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21 March 2016

Capital Markets Union : AMF's response to the European Commission's Green Paper on retail financial services

Within the framework of its Capital Markets Union action plan, the European Commission published a Green Paper on retail financial services in December 2015. This public consultation aims at helping the European Commission to better open up the European market for retail financial services, improving the benefits of citizens and firms, while maintaining an adequate level of consumer and investor protection. The AMF continues to support actively the Capital Markets Union by responding to this consultation

This Green Paper includes 33 questions relating to financial products and services that fall within the remit of the AMF, but also a broader scope concerning banking products and insurance. The AMF answer contains four main subjects: the UCITS product passport, consumer and saver protection, digitalization and the rationalisation and accessibility of information relating to commercial conditions in a given country for cross-border providers.

Example of the success of the UCITS product passport in the opening up of the European market for retail financial services

European Union law has already proved highly successful with regard to the cross-border supply of financial products, with a positive effect in terms of choice and price. The established Community mechanism (UCITS product passport), which enables marketing of

UCITS throughout the European Union by means of a simple notification procedure, is a remarkable example in this regard.

The success of this UCITS regime is attributable notably to the simplified procedure that professionals can benefit from to develop their cross-border activity while complying with harmonised rules within the Union. Its success is also clearly due to taking appropriate account of the specific protection requirements for retail investors. Thus, the UCITS Directive make it possible for the authority in the host country, where the fund is marketed, to control the information provided for the marketing of the fund in its territory.

Supervision of marketing documents by the host country authority is essential to take into account the local characteristics of retail investors, for which only the national regulator is able to fully understand the issues and needs. Moreover, taking into account the issues and needs of retail investors properly also supposes enabling the host country authority to supervise the way in which these activities are developed by foreign players not settled in the countries where they are operating. When this is not the case, the cross-border supply might endanger the proper protection of retail investors affect the conditions for healthy competition within the same State by subjecting players active in the same territory to different constraints in terms of marketing.

Major consumer protection issues with the opening up of the European market

The success of the European UCITS passport is the result of several factors: harmonised products, based on uniform financial instruments (equities, bonds, etc.) throughout the European Union and largely promoted to and well known to savers. At this stage, these conditions are not at all in place for this success to be reproduced on all savings products. First, the language barrier, closed product distribution systems and national bias are the main obstacles to the promotion of financial services throughout the European Union. Moreover, consumers reason in terms of net returns when choosing their financial products, and this situation implies perfect knowledge by all professionals of the local taxation rules applied to each of their products, and to rival products.

The European market is also still criss-crossed by major cultural differences: the level of financial literacy varies widely among Member States, saving tendencies are also very diverse among European countries reflecting diverse behaviour of individual savers and the perception of advertising or information documentation differs among Member States. So the advertising or information documentation must be adapted to local populations so that it can play its role to the full: inform, explain, and warn.

Finally, differences in rights must be taken into account prior to considering any systematic marketing throughout the European Union. Broadening the product offer will lead to a decrease in its clarity, cross-border selling of these wrappers thus requires – to avoid potentially catastrophic massive mis-selling – specific and strengthened advice to the client, and reinforced supervision by local authorities to ensure these products are appropriate for consumers given the local market conditions. In this regard, some cross-border selling of complex products have created major problems of mis-selling and confidence in recent years.

Digital: excellent opportunities, new forms of risk and the need for a protective and evolutionary regulatory Framework

Savings management is undergoing its digital transition, as for other financial sectors. It would seem that the entire investment product universe (insurance, structured products and funds), not just the already broad investment fund segment, is calling into question its distribution models. Expansion of the Internet has reduced distribution costs considerably (it costs less to make information available in the local language, there is no longer any need to have a physical presence on each market...).

Moreover, new technologies potentially facilitate better interactivity between the professionals and savers. They enable the former to systematise their questionnaires prior to providing any advisory service. These digitalised questionnaires are standardised, ensuring the same level of quality (minimal), and can be controlled more easily. Digitalisation facilitates thus traceability and storage of information gathered via online questionnaires.

However, the questionnaires remain declarative, and the client's answers cannot be challenged online unlike in face-to-face interviews. Similarly, as we noted during our recent mystery visits on-line, some sites may not provide any secure-response mechanisms, and even encourage clients to change their answers in order to get access to higher-risk products, which do not correspond to their original profile.

Besides, facility of access does not, however, imply simplicity regarding the products being offered. The risks of a poor match between the product and the investor's need are increased automatically. Analysis of the product and its fundamental characteristics (performance/risk/liquidity) remain an essential part of the purchase. Is digital selling without providing advice appropriate for all products, and for all consumers? Digital (remote) relations are better adapted to the distribution of simple, comparable and reliable (safe) products geared to a population that is relatively autonomous in the management of its investments (having the necessary knowledge and experience). Finally, the digital transition should not exclude non "connected" consumers, especially the elderly.

A clear and predictable regulatory framework applicable is necessary for financial service providers

The opening up of the European market for retail financial services creates numerous opportunities for firms, financial services providers, and non-professional investors. These opportunities harbour issues of how best to protect savers which may justify certain regulatory measures in order to best respond to these issues. In return, it is necessary to consider the means that allow professionals to benefit fully from these opportunities in a regulatory framework that protect retail investors.

In this regard, achieving a balance that would reconcile the opening up of the European retail financial services market with the protection required for retail investors relies on a clear and predictable regulatory framework applicable to this market. The specific requirements for the supply of retail services have to be clearly provided, accessible and target all the players involved with retail investors in a given country. Hence, one could envisage an obligation for European regulators to create a section on their web site dedicated to foreign providers and which would provide explanations about the specific marketing regulations in the country in question.

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services

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