

**Additional comments
on the
Green Paper on the Review of the Consumer Acquis**

- Degree of harmonisation and harmonisation approach -

The German banking associations that together make up the joint committee known as the Zentraler Kreditausschuss¹ submitted joint comments, a copy of which is enclosed, on the European Commission's Green Paper on the Review of the Consumer Acquis². Owing to diverging views between member associations, the committee refrained from responding to the questions raised in the green paper on the need for further harmonisation of consumer contract law and on the desired degree of harmonisation.

The Association of German Banks would like to comment on these issues separately as follows:

I. Further harmonisation of European consumer contract law is essential

The European Commission has repeatedly identified numerous obstacles and difficulties associated with doing business across borders in the internal market³. These make it apparent that consumer contract law needs to be harmonised further. It has not, as yet, been possible to establish a true European single market, especially in the area of banking and financial services⁴.

National borders continue to represent barriers both for consumers and for banks. The fragmentation that still exists in the internal market, particularly in the retail banking market, is not – as is sometimes claimed – due to the fact that consumers prefer to act “locally”. Consumers in the internet age are no longer tied to companies located in the vicinity but can in principle choose freely from all products and services on offer. The real reason, as the green paper points out, is the lack of common and reliable rules governing cross-border business. The major stumbling-block to offering services across borders is the difference in civil law regimes across member states and the associated lack of legal certainty. What is

¹ Bundesverband der deutschen Volksbanken und Raiffeisenbanken e. V. for the co-operative banks, Bundesverband deutscher Banken e. V. for the private commercial banks, Bundesverband Öffentlicher Banken Deutschlands e. V. for the public-sector banks, Deutscher Sparkassen- und Giroverband e. V. for the savings banks' group and Verband deutscher Pfandbriefbanken e. V. for the Pfandbrief banks.

² COM (2006) 744 final.

³ See, for example, the European Commission's Communication “A more coherent European contract law – An action plan”, COM (2003) 68 final.

⁴ See the European Commission's Green Paper on retail financial services in the single market, COM (2007) 226 final, p. 5.

more, the minimum harmonisation approach pursued thus far – especially in directives dealing with consumer and investor protection – has not proved successful. National implementing legislation differs too widely to enable consumers and suppliers in the internal market to benefit.

The Commission's objective of revising the consumer acquis with a view to creating a true internal market is therefore to be warmly welcomed. In a European market which is becoming increasingly integrated with more and more cross-border banking and financial services, it is essential in the interests of consumers and banks to eliminate existing obstacles to cross-border business and establish **pan-European solutions**. There can be no scope for national interpretation. This should be achieved by means of successive full harmonisation of those aspects of law that have a particular bearing on doing business across borders – the concept of targeted harmonisation (see also our comments in section II.).

But the creation of common, pan-European consumer contract rules must not be confused with restrictions on diversity and flexibility in product design. Instead, it should be made possible for companies to offer the same product in various member states without having to satisfy a different set of customer information requirements in each of the 27 member states.

II. Degree of harmonisation (question A3)

Germany's private banks advocate selecting **option 2** in question A3 in Annex I of the green paper. This option envisages that full harmonisation will be the starting point for revised legislation, complemented by a mutual recognition clause for issues that are not fully harmonised. The correct approach should be to **successively harmonise** aspects of the law that have a particular bearing on doing business across borders (**concept of targeted harmonisation**). The country of origin principle or mutual recognition can be applied on a case-by-case basis to all remaining areas. It is crucial, however, for the Commission to ensure that harmonising provisions cannot be misused to wall off national markets.


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Enclosure