, regulation will not help to solve the problem. This is clear from the provisions provided for in the EU directive on Markets in Financial Instruments (2004/39/EC), which on paper look very good, but which do not solve the issue of mis-selling.

It is crucial to underline that while consumers have a right to good advice, finance employees have a right to *give* good advice.

Moreover, this issue should not be dealt with as a narrow consumer issue; rather, a broader perspective should be adopted which also addresses issues of systemic risk. As confirmed by the FSB report, quite often protection of financial consumers is not an 'explicit' policy goal; this must be reversed. Policy makers must make consumer protection a priority and implement the relevant policies to guarantee a high degree of consumer protection.

We also have an issue with the methodology of the paper. The vast majority of the country-specific examples that are referenced in the paper are drawn from common law jurisdictions (Australia, Canada, the US, the UK, and Singapore) as well as from Saudi Arabia. By contrast little is said about civil law jurisdictions, be it of French origin (France, Italy, Spain, Brazil) or German origin (China, Japan, Korea, Germany). The reader is then tempted to conclude that either (i) common law jurisdictions are superior to civil law system regarding financial consumer protection or (ii) there is a cultural bias in the paper. The final version of the paper should address this problem.

Content of the FSB Draft Report

With regards to the specific content of the report UNI Finance, TUAC and ITUC have the following comments.

2.2 Establishment of consumer protection authorities

We fully support the recommendation for the establishment of independent consumer protection authorities with a clear mandate. It is crucial that these authorities/bodies have a direct link to finance services providers and their representative trade unions. It is recommended that finance employees and their representatives have seats on any possible future platform for consumer protection bodies to exchange views. Without this input, discussions will miss a vital element of the equation – the providers of consumer service. For example in France, trade union representatives sit on the Comité Consultatif du Secteur Financier, CCSF, which is a specific body dealing with consumer issues. The CCSF has worked a lot on financial inclusion and the access to a basic payment account, financial transparency (i.e. the fee structures of banks, which could well become a subject for European harmonization). In Denmark, there is a strong dialogue between the trade unions representing finance employees and Danish Consumer Council. They have jointly lobbied the Danish Labour Ministry on proposed legislation relating to consumer finance protection and have publicly campaigned together to demand that decisions made by the Danish Financial sector Consumer Complaints authority become binding.

Product intervention

While we clearly recognise the role played by competition to ensure better options for consumers, competition should be fair and based on realistic profit margins. One of the key causes of the crisis was the emphasis placed by financial institutions on excessive profit making and competition to sell (or mis-sell) high value products to the detriment of good consumer service and ultimately putting at risk stability of financial markets. The FSB should make the link clear between excessive competition and profit making, bad customer service and financial instability.

2.3 Consumer and employee advocacy

UNI Finance, ITUC and TUAC strongly support the establishment, in many FSB jurisdictions, of formal processes to engage consumer advocacy groups in policy making. An important barrier to financial education is the lack of independent civil society organisations, free from conflicts of interest including the influence of powerful financial business groups. The FSB should make recommendations on the need for governments to actively promote consumer groups and NGOs that are independent from business interests and are adequately funded. In addition, for the many

reasons detailed previously it is crucial to ensure that trade union and employee representatives are involved in such processes dealing with consumer finance protection issues.

3.2 Relevant oversight of consumer protection

The FSB report refers to the importance of effective oversight of consumer protection. We strongly believe that effective supervision can only be carried out with the involvement of finance employees. In particular, the establishment of internal structures allowing employees to report inappropriate internal practices to an internal, independent ombudsman. These structures should provide full protection and anonymity for its employees.

The FSB report should also recommend that employees of the financial service providers and their representative trade unions should be involved with and intrinsically linked to the oversight bodies and supervisors. Employees have a special knowledge and experience about how daily practices can impact on risk. In practice, policies are not always implemented the way managers think they are, and the employees can contribute to providing a more complete picture of the company's risk profile. The contribution of employees has been legally recognised in the EU under the regulations implemented in 2010 establishing the four European Supervisory Authorities and their relevant stakeholder groups within which employee representatives have an important role to play. In France, trade union representatives sit on the ACP (Autorité de contrôle prudentiel), the French supervisor's committee on commercial practices (comité consultatif des pratiques commerciales). This committee is internal to the supervisor.

4.1 Protection from unfair selling practices

We believe the policies that various FSB jurisdictions have implemented to tackle the issue of unfair selling practices are very good examples of how to tackle this serious issue. These approaches should be recommended for application in all jurisdictions - in particular, with regard to the establishment of guidelines for market selling agents, and for training and counselling to be provided for all sales staff.

4.1 Promoting responsible lending practices

The FSB report mentions several examples in which charters and codes of conduct have been developed on an industry level to complement regulation. UNI Finance has developed and adopted a Model Charter on responsible sales¹ the objectives of which are:

1. To ensure internal business culture and operating procedures conducive to responsible sales of products.
2. To ensure staff are empowered with a high level of professional competence and have a good work environment.
3. To ensure financial products are of a high quality, suitable for the customer and are sold in a transparent manner.
4. To ensure a continuous dialogue on sales and advice issues between the company, its employees and the trade union representing them as well as other stakeholders.

A charter has already been signed with Barclays and UNI Finance and its affiliates are in continuing negotiations with other interested organizations. The charter is an important corporate governance tool to hold companies to account and enable trade unions to start a dialogue on issues surrounding responsible sales. The FSB should recommend the implementation of corporate governance tools such as the proposed charter as opposed to unilateral codes of conduct established by companies.

4.2 Disclosure of information on incentives tied to certain products

We welcome the FSB report's emphasis on 'disclosure of incentives tied to certain products', in particular information gathered concerning the rules/regulations in various jurisdictions. We strongly

¹http://www.uniglobalunion.org/Apps/iportal.nsf/pages/sec_20081016_gbhqEn?Opendocument&exURL=http://www.uniglobalunion.org/Apps/UNINews.nsf/0/65218E62307F482FC125773E002C4D56

encourage the FSB to make recommendations in favour of full disclosure and transparency surrounding incentive structures, sales targets and remuneration linked to the sale of financial products. In addition, these recommendations should state an obligation on providers to ensure that the use of targets, incentives and remuneration should at no time impede employees to act in the best interest of the customer and should be at all times realistic taking into account the economic climate. The current text of the draft EU directive on Credit agreements relating to residential property includes wording to such effect (article 3, 5, 6, 11, 17). If used, incentives, sales targets and remuneration should reward good customer service and qualified advice and should not be linked to specific products. In addition, in Australia draft legislation recently drawn up (September 2011) is suggesting the ban of conflicted remuneration (covering commissions and volume payments), a ban of 'soft dollar' benefits, the ban of asset-based fees (where there is gearing), and a definition of intra-fund advice.²

4.3 Simple products and criteria for product suitability

The draft FSB report refers in its concluding remarks to various options for improving the policy framework for consumer protection. We welcome the reference in Option 3 to the need to offer 'simple products'. The current complexity of financial products presents serious difficulties for both employees pushed to sell them and consumers trying to understand them. We strongly advocate a simplification of products. We also strongly support the proposal for criteria on product suitability, which focuses on the need for proper advice and removal of incentives, targets and remuneration linked to particular products. We would add that sales staff must be sufficiently aware and trained with regard to these criteria.

The following elements have not been addressed by the current draft FSB report. UNI Finance, the ITUC and TUAC believe these issues are of fundamental importance to achieving real consumer protection and a much more sustainable and responsible approach to lending.

Training, resources and time

In order to provide good and professional customer service, it is vital that finance employees who sell products are authorised to carry out these tasks, properly trained and have a thorough understanding of those products including their long term implications for customers. This training should be ongoing to keep up with product development. In addition, employees should be allowed sufficient time and resources to be able to provide customers with informed and professional advice. For example, Barclays has recently signed a Charter on Responsible Sales with the European Works Council representing trade unions and employee representatives from all over Europe, which states the company's guarantee that staff, will have the time to engage with their customers as well as continuing to provide financial education for staff, customers and the wider community. In Belgium, the social partners of the Banking sector have recently signed their two year collective labour agreement which includes a direct obligation on banks to support a commercial policy that aims at developing and offering financial products of high quality and transparent and which are in the best interests of the customer. This approach will be applied to all aspects of personnel management and in particular those that concern training of staff and their respective working conditions. The banks will commit to consult on this in the Workers Council with the representatives of employees, within the confines of its competencies, in order to obtain concrete results.

Advice

Giving good advice and having excellent customer service is a precondition for the sustainable and long-term success of any financial institution. The essential asset to achieve this is the employees – from the highest to the lowest level. The employees are key: they are the face of the company towards its customers; they are responsible for creating feelings of trust and satisfaction among

²<http://assistant.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2011/127.htm&pageID=003&min=brs&Year=&DocType>

customers. The FSB report notes that consumer protection is concerned with ensuring that consumers can make informed decisions. Informed decision making and consent requires three elements – educated employees, good quality information and the possibility for *professional* advice, which should be distinguished clearly from commercial advice. It is vital that the knowledge gap that currently exists between financial institutions and their customers is narrowed significantly. One of the methods of achieving this is to ensure customers receive professional advice which is governed by detailed advice standards. In addition, it is crucial that working conditions for financial sector employees facilitate a working environment that is conducive to equitable and fair treatment of consumers. Working conditions include allocating sufficient time for advice, on the job training and protection against any form of management pressure to sell products or services that are not in the consumer's interest. For example the largest German trade union Ver.di and the German saving banks association (DSGV) signed a joint declaration on investment advice in May 2010. The joint declaration contains the most important principles in six points on transparency and comprehensibility in terms of advising customers, the organisation of variable pay systems, education and continuous training from advisory and management culture.