

Joint ESAs Consumer Protection Day

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Prague, 23/06/2017

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## Introductory statement by Andrea Enria, Chairperson of the EBA

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Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort

Ladies and Gentlemen,

It is a great pleasure for me to open the fifth edition of the Joint ESAs Consumer Protection Day and welcome you all here in Prague.

The European Supervisory Authorities (ESAs) organised their first Joint Consumer Protection Day five years ago in Paris. Each ESA had previously organised similar events, but we quickly recognised the benefits of developing this dialogue on consumer protection issues together, under the umbrella of the Joint Committee. Since the very beginning, the main objective of this event has been to listen to and engage with key stakeholders, especially with representatives of consumers. I believe we managed to make the event more and more interactive, a true opportunity for an open and transparent dialogue. The input we received in past Consumer Protection Days is visible in the work that we have subsequently conducted, showing that this event has a real effect in shaping the policies of the ESAs. It has proven very useful to us, and the wide participation today shows, I think, that it is seen as useful also by our key stakeholders.

### Focus on the CESEE region

This is also the first time that the Consumer Protection Day is not hosted in Paris, Frankfurt or London, the venues where the three ESAs are located – for the EBA, I should add “for the moment being...”. The decision to have the event in Prague was triggered mainly by a letter we received from European association representing consumers and final users of financial services – BEUC.

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The suggestion to move the discussion to Central, Eastern or Southern Eastern European (CESEE) Countries was motivated by the perception that there are specific consumer protection issues in the region that deserve greater attention and action from public authorities. It was a very welcome advice, which we gladly followed. So, thanks to Monique Goyens for the idea of moving out of our usual courtyard.

Since the first wave of accession to the EU in 2004, CESEE Member States have experienced rapid changes in the functioning of financial markets, including a very disruptive financial crisis whose legacy we are still struggling to overcome. The benefits of the Single Market in terms of financial integration, competition and efficiency have been visible here more than in other parts of the EU, but have also provided channels for spillovers during the crisis, ring-fencing measures, and greater need for supervisory cooperation. Also, in the region there are specific issues that consumers and investors in financial services have experienced in their daily lives. Important cases of consumer detriment emerged, for instance, on the widespread provision of loans denominated in foreign currencies. Retail mortgage borrowers complained about the lack of protections when they have difficulties in meeting their obligations. Lack of access to basic payments accounts has also been a source of complaints. The issue of unsuitable investment advice has been widely reported. In these and other areas, EU legislation and work conducted by the ESAs have significantly strengthened the regulatory framework. But new issues have emerged, which may require further regulatory action. Moreover, having a strong regulatory framework is a necessary but by no means sufficient condition to address effectively consumers' issues: you also need strong enforcement action and measurable progress for final consumers. Sometimes, national authorities struggle with lack of resources, weak powers, insufficient intervention tools and low sanctions. Local consumers' organisations often have insufficient resources and low recognition as legitimate stakeholders in domestic debates on financial reforms.

Against this background, I am delighted that several speakers from Central and Eastern European Member States have accepted the invitation to take part in our discussions today, in a dedicated panel.

## A Single Market working for consumers

The ESAs have been created to support a better functioning of the Single Market in financial services, in particular via a more unified regulatory framework – the Single Rulebook – and greater convergence in supervisory practices. I am very proud of the work we have done. We have to acknowledge, though, that the benefits of the Single Market are not always clearly perceived by consumers. It might simply be an issue of time: our products have been finalised only recently and have not yet deployed their effects in such a visible way to determine a clear improvement in the availability, quality and conditions of financial services for retail users. Or it could be that there are bottlenecks in the application of European rules and supervisory practices to concrete cases. Or, maybe, the task is so challenging that we need much more work before

significant progress is achieved. Probably, all these three explanations are true – although my impression is that we need to focus more and more on the enforcement aspects.

It is a fact that the ESAs have delivered important products in the area of consumer protection. We have fulfilled important and difficult mandates, for instance in the development of the Key Information Document (KID) under the PRIIPs Regulation. But we have also initiated joint, own initiative work in a number of areas. For instance, we set common requirements for the handling of complaints by financial institutions, irrespective of where in the EU the provider is located, where the consumer resides, or the type of financial product. In light of widespread episodes of mis-selling, the ESAs have developed common principles on product oversight and governance, requiring both manufacturers and distributors of financial products to correctly identify the target market, to take into consideration the consumers' needs and interests in the development of product characteristics and distribution channels. To highlight the importance we attach to product oversight and governance, we have today a dedicated panel on this topic. We also looked at cross-selling practices, and worked very hard to develop common Guidelines across the three sectors, although our success in this area was eventually confined to securities products due to a poorly defined legal basis in Level 1 Directives and Regulations for banking and insurance. The list would be much longer if we include also the own initiative guidelines with a consumer protection focus issued by each ESA in its own sector.

Let me take a short detour here. In the discussion opened by the Commission's consultation on the future of the ESAs, proposals have been floated to constrain, or even eliminate, the possibility to issue own initiative Guidelines. If this were to be the case, we might find ourselves in the rather uncomfortable position of identifying major differences in national application of the rules, with varying degrees of effectiveness, for instance, in protecting consumers, and we would not be allowed to develop convergent supervisory practices aligned on the best approaches. I understand that these misguided proposals rest on the belief that in the absence of an intervention of the ESAs, the regulatory burden for financial firms would be lower. On the basis of experience, I am rather led to conclude that the opposite is likely to happen: if the ESAs are not allowed to promote common European approaches, diverse national approaches will flourish; some will be lighter, some will be heavier, but surely for those firms that operate across borders the compliance process will become more segmented and burdensome.

## Looking ahead

The ESAs' Consumer Protection Day is always an opportunity to discuss future challenges and policy priorities. The increasing use of modern technologies and digitalisation has the potential also in light of the amounts invested in new technologies and the blend of new entrants – dedicated start-ups and well-established and trusted technology companies – to transform the financial system across a broad range of services. And this is a good thing, as it would help improving efficiency and customer satisfaction in a financial industry still struggling to rebuild its reputation after the financial crisis. It would be disgraceful if the regulatory and supervisory lever

were to be used to protect incumbents and prevent greater competition in the Single Market. But there are also risks, including those of consumer detriment, which have to be carefully assessed.

The ESAs' founding Regulations have been very long-sighted in including a specific mandate to monitor financial innovation from the angle of consumer protection. Individually as well as jointly, the ESAs have been devoting increasing attention to phenomena such as FinTech, InsurTech, crowdfunding, the use of distributed ledger technologies, artificial intelligence and machine learning. Let me elaborate on a recent example: robo-advice, i.e. the various ways in which the human interaction in the relationship between consumers and financial institutions is being replaced by automated tools, such as algorithms, at the end of which the consumer receives, or perceives to receive, advice or advice-like recommendations. We aimed at a balance and fact-based assessment of this innovation, focusing first on the potential benefits, such as reduced costs; wider access to advice; better quality of service; additional revenue opportunities. But we also identified the risks arising from automation, such as flaws in algorithms; unclear allocation of liabilities; and the limited ability of consumer to understand or process information. Furthermore, we analysed applicable EU legislation and sketched future developments in this area.

As a reflection of our work on technological and financial innovation, all the three ESAs have recently responded to the consultation launched by the European Commission on FinTech. Our second panel today will deal with consumer protection and supervision in a digital world. I really look forward to that discussion.

But while we increasingly focus on new technologies, we need to continue working on traditional consumer issues, such as potential conflict of interests and mis-selling of financial products. Three years ago, when we hosted the Consumer Protection Day in London, I announced a joint reminder on the need that banks, under supervisory pressure, strengthen their capital position and comply with the new regulatory requirements on loss absorbing capacity, carefully respecting the MiFID provisions, providing adequate information and making sure that any placement to retail customers occurred in full awareness of the risks of these instruments. We focused, in particular, on the practice of banks to sell own liabilities to their own retail customers – the so-called self-placements. Three years afterwards, we are still concerned that a significant amount of capital and other loss absorbing instruments have been distributed to retail customers, who do not seem sufficiently informed about the risks that these products carry in the new regulatory environment. While we are confident that competent authorities monitor these practices, we are working further to better understand the scale of the problem and identify possible remedial actions.

Now let me close my introductory remarks and move to a listening mode, as I do believe that the greatest value added for the ESAs in this event is to listen to our stakeholders and get good input for our current and future work.

Thank you very much for your attention.