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RESPONSE TO “CONSULTATION DOCUMENT: REVIEW OF DIRECTIVE 94/19/EC ON DEPOSIT-GUARANTEE SCHEMES (DGS)” PUBLISHED BY THE INTERNAL MARKET AND SERVICES DIRECTORATE-GENERAL OF THE EUROPEAN COMMISSION

The Advertising Association is the only body representing all sides of the advertising and promotional marketing industries, worth £18.6 billion in 2008. Its membership represents advertisers, agencies, media and support services in the UK. Further information about the organisation is available at: <http://www.adassoc.org.uk/>

1. Introduction & Summary

1.1. The Advertising Association responds here to “Consultation Document: Review of Directive 94/19/EC on Deposit-Guarantee Schemes (DGS)” published by the Internal Market and Services Directorate-General (DG MARKT) of the European Commission. Publication of this consultation follows amendments made to Directive 94/19/EC “on deposit-guarantee schemes” by Directive 2009/14/EC¹. The principal effect of Directive 94/19/EC has been to ensure that Member States of the European Union (EU) have in place a safety net for depositors to cover those circumstances where deposit-taking institutions find themselves unable to return assets to their customers². The key effect of Directive 2009/14/EC is to fix at a higher level the compensation that must be offered to depositors under relevant DGSs. Directive 2009/14/EC also amends Directive 94/19/EC, such that the European Commission is required to submit a report to the European Parliament and the Council by 31 December 2009 aimed at identifying deficiencies in the operation of the 1994 Directive and propose legislative measures, if necessary, to address any shortcomings. Whilst Directive 2009/14/EC is silent on the subject of advertisements, DG MARKT, nevertheless, poses two questions (8 and 24) on advertising-related issues.

1.2. In this response, the Advertising Association:

- (a) argues that restrictions should not be placed on advertisements that refer to mutual guarantee schemes (MGSs) or voluntary deposit-guarantee schemes (VDGSs), with reliance instead being placed upon the Unfair Commercial Practices Directive (UCPD)³ to ensure that any advertising claims made about the “unlimited” nature of the protection available to depositors are suitably explained; and,
- (b) asserts that the imposition of mandatory references to information about DGSs in advertisements will be of no value to consumers – a finding contained in research cited twice by DG MARKT in its own consultation document - whilst imposing a significant and unnecessary burden on media owners.

¹ Directive 2009/19/EC “amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay” was adopted on 11 March 2009.

² The DGS system operating in the United Kingdom is the Financial Services Compensation Scheme under which – currently - the first £50,000 of depositors’ funds placed with each individual deposit-taking institution authorised by the Financial Services Authority is protected.

³ Directive 2005/29/EC “concerning unfair business-to-consumer commercial practices in the internal market”

1.4. The Advertising Association looks forward to publication by DG MARKT of a summary of the responses it receives to this consultation exercise in due course. No part of this response should be treated as if it were confidential in nature.

2. Responses to Questions 8 & 24

Question 8: Should mutual guarantee schemes and voluntary schemes be integrated into the Directive so that the same rules would apply as for 'classical' DGS? If so, how? Should there be restrictions on advertising for these schemes? Please provide reasons.

2.1. DG MARKT briefly considers the status of MGSs and VDGSs in introducing Question 8⁴. MGSs are currently explicitly exempted, where they fulfil certain criteria, from the requirements of Directive 94/19/EC, whilst the European legislation is silent in respect of VDGSs. DG MARKT describes the protection offered by MGSs as a form of "unlimited protection", whilst it describes VDGSs as offering "quasi unlimited protection"⁵. In using the word "quasi" to describe the nature of the "unlimited protection" offered by VDGSs, DG MARKT implies advertisements making references to such voluntary schemes in these terms may be misleading.

2.2. The case for whether or not MGSs and VDGSs should be integrated into the scope of Directive 94/19/EC, such that the same legislative framework would apply to guarantee schemes of whatever construction, and, if a decision were taken to incorporate them, how this should be achieved, is for other more directly affected organisations to make.

2.3. In respect of whether or not there should be restrictions placed on advertisements referring to MGSs or VDGSs, the Advertising Association is qualified to comment and would counsel against such a move.

2.4. It is notable that DG MARKT itself fails to set out at all clearly either why consideration should be given to applying restrictions to advertisements that refer to MGSs or VDGSs or what form the Directorate-General would envisage any constraints taking. In this context, it has been attempted in paragraph 2.5 to understand what the concerns of DG MARKT are in this field and the type of restrictions the Directorate-General might envisage imposing.

2.5. Since the end of June 2009, the minimum level of protection afforded by 'classical' DGSs to depositors has been €50,000, with no upper limit imposed. The likelihood is, however, that from the end of December 2010 the level of protection will be fixed at €100,000 for 'classical' DGSs: thus the compensation available may neither fall short of nor exceed that amount. If this happens, it will leave MGSs and VDGSs as the only types of scheme not subject to such a cap. Participants in MGSs or VDGSs could therefore emphasise in their advertisements that the protection they offer depositors exceeds €100,000 (and is therefore more generous than that available under 'classical' DGSs) or indeed assert that the compensation available is "unlimited" as some advertisers do already claim, according to DG MARKT. The Advertising Association assumes that DG MARKT considers this would risk rendering participants in 'classical' DGSs less able to compete with the claims made in advertising by members of MGSs or VDGSs, which could result in what the Directorate-General describes as "competitive distortions"⁶ being created. From this it is

⁴ The liquidity and solvency of institutions participating in MGSs is protected by those other members of such schemes stepping in to support or reorganise, as necessary, the entities which risk failing. MGSs aim at avoiding the failure of those banks in membership "at all costs", thereby offering a form of "unlimited" protection, without the need for an upper compensation limit to be fixed. (MGSs can be found operating in Germany and Austria.)

⁵ DG MARKT, Consultation Document, Section 3.1.5 (May 2009)

⁶ DG MARKT, Consultation Document, Section 3.1.5 (May 2009)

possible to surmise that a restriction DG MARKT might be considering imposing is one which prevented participants in MGSs or VDGSs from claiming in their advertisements that the compensation available to depositors exceeded that offered by advertisers participating in 'classical' DGSs. It is worth recalling, however, that the potential for "competitive distortions" occurring has, however, largely been created by the proposal in Directive 2009/14/EC to fix the amount of relevant compensation at €100,000, rather than by participants in MGSs or VDGSs changing their practices. The Advertising Association does comment, however, about the use of participants in MGSs and VDGSs of phrases such as "unlimited protection" (see paragraphs 2.6 to 2.8).

2.6. With regards to VDGSs, DG MARKT has implied (see paragraph 2.1) that were a participant in such a voluntary scheme to claim in their advertising that the protection offered to prospective depositors was "unlimited" in nature then this would by definition be misleading. If such a claim were misleading *per se*, as DG MARKT implies, then the advertiser would surely risk falling foul of the provisions contained within the UCPD.

2.7. With regards to MGSs, DG MARKT does not imply that the claims made by participants in mutual guarantee schemes to offer depositors "unlimited protection" are necessarily misleading. Nevertheless, the Advertising Association considers that use of the word "unlimited" in an advertisement, without explanation or qualification, would still be problematic given the provisions contained within the UCPD on misleading omissions.

2.8. To conclude, if the compensation limit for 'classical' DGSs is fixed and / or MGSs and VDGSs remain outside the scope of Directive 94/19/EC, it would be preferable for Member States to make use of the existing tools available to them to prevent depositors from being misled by "unlimited protection" claims, rather than see new restrictions imposed. Furthermore, it might be anticipated that with certain forms of advertising the additional media space that would need to be purchased to explain or qualify the phrase "unlimited protection" and the overall effect of this on the communication might deter such claims being made in the first place, thereby largely addressing the problem that DG MARKT perceives⁷.

When and how should depositors be informed?

The following options could be considered:

- (a) Retain current approach (details left to the discretion of Member States)
- (b) Mandatory reference to information on DGS in advertisements
- (c) Mandatory reference to information on DGS on account statements
- (d) Require depositors to countersign information on DGS before entering into a contractual relationship and to receive a copy.

Question 24: Which solution(s) would you prefer? Please provide reasons. Would you prefer another option? Please describe.

2.9. Under Directive 94/19/EC, depositors must be provided with information about DGSs, but it is left to the discretion of Member States to determine the means by which such data is disclosed. DG MARKT, however, expresses concern at the lack of certainty it detects on the part of depositors as to the extent to which their assets would be protected in other Member States. The result of this is that consumers within the EU may not be selecting financial products on a sufficiently informed basis and thus find themselves unable to exploit all the options that may be available to them within the Internal Market. DG MARKT considers that in order to address this perceived information gap consideration should be given to proposals that would provide depositors with additional data about the range of products

⁷ It is notable in this context that the two advertisements by German banks that make "unlimited protection" claims, cited by DG MARKT, appear on their own websites rather than in paid-for space.

covered by DGSs and the amount of compensation offered by deposit-taking institutions in different Member States.

2.10. It is noteworthy that the Financial Services Authority (FSA) recently consulted on its proposals for raising consumer awareness of the Financial Services Compensation Scheme (FSCS) – the ‘classical’ DGS which operates in the UK. In its response to that consultation the Advertising Association endorsed the decision by the FSA to fund an advertising campaign aimed at raising consumer awareness of the FSCS. The Advertising Association also took the opportunity to applaud the decision of the FSA not to propose amending its rules so as to require the incorporation of additional information – in the form of references to the FSCS - in financial promotions for relevant products, although deposit-taking institutions would remain free so to do. (This decision appeared to take on board the principled opposition previously expressed by the Advertising Association to the FSA about information requirements being mandated in advertisements, given its questionable value.) By extension, the Advertising Association would therefore support the continuation of the *status quo* under Directive 94/19/EC whereby certain safeguards must be observed if references to DGSs are made in advertisements, but without any positive requirement being placed on financial services advertisers to refer to such schemes. Generating awareness of ‘classical’ DGSs along the lines the FSA proposes in respect of the FSCS would be of far greater value and DG MARKT should encourage other Member States to contemplate such an approach.

2.11. The Advertising Association would counsel against DG MARKT proposing any amendments to Directive 94/19/EC that would require deposit-taking institutions to incorporate references to DGSs within their advertisements. Although the over-arching objective of supplying additional information to prospective customers prior to them placing their assets with deposit-taking institutions is sound, all the available evidence points to the fact that the incorporation of such mandatory references in as early a pre-contractual stage as advertising is of no value to consumers. In the consumer research that the FSA commissioned to inform its FSCS consultation, the Authority found that consumers do not appreciate advertising that tries to tell them everything at once, as this can have a tendency to overwhelm them⁸. DG MARKT is aware of this FSA research as the Directorate-General cites the study twice in its consultation, although not in the context of consumer awareness. The above finding appears to bear out earlier research into the utility, or otherwise, of incorporating mandatory information into advertisements. (Appended to this response is a list of other research that serves to question the value of such interventions.) Whilst offering no consumer benefit, such an intervention would impose a significant burden on media owners. Indeed the Information Society Directorate-General is so concerned about this type of intervention that it is currently in the process of commissioning research in this field.

2.12. In respect of whether or not there would be value in references to DGSs being made in account statements and the like, it is recommended that DG MARKT reviews the findings of the FSA research in this area. Unlike mandating references in advertising, the research points to there being value in such information being incorporated in account statements. The Advertising Association also considers that there would be value in placing some responsibility on consumers at a pre-contractual stage by requiring them to countersign and retain for their records information on the relevant DGS before they can open an account with a deposit-taking institution. The most appropriate and effective location for the provision of detailed or technical information to consumers about products, including those of a financial nature, is undoubtedly at the point-of-purchase, rather than in advertising.

27 July 2009

⁸ UK FSA, *Consumer awareness of the Financial Services Compensation Scheme*, p.48: <http://www.fsa.gov.uk/pubs/consumer-research/crpr75.pdf>

APPENDIX

Review of evidence regarding the utility or otherwise of mandatory information requirements in advertising (referred to in paragraph 2.11)

The public's perception of advertising in today's society – report on the findings from a research study

Conducted by: The Thinking Shop

Commissioned by: The Advertising Standards Authority

Published: February 2002

Relevant finding: Consumers tend to regard the inclusion of mandatory statements in advertisements as there to protect the advertiser rather than being of benefit to themselves.

Download from:

http://www.asa.org.uk/NR/rdonlyres/A351FFA3-22D2-4A03-942E-F653A700B6EC/0/ASA_Public_Perception_of_Advertising_Feb_2002.pdf

Radio Commercials and Wealth Warnings

Conducted by: Navigator

Commissioned by: Radio Advertising Bureau

Published: February 2004

Relevant finding: Consumers use advertising to make them aware of the different products available rather than as a useful way to find out detailed information about them. Supplier literature is regarded as the most appropriate means for delivering such information. There is cynicism amongst consumers about the role and usefulness of warnings in advertising and recognition that radio would be most detrimentally affected by their inclusion.

Download from:

[n/a – Available from the RadioCentre](#)

Effects of advertising in respect of compensation claims for personal injury

Conducted by: Millward Brown

Commissioned by: Department for Constitutional Affairs

Published: March 2006

Relevant finding: Relying strongly on either text onscreen or a voiceover to convey a message can prove ineffective (unless the voiceover or text is clearly reinforcing the visuals appearing on screen at the time).

Download from:

<http://www.cap.org.uk/NR/rdonlyres/DC59B829-D6DC-4585-81C7-8A6D7BC5494F/0/ClaimsadvertisingreportFINAL080506.pdf>

Consumer Purchasing Outcomes Survey

Conducted by: BMRB and The Henley Centre

Commissioned by: Financial Services Authority

Published: September 2006

Relevant finding: Advertisements were not deemed to be a useful source of detailed information for house-buyers in their decision-making processes for purchasing mortgage products, despite the data they are required by the regulator to incorporate. (Information provided by financial advisers was considered to be the most useful source of data upon which decisions were made, followed by leaflets and brochures supplied by the financial services companies offering the products.) This finding would appear to underline the fact that advertising by its very nature is aimed at raising awareness of products, rather than acting as a source of detailed information that consumers utilise when making purchasing decisions.

Download from: http://www.fsa.gov.uk/pubs/other/mortgage_review_outcomes.pdf

Licensing Conditions and Codes of Practice Focus Group Research

Conducted by: Corr Willbourn Research & Development, November 2006

Commissioned by: Gambling Commission

Published: November 2006

Relevant finding: Consumers tend to regard the inclusion of mandatory statements in advertisements as there to protect the advertiser rather than being of benefit to themselves.

Download from:

<http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/Focus%20group%20results.pdf>

Although not advertising-specific, the following report may also be of interest:

Warning: Too much information can harm

Conducted and commissioned by: Department for Business, Enterprise & Regulatory Reform and National Consumer Council

Published: November 2007

Relevant finding: Many pieces of information were simply not having the impact on consumer behaviour they set out to achieve, whilst placing an undue administrative burden on businesses to ensure compliance.

Download from:

http://www.ncc.org.uk/nccpdf/poldocs/BRE-NCC_warning_too_much_information.pdf