EUROPEAN
COMMISSION

Brussels, 10.12.2015
COM(2015) 630 final

GREEN PAPER

on retail financial services

Better products, more choice, and greater opportunities for consumers and businesses

EN EN

Green paper on retail financial services

Better products, more choice, and greater opportunities for consumers and businesses

Section 1 Creating a true European market for retail financial services

The European Union's Single Market and its four freedoms[1] offer great opportunities for the EU's citizens. In areas where the Single Market is well developed, as in air travel, 500 million consumers benefit from the breadth of competition, giving all of us greater choice, better services and lower prices. One of the priorities of President Juncker's Commission is the achievement of a deeper and fairer Single Market.

Retail finance provides a number of services that are essential for citizens: where we keep our money, how we save for our old age, how we pay for a house or other purchases, how we insure ourselves or our property against health problems or accidents. Developing effective Europe-wide markets for these services will improve choice for consumers, allow successful providers to offer their services throughout the EU, and support new entrants and innovation. But Europe-wide markets in retail financial services do not really exist at present. Only a small minority of retail financial service purchases take place across borders. There are many good products which exist in domestic markets, but it is difficult for consumers in one EU Member State to buy products provided in another. This does not just limit choice. Evidence shows that prices vary widely across the EU: for example, motor insurance for the same customer can be twice as expensive in some Member States than in others.

Digitalisation – the development of new business models and services through technology – makes information easily available to potential consumers. As a result, physical location of the parties to a transaction has become less important. Digitalisation can help bring down prices and improve the comparability of products, empowering consumers in their financial choices. In the long run, digitalisation should allow firms to make their products available anywhere in the Union, bringing a single European market closer to reality.

Building confidence and trust will be crucial to the expansion of the Single Market in this area: confidence among companies that they can do business across borders and trust among consumers that if they use a service across borders their interests will be protected. To achieve these objectives, services and products must be comprehensible: in other words, information on their function, their price and how they compare to other products should be available in a way that consumers can understand.

Building on previous EU action in this area, this Green Paper explores what can be done to help the Single Market in financial services deliver concrete improvements to people's lives in the EU. An improved market in retail financial services would also create new market opportunities for suppliers, supporting growth in the European economy and creating jobs.

[1] The Treaty on the Functioning of the EU (TFEU) guarantees free movement of goods, capital, services, and people within the EU.

1.1 Objective

This Green Paper is an opportunity to comment on how the European market for retail financial services – namely insurance, loans, payments, current and savings accounts and other retail investments – can be further opened up, bringing better results for consumers and firms, whilst maintaining an adequate level of consumer and investor protection. It seeks to identify the specific barriers that consumers and firms face in making full use of the Single Market and ways in which those barriers could be overcome, including by making best use of new technology, subject to appropriate safeguards. The goal is to make it easier:

- For companies based in one EU Member State to offer retail financial services in other EU Member States;
- For consumers to be able to buy retail financial services offered in other EU Member States; and
- For citizens to take their financial service products with them if they move from one Member State to another, whether to study, work or retire – so-called "portability".

The Green Paper aims to stimulate debate at EU and national levels. It is an invitation for the European Parliament and the Council, other EU institutions, national Parliaments and all those interested to come forward with suggestions on the possible short and longer term policy actions that might be needed to achieve a well-functioning and competitive European market in this area. It therefore explores:

(1) the current state of the Single Market for retail financial services, and the recent trend of digitalisation (Section 2); and

(2) the need for action at the EU or national level to overcome the barriers which currently stop consumers and firms from going cross-border (Section 3).

1.2 Previous EU action in the area of retail financial services

Consumer trust in the financial sector and in retail financial services has diminished owing to the financial crisis and the reputational damage suffered by the financial industry. To restore consumer trust, and to help expand the Single Market, the EU has recently taken a number of legislative measures in the area of retail financial services. Some of these initiatives are still being implemented nationally. They are discussed further in this Green Paper, but include:

- empowering consumers to make informed choices through increased transparency requirements, and better advice in some areas, before the sale of certain financial products such as payment accounts, consumer and mortgage credit, investment products and insurance;
- encouraging the development of competitive markets in payment accounts by providing an EU-wide right of access to basic payment accounts, prohibiting discrimination on the basis of residence for payment accounts and ensuring access to payment account switching services at national level;
- improving consumer protection rules for investments, mortgage credit and insurance to give consumers confidence in shopping in their domestic markets and cross-border;
- facilitating cross-border distribution of insurance and mortgage credit to improve competition.

Retail financial services are also subject to a wide variety of requirements and regulations at the EU and national levels with the aim of protecting consumers and encouraging an internal EU market for these services. These include cross-sectoral requirements, such as those relating to unfair terms in consumer contracts and to unfair business-to-consumer commercial practices,[2] and sector-specific legislation on many financial products and payments services. The Commission is closely monitoring the implementation and enforcement of existing legislation by Member States and continues to promote cooperation between national competent authorities to ensure that it is effective across the EU.[3] The work of the European Supervisory Authorities (ESAs) is also relevant in this context.[4] Alongside this work, the Commission has regularly reviewed the regulatory framework for the retail financial services sector with the aim of creating more integrated, competitive and fair markets for financial services.[5]

1.3 How this Green Paper fits with the Commission's overall priorities

This consultation complements other key pieces of Commission work:

- *The Digital Single Market (DSM).* The DSM Strategy[6] intends to ensure, among other points, better access for consumers and businesses to online goods and services across Europe by tackling the problem of unjustified 'geo-blocking' (supplier-imposed restrictions on purchases). It also addresses the issue of the "level-playing field" between various service providers and envisages a comprehensive assessment of online platforms, with a particular focus on handling of data. Moreover, the DSM Strategy aims to improve technological interoperability through supporting standardisation, These are all relevant to the digitalisation of the financial sector, though not specific to it.
- *The Capital Markets Union (CMU).* By building a stronger single market for capital, the objective of the CMU[7] is to offer businesses more choices of funding at different

[2] See, for instance, the Unfair Contract Terms Directive (UCTD), Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29); Unfair Commercial Practices Directive (UCPD), Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 22).
[3] Notable tools include the Consumer Protection Cooperation Network established as part of the Regulation on consumer protection cooperation – Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ L 364, 9.12.2004, p. 1).
[4] The three ESAs are the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and European Insurance and Occupational Pensions Authority (EIOPA)
[5] For instance, the Commission's Financial Services Action Plan (1999); Communication from the Commission: Sector Inquiry under Art 17 of Regulation 1/2003 on retail banking (COM(2007)33 final); Green Paper 'Retail Financial Services in the Single Market' (COM/2007/0226 final); and Green Paper 'Towards an integrated European market for card, internet and mobile payments' (COM/2011/0941 final).
[6] Commission Communication: A Digital Single Market Strategy for Europe (http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf)
[7] Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions – Action Plan on Building a Capital Markets Union, COM (2015) 468 final, 30.9.2015.

stages of their development and to provide more options and better returns for savers and retail investors.

- *The Single Market Strategy (SMS)*. The SMS[8] consists of targeted actions in three key areas: creating opportunities for consumers, professionals and businesses, encouraging modernisation and innovation and ensuring practical delivery that benefits consumers and businesses in their daily lives. It aims to facilitate cross-border provision of services and to address key barriers for business services and construction. The Commission will review market developments and, if necessary, take action in connection with insurance requirements for business and construction service providers.

This Green Paper takes account of and complements other more specific Commission initiatives such as the Call for Evidence on the EU regulatory framework for financial services[9], the ongoing work to remove obstacles in the insurance sector related to contract law[10], the assessment of the potential of the Distance Marketing of Financial Services Directive (DMFSD)[11] and the current sector inquiry into e-commerce.[12]

Section 2 Current state of the retail financial services markets

2.1 Fragmented markets and insufficient competition

There are wide differences in price and choice among EU Member States. Some markets show few consumers switching products, which could diminish incentives for firms to compete. Furthermore, some Member States' markets show a high concentration of service providers. EU retail financial service markets also show little cross-border activity. To some extent, this reflects cultural and national preferences and customers' choice. Not all consumers want to buy their financial services products cross-border. There is, however, merit in considering whether more can be done to reduce fragmentation.

The growth of purchasing online offers significant potential to allow firms to serve customers in other Member States from a distance. There is also a large potential market amongst consumers who are mobile within the Union: 13.6 million EU citizens live in an EU Member State other than their own and many more may do so at some point in their lives.[13] Moreover,

[8] Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions – Upgrading the Single Market: more opportunities for people and business, COM (2015) 550 Final 28.10.2015

[9] European Commission, Call for Evidence: EU Regulatory Framework for Financial Services (http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/consultation-document_en.pdf)

[10] For further information see http://ec.europa.eu/justice/contract/insurance/index_en.htm

[11] Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16)

[12] For further information see http://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html

[13] Eurostat, EU citizenship - statistics on cross-border activities, April 2013, (http://ec.europa.eu/eurostat/statistics-explained/index.php/EU_citizenship_-_statistics_on_cross-border_activities) (access March 2015)

35% of European citizens live in regions bordering other Member States[14], and many already do part of their shopping in their 'local' cross-border areas.[15] This should also be possible for retail financial services, but often this is not the case. For markets to be accessible to all firms, unnecessary and unjustified barriers for new entrants to the market should be reduced, especially for those firms which may be able to provide their products cross-border within the EU.

Limited cross-border activity

The current level of direct cross-border transactions in retail financial services is limited, with consumers largely purchasing these products in their domestic market and firms overwhelmingly serving markets in which they are physically established.[16] Recent studies suggest that the share of consumers who have already purchased banking products from another Member State was less than 3% for credit cards, current accounts and mortgages.[17] In consumer credit only 5% of loans had been obtained cross-border.[18] Cross-border loans within the euro area account for less than 1% of the total household loans in the area.[19] In insurance, cross-border provision of services accounted for only about 3% of total gross written premiums in 2011 and 2012.[20]

Price and choice differentials

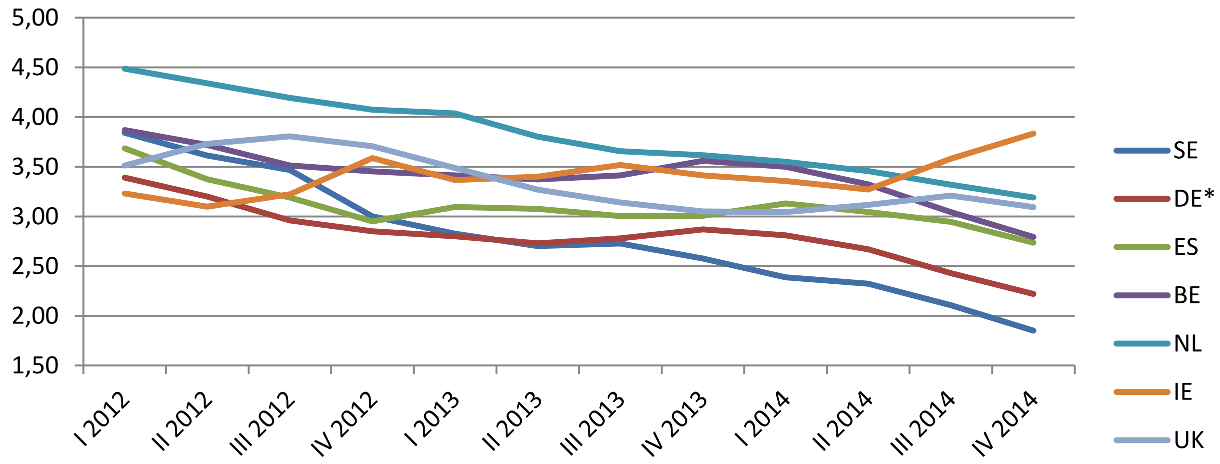
There is evidence of market fragmentation in the differing prices for identical or similar products available in different domestic markets, even from the same provider. For instance, when establishing branches in other markets, firms tend to adjust their pricing to local conditions and do not generally export more competitive pricing to other markets. Market fragmentation is also demonstrated by the constrained choices available to consumers in some

[14] Territories with specific geographical features, Working paper, European Union Regional Policy, n° 02/2009, pp. 4-5.
[15] European Parliament, EU contract law as a tool for facilitating cross-border transactions: a point of view from consumers, 2010 (http://www.europarl.europa.eu/webnp/cms/pid/1483), p. 9.
[16] Special Eurobarometer survey 373 Retail Financial Services, p. 28 and thereafter (http://ec.europa.eu/internal_market/finservices-retail/docs/policy/eb_special_373-report_en.pdf)
[17] Special Eurobarometer survey 373 Retail Financial Services, p. 32
[18] Study on the functioning of the consumer credit market in Europe, July 2013 (http://ec.europa.eu/consumers/archive/rights/docs/consumer_credit_market_study_en.pdf), pp. *x-xi*
[19] Source: ECB Statistical Data Warehouse
[20] DSF Policy Paper N°45s 'Cross-border insurance in Europe' Dirk Schoenmaker and Jan Sass, November 2014, p.12

Member States; for instance, consumers in some markets can only access fixed-rate mortgages, and in others they can only access variable rates.[21]

In the banking sector, information collected by the Financial Services User Group (FSUG) indicates that differences between Member States – going beyond what can be explained by objective differences in terms of purchasing power and national price levels – can be substantial for a number of products.[22] Annual fees charged for a credit card can vary from €9.10 in Romania to almost €114 in Slovakia. Offline credit transfers are free in some Member States, but can cost an average of €3.58 in France. There is also significant dispersion in interest rates that households pay on mortgage loans in different countries (see Chart 1).[23] Greater dispersion can be observed for consumer credit than for mortgage credit.

Chart 1: European Mortgage Federation data on interest rates on new residential mortgage loans by quarter (2012-2014)



*Please note that the weighted average for the whole market is likely biased towards the short-term loans. This is due to the available weighting scheme: the loan volumes include prolongations, but prolongations tend to have shorter interest rate periods.

In the insurance sector, the same policy holder with a similar risk profile can pay twice as much for a similar policy depending on his place of residence. Information collected by the FSUG indicates that monthly premiums for a comparable non-investment 25-year term life insurance product ranged from €10 per month in Slovakia and €12.40 per month in Spain to £65 per month in the UK. In the case of motor insurance, for example, quotes vary even for the same car model (Chart 2).[24]

---

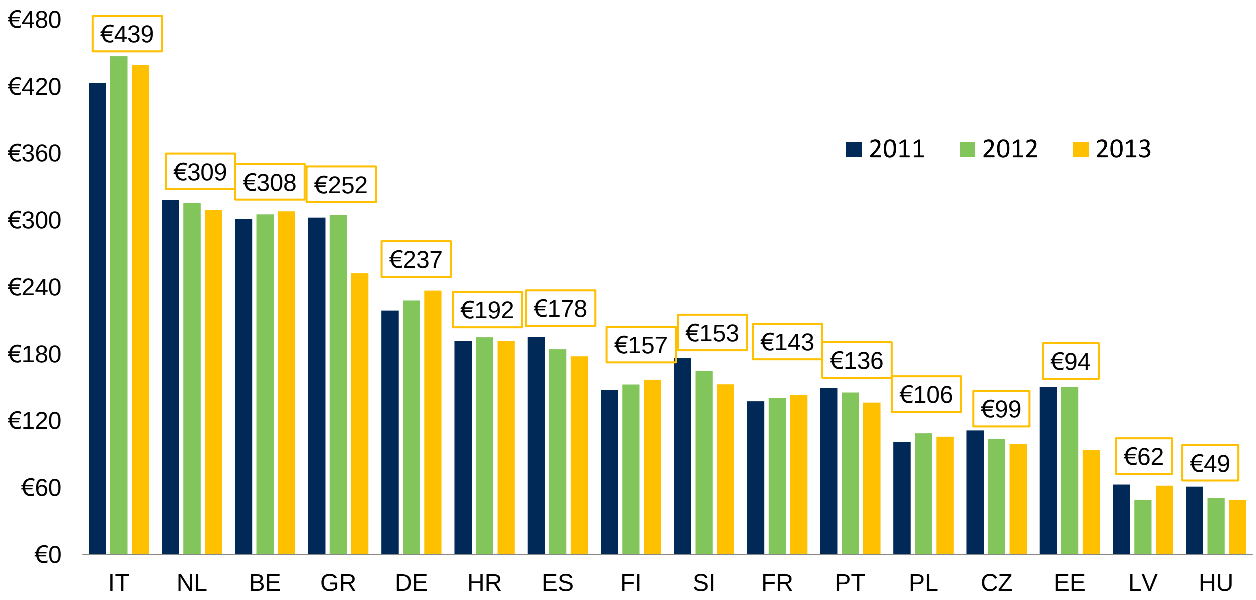
[21] European Mortgage Federation, Hypostat 2015, p. 15

[22] Financial Services User Group, 'Retail Financial Market Integration' (http://ec.europa.eu/finance/finservices-retail/fsug/papers/index_en.htm).

[23] Source: European Mortgage Federation

[24] Insurance Europe Report on European Motor Insurance Markets, page 40 (Chart 48), November 2015 (www.insuranceeurope.eu). Please note that this graph has been edited to remove non-EU countries. See also Retail Insurance Market Study by Europe Economics (26.11.2009), p. 301 & 315 (http://ec.europa.eu/finance/insurance/docs/motor/20100302rim_en.pdf)

Chart 2: Average Mandatory Third Party Liability premiums by country



Differences in prices can be attributed to factors such as varying conditions in domestic economies, uneven levels of purchasing power, financial or institutional structures (e.g. taxation, regulation or supervision), or differing funding costs, value propositions (sometimes related to product tying or packaging) and pricing structures in local markets. For insurance (specifically motor insurance) variations in the costs and risks of providing cover can vary substantially between the different Member States, which can justify some price differences. However, there is no apparent objective justification for the scale of the price difference in products that are less tied to geographical location or local risk characteristics, such as life insurance (even if life expectations may not be identical in every Member State). These factors do not always sufficiently explain the degree of price fragmentation across the EU.

Insufficient competition and minimal consumer switching

A majority of Member States' retail banking and insurance markets are highly concentrated and display signs of not being fully competitive, limiting consumer choice and the value and quality of the products they receive. For instance, at the end of 2013 the market share of the five largest providers in the banking sector ranged from close to 95 % in Greece to over 30 % in Germany and Luxembourg.[25] In response to the public consultation on the review of the Insurance Block Exemption Regulation, the majority of insurers and their industry associations claimed that insurance markets are competitive.[26] Nonetheless, high concentration can be observed in life and non-life insurance; for example, concentration ratios in the life insurance sector, as measured by the market share of the largest five life insurance

[25] See Banking Structures Report, ECB, October 2014, p.15 (https://www.ecb.europa.eu/pub/pdf/other/bankingstructuresreport201410.en.pdf)
[26] Summary Report of the Replies to the Public Consultation on the Review of the Insurance Block Exemption Regulation (IBER) (http://ec.europa.eu/competition/consultations/2014_iber_review/summary_report_en.pdf)

companies as of 2013, range from 100% in Estonia and Malta to less than 40% in Germany and Croatia.[27] These large variations do not appear to be justified by the differing sizes of these markets.

Switching between different product providers is at a low level in the EU.[28] From Eurobarometer data, in 2012 over 85% of respondents with a personal loan or a credit card had not switched or tried to switch.[29] In addition, on a Member State level, markets for cash savings have been shown not to be working well, with consumers remaining "locked-in" with the same provider and product even though similar products with better returns are available.[30] In fact according to consumer scoreboards, retail financial services are amongst the areas where consumers are most dissatisfied with the services they receive.[31] This combination of high levels of dissatisfaction, varying prices, and low levels of switching could indicate that competition is not working sufficiently well in these markets for consumers, or that barriers to entry and to exit from products play to consumers' inertia and stop them from finding the best deals.

Switching behaviour by consumers can encourage competitiveness amongst firms and provide incentives for new players to enter mature markets. Were it not for the obstacles that prevent cross-border transactions, switching behaviour could also encourage firms to provide services from other Member States. Two of the markets where switching can be most difficult – payments accounts and mortgages – have been the subject of EU-level initiatives in recent years which are still being transposed at national level, with the Mortgage Credit Directive[32] (MCD) removing barriers to exit from products and the Payment Accounts Directive[33] (PAD) creating dedicated national switching services for payment accounts. However, there are still further ways in which switching behaviour can be encouraged at the EU level – for instance, full portability of bank account numbers is being examined in some Member States.

Tying and packaging of products can also be a barrier to consumer choice. Alongside competition rules, the tying or the packaging of retail financial products is currently subject to sector-specific rules set out in the MCD (which will ensure that borrowers will be able to

[27] See EU/EEA (Re) insurance statistics (table 10). (https://eiopa.europa.eu/financial-stability-crisis-prevention/financial-stability)
[28] Monitoring consumer markets in the European Union 2013, pp. 43-44. (http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/market_monitoring/docs/consumer_market_monitoring_2013_part_1.pdf.)
[29] Eurobarometer survey 373 "Retail Financial Services", p. 85
[30] FCA, Cash Savings Market Study Report (http://www.fca.org.uk/static/documents/market-studies/cash-savings-market-study-final-findings.pdf); Autoriteit Consument & Market, Barriers to entry in the Dutch retail banking sector, p. 69
[31] See the most recent Consumer Markets Scoreboard at http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/index_en.htm
[32] Directive 2014/17/EU of the European Parliament and of the Council of 4 February on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p.34). Article 25 addresses issues relating to early repayment
[33] Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214)

choose their insurance from another supplier)[34], PAD, and the forthcoming Insurance Distribution Directive (IDD)[35]. The revised Markets in Financial Instruments Directive (MiFID II)[36] also includes an empowerment for the ESMA (in cooperation with the EBA and EIOPA) to develop cross-selling guidelines. Customers should be informed if they are free to purchase each product in the package separately (e.g. insurance from another provider) and have clear information on the costs. The Commission will continue to monitor whether this is the case and whether further action is needed in this area.

2.2 Changing landscape of the retail financial sector in view of digitalisation

Digitalisation and innovation have rapidly changed the shape of retail financial services in recent years, and promise to continue to do so. Financial firms increasingly offer products online or via applications and nowadays the vast majority of consumers regularly use online banking to handle their accounts and carry out transactions.[37] In principle, these technological advances offer the opportunity to smooth the process of making some cross-border transactions expand access to more effective information and advice for consumers, improve comparability of products and increase switching behaviour.[38]

New players and new techniques in a digital market

The retail financial services sector is experiencing significant change as it is affected by digitalisation. New business models are emerging: online-only providers and technology companies are entering the market, offering services (within Member States and sometimes cross-border) including electronic money transfers, intermediation in online payments, financial data aggregation, peer-to-peer funding and price comparison. New players who are not traditional financial services providers and whose primary business model is not always financial services are also entering the market. Social media companies, for example, are now selling financial products. These new technologies can be beneficial for consumers, provided that appropriate security standards are maintained.

Both established firms and new financial technology companies (Fintechs) are exploring ways of interacting with their customers, of integrating their distribution channels for products and of providing services which are faster, more responsive and more tailored. For established players, digital technologies including distributed ledgers (such as the blockchain method used by Bitcoin) offer the opportunity to reshape internal processes with improved

[34] MCD Art. 12 (4): *"Member States may allow creditors to require the consumer to hold a relevant insurance policy related to the credit agreement. In such cases Member States shall ensure that the creditor accepts the insurance policy from a supplier different to his preferred supplier where such policy has a level of guarantee equivalent to the one the creditor has proposed."*

[35] Publication expected early 2016 , see also http://www.consilium.europa.eu/en/press/press-releases/2015/07/22-insurance-mediation/.

[36] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p.349)

[37] Statista, Online banking penetration in selected European markets in 2014, website (http://www.statista.com/statistics/222286/online-banking-penetration-in-leading-european-countries/)

[38] KPMG, *Mobile Banking 2015: Global trends and their impact on banks*, pp. 21-22. KPMG has posited that the increased engagement with financial products that stems from online banking encourages more active review of consumers' potential options.

standardisation, automation and economies of scale. Established players are also partnering with or fostering fintechs, and working with major digital providers, to shape and stay on top of this trend. In addition, firms are increasingly using 'big data', drawn from points including social media, to gather information on their potential target customers. This gives them a greater understanding of customers, but also raises questions about the appropriate use of these data.

These changes will have a particular impact on existing providers, such as incumbent banks, because of their reliance on significant – and costly – branches and the role of payment accounts as the traditional gateway to consumers, which will be challenged by the emergence of fintechs and digital wallets. New entrants have also focused on profitable ancillary activities such as foreign exchange.[39] Banks and insurance companies are investing heavily in digitalising their sales and customer services in the hope of making cost savings and engaging more closely with their existing customers.[40] New entrants (who do not yet benefit from a stable customer base) have the potential to drive cross-border solutions and seize new markets from incumbents.

The development of online distribution channels is of particular interest at the EU level. By allowing providers and consumers to conclude and support distance sales more easily and at a lower cost, digitalisation offers access to a large consumer base in the Single Market that can benefit from the best available offers. Digitalisation should in principle foster cross-border activity, without requiring firms to establish themselves in other Member States.

Though innovative technologies offer opportunities to improve customer service and reduce prices, they may also pose regulatory challenges, particularly in relation to cyber-security and data protection. Cyber threats are a major concern for consumer and businesses; this issue is likely to grow in importance as digitalisation progresses and needs an appropriate response. New players may not always be regulated to the same extent as incumbents by current regulatory and supervisory frameworks, including from a consumer protection perspective. Technological developments and the expansion of new distribution channels may make it difficult to provide appropriate pre-contractual information to customers – for example, by supplying mandatory disclosure via mobile devices with small screens. The appropriate response to these challenges (including adequate security and consumer protection) and opportunities will have to be carefully considered.

New financial and payment products

The Commission supports the growth of innovative, consumer-friendly technologies and wants to ensure that they are available to a wide array of consumers across Europe, and cross-border where possible. The digitalisation of financial services has led to the emergence of new products, such as text loans or peer-to-peer lending, some of which bring regulatory and consumer protection challenges.

[39] KPMG, *Mobile Banking 2015: Global trends and their impact on banks*, p. 27.
[40] KPMG, *Mobile Banking 2015: Global trends and their impact on banks*, p. 21.

In the area of payments in particular, new opportunities are emerging with the development of mobile, internet and instant payments in domestic markets. Mobile payments are developing fast in Europe, with a wide variety of solutions for remote or proximity payments currently available from market players including banks, card schemes, mobile operators and internet players. These services include peer-to-peer payments, mobile wallets, banking applications and card applications, and use various technologies (Near-Field Communications and Quick-Response codes being the most developed ones for point-of-sale payments). For the consumer, this means that they can pay for their shopping via their phone, share the price of a meal or send funds to friends via an application. However, solutions are often valid only at domestic level and are generally not interoperable and firms or groups of firms are competing to impose their own standards. Their constrained geographical coverage and minimal interoperability limit their acceptance by merchants, which reduces their effective cross-border use.

Real-time (or instant) payments currently exist in some countries, and have attracted significant interest in others as their speed has the potential to drive innovation and lead to the emergence of new payment applications. They are the logical next development within the Single Market for retail payments following the transition to the Single Euro Payment Area (SEPA)[41]: EU payment services providers have started developing an Instant SEPA Credit Transfer scheme. The Euro Retail Payments Board and the European Payments Council[42] are working on a pan-European standard for instant payments and peer-to-peer mobile payments which has the potential to create interoperable systems. The Commission supports both bodies in this work.

Section 3 Better products, more choice and greater opportunities for consumers and businesses

The full benefit that may derive from the single European market for retail financial services has not yet been exploited. One of the most direct ways of improving competition and promoting consumer welfare would be to reduce, where possible, the obstacles to cross-border trade in these services. These obstacles originate from two main groups of root causes affecting both suppliers and consumers, which act together to reduce choice and competition and keep the European market fragmented:

- consumers do not know about or do not have enough confidence in offers from other Member States and if they do, they have trouble accessing them (section 3.1); and
- suppliers do not offer products to consumers in other Member States because, even in a time of digitalisation, fragmented markets create excessive operational and compliance costs (section 3.2).

The Commission is particularly interested in whether the use of innovative digital technology can assist in solving any of these obstacles. Lack of confidence by consumers and a lack of

[41] Further information on SEPA can be found at http://ec.europa.eu/finance/payments/sepa/index_en.htm

[42] For further information see http://www.ecb.europa.eu/paym/retpaym/governance/eu/html/index.en.html and http://www.europeanpaymentscouncil.eu/

legal certainty for traders for cross-border transactions may also arise from an inconsistent enforcement of EU legislation across the EU. The Consumer Protection Cooperation Network covers some key consumer protection legislation in the field of financial services. If the enforcement of EU legislation emerges as a problem more could be done through such networks.

General questions

1. *For which financial products could improved cross-border supply increase competition on national markets in terms of better choice and price?*
2. *What are the barriers which prevent firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border?*
3. *Can any of these barriers be overcome in the future by digitalisation and innovation in the FinTech sector?*
4. *What can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate?*
5. *What should be our approach if the opportunities presented by the growth and spread of digital technologies give rise to new consumer protection risks?*
6. *Do customers have access to safe, simple and understandable financial products throughout the European Union? If not, what could be done to allow this access?*
7. *Is the quality of enforcement of EU retail financial services legislation across the EU a problem for consumer trust and market integration?*
8. *Is there other evidence to be considered or are there other developments that need to be taken into account in relation to cross-border competition and choice in retail financial services?*

3.1 Helping consumers to buy financial products cross-border

At a number of points over their lives, consumers have to make big financial decisions with long-term implications. Whether purchasing life insurance, using a mortgage to buy a home, moving abroad or saving money for the future, consumers should be able to i) know what is available elsewhere in the EU, ii) get competitively-priced products suited to their needs, and iii) be confident that their products are safe and suitable and will act in the way they intend.

3.1.1 Knowing what is available[43]

I'm looking for the best possible deal in my Member State. I don't know that there are products in other Member States that might be cheaper or better.

Consumers often lack access to information about cross-border offers of financial products; it is therefore difficult for them to shop beyond their home country. Few providers of retail financial services target consumers in Member States where they are not physically established. Furthermore, consumers face a number of barriers, including language, if they want to enquire about products in other Member States.

[43] The examples used in this document are inspired by a number of real-life cases brought to the Commission's attention.

Better information for customers and helping them switch

One way to build consumer awareness, and encourage them to switch to more suitable products, would be to ensure that they have access to channels which allow them to find out about products available from other Member States and understand their features. Such channels could, for instance, include financial intermediaries, independent comparison websites or internet-based independent financial advice services.

Independent comparison sites can be helpful in ensuring that customers know that products exist, but their major benefit comes from the support they provide to consumers in switching, by allowing them to assess and choose between the most suitable products for their needs. EIOPA has found that comparison websites stimulate competition between insurers and insurance intermediaries and help enhance the transparency and comparability of information available to consumers.[44] This concept could also apply for other product segments, as well as Member States which currently lack these facilities, though any action must take into account that many comparison websites themselves are sometimes poor at outlining the metrics and aspects compared, and are often overly focused on price.[45] Comparison websites are very common in the insurance sector, and the PAD has introduced an obligation to establish at least one comparison website (with established quality criteria) at national level which will present the offers of bank account services, including the fees charged, from different financial institutions.

Other methods of improving switching rates may include moves to ensure that consumers can exit their products without being subject to onerous penalties, as in the MCD and Consumer Credit Directive (CCD)[46], or efforts to overcome consumer inertia by reducing the obstacles and hassle involved in switching products.[47] The use of targeted disclosure at key moments when a consumer may benefit from changing products could also ensure that consumers are more engaged with their financial decisions and less locked in to the products they have purchased.[48]

Questions

9. *What would be the most appropriate channel to raise consumer awareness about the different retail financial services and insurance products available throughout the Union?*
10. *What more can be done to facilitate cross-border distribution of financial products through intermediaries?*
11. *Is further action necessary to encourage comparability and / or facilitate switching to retail financial services from providers located either in the same or another Member*

[44] EIOPA report on Good Practices on Comparison Websites (January 2014)
[45] European Commission, 'Comparison Tools and Third-Party Verification Schemes', website (http://ec.europa.eu/consumers/consumer_evidence/market_studies/comparison_tools/index_en.htm)
[46] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.05.2008, p.66)
[47] Firms are currently subject to EU legislation on unfair contract terms and unfair commercial practices (see footnote 3) which limit some contractual and non-contractual barriers to consumer switching.
[48] See, for instance, FCA Cash Savings Market Study, which proposes use of text alerts were a bonus period will soon end (https://www.fca.org.uk/static/documents/market-studies/cash-savings-market-study-final-findings.pdf)

State? If yes, what action and for which product segments?

Tackling complex and prohibitively high fees for foreign transactions

I live in the Eurozone. I'm charged high fees by my bank each time I transfer money to a non-euro Member State. When I used my credit card abroad, I came back to a high bill because the conversion rate applied by the bank was worse than market rates, and I was not properly informed in advance of the exchange rate that would be charged.

As regards transaction charges, Regulation 924/2009 on cross-border payments[49] eliminates the differences in charges for cross-border and domestic payments in euro, greatly benefiting consumers when they make payments in euro. However, citizens wishing to transfer money to other countries of the EU in currencies other than the euro are often faced with very high fees compared to those they pay for domestic transfers. These fees cover both transaction charges and currency exchange fees and can represent a significant part of the value of the transaction. Transaction charges for ordinary consumers for cross-border payments and transfers in currencies other than the euro tend to be very high in all Member States and are not always disclosed clearly to customers. Increasingly, websites are available for peer-to-peer currency exchange, which offers much better rates for consumers and are beginning to have a real impact on the markets. Though firms must be transparent regarding the fees and rates charged for currency exchange, these fees and rates are not specifically subject to any European rules.

For card payments, consumers are not always aware of the currency conversion rate that will be applied to a transaction executed abroad, for example for cash withdrawals or purchases with payment cards in Member States having a different currency. The currency conversion is usually offered by the bank that issued the card. In recent years, merchants have increasingly offered the option of using the currency exchange rate of their own bank (so called dynamic currency conversion), which at least provides some transparency to consumers and could provide better value for money. However, the merchant rates are not systematically better for consumers and they are often difficult to compare on a case by case basis with the rates offered by the consumer's bank as the precise rates offered by the banks are not available to consumers at the time of the transaction. This means that, thus far, consumers have not been able to take advantage of competition from dynamic currency conversion opportunities.

Given the existence of different currencies within the EU, and the continuing integration of retail financial services markets, this issue is likely to grow in importance as e-commerce expands in the Digital Single Market and further examination of it will be needed.

Questions

12. What more can be done at EU level to tackle the problem of excessive fees charged for

[49] Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11)

cross-border payments (e.g. credit transfers) involving different currencies in the EU?

13. *In addition to existing disclosure requirements*[50]*, are there any further actions needed to ensure that consumers know what currency conversion fees they are being charged when they make cross-border transactions?*

3.1.2 Accessing financial services from anywhere in Europe

> We've moved to France for retirement, and want to keep our bank account in the UK in order to receive our monthly pension. But our bank refuses to renew a debit card because we don't have a permanent address in the UK. The bank only agrees to keep an account if we leave a large deposit.
>
> We also looked at a well-known price comparison website about the best interest rates available on our savings and saw the following: *"Before you apply, please make sure you've read and understood the terms & conditions of the account. You'll also need to be aged over 18 and living permanently in the UK."*

As financial services providers do not currently make their products available cross-border unless they are established in the target market, EU consumers can rarely access any financial services from other Member States (except for some limited investment products).[51] Though the PAD will foster the internal market by prohibiting discrimination on grounds of residence against consumers applying for or accessing payment accounts, in most cases consumers still find that they are not eligible for services if they do not reside in the provider's country.[52] In insurance, consumers' places of residence, rather than their individual risk profiles, define the options available, as insurers will draw up policies based on the risk pool as determined by local demand. On-line suppliers may apply 'geo-blocking' techniques by blocking access to websites, rerouting to other websites or by not allowing for the conclusion of the transaction by requiring specific data formats limited to particular countries (e.g. postal codes or payment information). These practices prevent consumers from applying for their chosen products.

Consumers should not be treated differently based on their nationality or place of residence when shopping in the EU, unless justified by objective criteria. Actions on geo-blocking and other forms of geographically-based discrimination have been announced in the Digital Single Market Strategy in May 2015 and the Single Market Strategy in November 2015.[53] The Commission will present legislative proposals by mid-2016 to end unjustified geoblocking and, more generally, to prevent discrimination of consumers on the basis of residence or nationality.

---

[50] European Parliament legislative resolution of 8 October 2015 on the proposal for a directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC (COM(2013)0547 – C7-0230/2013 – 2013/0264(COD)). See Articles 59 and 60(3)

[51] BEUC, Protecting consumer interests in the retail financial services area, 2011, p.3 (http://www.beuc.org/publications/2011-09879-01-e.pdf)

[52] See, for instance, the example available in Section 2.1.

[53] The consultation on geo-blocking will be open until 28 December 2015 (see https://ec.europa.eu/eusurvey/runner/geoblocksurvey2015/)

Questions

14. *What can be done to limit unjustified discrimination on the grounds of residence in the retail financial sector including insurance?*

Increasing portability of products

I want to move to another Member State to take a new job. I've long had private health insurance in my home Member State but can't carry it to my new home and would have to take new private health insurance. I discovered that my premiums would be significantly higher in my new Member State, as the insurance relies on my most recent health information rather than my previous history.

Citizens moving from one Member State to another may no longer be able to benefit from financial products acquired in their home Member State, and they may see themselves excluded from the financial sector in their new Member State of residence. This situation can be particularly burdensome for consumers who are less well equipped to negotiate with service providers in the new Member State of residence or for citizens who need to rely on frequent access to financial products they may have built up over a life time such as private health coverage.

For private health insurance it appears that there are contractual terms and conditions in use which limit entitlement to benefits to the Member State where the policy-holder is habitually resident at the moment of the conclusion of the insurance contract. Habitual residence is by its nature something that may change over time. As a result, policy-holders may not be able to count on their existing policies when they move to another Member State, claim reimbursements of hospital treatment costs or enjoy their private pensions abroad. This particularly affects elderly people who are often charged higher health or long-term care insurance premiums.

Consumers face particular issues when attempting to rely on insurance-based old age savings. Alongside the significant difficulties policyholders may face in reconciling duplicative and contradictory taxation arrangements, many life insurance policies limit the insurance so that it is only valid in the Member State where the policy-holder is habitually resident.[54] Such restrictions reduce consumer choice and cross-border competition and also represent a serious obstacle for consumers moving to other Member States. These obstacles affect most severely EU citizens seeking to settle for their retirement in another Member State.

Questions

15. *What can be done at EU level to facilitate the portability of retail financial products – for example, life insurance and private health insurance?*

Facilitating access to and recognition of professional indemnity insurance cross-border

In sectors where professional indemnity insurance is mandatory[55], service providers often have difficulty in acquiring products covering the territory of more than one Member State for

[54] For private pensions, the issue is being addressed as part of the Commission's work on the CMU.

[55] Article 23 of the Services Directive allows Member States to require service providers to subscribe to professional liability insurance or to provide for some other form of financial guarantee. (Directive 2006/123/EC

the provision of services. The Single Market Strategy announced that the Commission will review market developments concerning the availability and mutual recognition of mandatory Professional Indemnity Insurance (PII) and, if necessary, will take action in relation to insurance requirements for business and construction service providers.

Questions

16. *What can be done at the EU level to facilitate access for service providers to mandatory professional indemnity insurance and its cross-border recognition?*

3.1.3 Having trust and confidence to benefit from opportunities elsewhere in Europe

> I found a great offer for a loan in another Member State, at a much lower rate than my local alternatives. I was tempted, but I was worried about the implications if something went wrong with the product. So instead I chose to buy a more expensive product on the local market.

Consumers need to know that they will be adequately protected before and after a purchase of a retail financial product, no matter where they buy within the Union.[56]

Encouraging comparability and consumer understanding through improved disclosure

Consumers need information that is easily understandable. Information should be clear and concentrate on the elements that allow the consumer fully to understand a product; it should also take consumer behaviour into account. Financial education can help, but when consumers purchase a product they need to know how much they are being charged, by whom and how they are benefiting from it. They need to be able to compare costs and benefits to make an effective choice. Consumer organisations, among others, have an important role to play in sharing and disseminating impartial reviews of financial products.

Any action in this area could build on efforts taken over recent years to ensure that disclosure is effective, transparent and comparable. In the last few years, a number of EU measures have addressed this area, such as the MCD, the CCD, the PAD, the Undertakings for Collective Investment in Transferrable Securities (UCITS) Directive[57], MiFID II, the PRIIPs Regulation[58] and, for non-life insurance products, IDD. For distance marketing (e.g. online) of consumer financial services, there are information requirements in place in the DMFSD. Under the CMU Action Plan, the Commission will ask the ESAs to work on transparency of long-term retail and pension products, including their actual net performance and fees. In

---

of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36)

[56] Eurobarometer survey 373 “Retail Financial Services”, p. 42, which notes 'not having clear information' (29%), 'do not know your rights in there are problems' (28%) and 'less consumer protection in other EU member states' as concerns in purchasing from another Member State.

[57] Directive 2009/65/EC, as amended, most recently, by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertaking for collective investments in transferrable securities (UCITS) as regards depository functions, remuneration policies and sanctions (OJ L 257, 28.8.2014, p. 186)

[58] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (OJ L 352, 9.12.2014, p.1)

addition, digitalisation, and the emergence of new products and new digital channels, provides an opportunity to examine further how firms' communications with their customers, including the disclosure required by EU law and national regulation, can work best in the interests of consumers, and support them in understanding and trusting the products they purchase.

Questions

17. *Is further EU-level action needed to improve the transparency and comparability of financial products (particularly by means of digital solutions) to strengthen consumer trust?*

Improving redress in retail financial services

It is often difficult for consumers to find an adequate redress mechanism in cross-border situations and this may deter them from buying financial products in other Member States.

To help consumers in such situations, the Commission founded the Financial Dispute Resolution Network (FIN-NET) in 2001, aiming to facilitate the resolution of cross-border disputes in financial services.[59] This voluntary and informal network brings together ombudsmen, arbitrators, adjudicators and other schemes from across the EU. FIN-NET's members have a range of different powers and approaches, varying from compulsory participation and mandatory compliance with decisions by the parties to voluntary participation in adjudication proceedings. Moreover, this network currently neither covers all Member States, nor all areas of each country's financial sector.[60]

To make consumers more confident when purchasing products cross-border, FIN-NET could be upgraded to ensure that all members have been listed as meeting the binding quality requirements for “Alternative Dispute Resolution entities” under the Alternative Dispute Resolution (ADR) Directive.[61] To benefit from a strengthened FIN-NET, more consumers would need to learn about the network's existence. Though FIN-NET treated over 3500 cross-border cases in 2014, general awareness on FIN-NET is low. The Commission will examine whether raising awareness of FIN-NET should be an early priority. In the long run and in the event cross-border integration increases significantly, it might become necessary to think of additional measures to improve the ADR system in retail financial services still further on the basis of the experience gained from the implementation of the ADR Directive.

In 2013 the Commission adopted a Recommendation on collective redress.[62] This Recommendation calls on Member States to put in place collective redress mechanisms for violations of rights granted under Union law, including in the financial services area. Collective redress actions have proven to be an effective tool to defend consumers' interests in

[59] For further information see http://ec.europa.eu/finance/fin-net/index_en.htm

[60] FIN-NET currently has 57 members from 22 Member States and the 3 EEA countries (Norway, Iceland and Liechtenstein).

[61] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63)

[62] Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law (OJ L 201, 26.7.2013, p. 60)

financial services.[63] The Commission will assess the implementation of the Recommendation on the basis of practical experience by July 2017.

Questions

18. *Should any measures be taken to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation?*
19. *Do consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance? If not, what could be done to ensure this is the case?*

Protection of victims where motor insurers are insolvent

Consumers who become a victim of a car accident in another Member State face a risk of not receiving compensation if the liable insurer becomes insolvent. Not all Member States currently participate in the voluntary agreement to ensure compensation of victims where an accident in one Member State is caused by a vehicle covered by an insolvent insurer based in another Member State. In a recent insolvency of an insurer providing cross-border motor insurance, a guarantee fund in another Member State had to compensate approximately 1,750 claimants.

Questions

20. *Is action needed to ensure that victims of car accidents are covered by guarantee funds from other Member States in case the insurance company becomes insolvent?*

Increasing transparency and comparability of ancillary insurance

> When I went to pick up my rental car, I was asked if I wanted to pay a substantial amount for additional insurance on top of the basic rental price and my current insurance.

Consumers are often not made aware of the cost or value of ancillary insurance products and can be exposed to high prices owing to a lack of competition and disclosure. One example can be seen in the car rental sector: in 2014, 44.7% of the 1758 reported consumer complaints regarding car rentals were about supplementary charges (e.g. linked to damages and extra services such as insurance products not presented at the booking stage).[64] For insurance products, including those that are ancillary to another product, the IDD will strengthen information requirements (though not on pricing), to avoid consumer detriment. Furthermore, on 4 July 2015, five major car rental companies agreed to review how they deal with consumers and to provide better information at the booking stage about optional waivers and insurance products.[65]

[63] See, for instance, collective redress actions launched in regard to life insurance products in France, and in relation to preferred shares and financial pyramid schemes in Spain..
[64] Car rentals: Key data from the European Consumer Centres case handling database (http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/docs/car_rental_version2_en.pdf)
[65] European Commission, 'Better protection for consumers when renting cars', website (http://ec.europa.eu/justice/newsroom/consumer-marketing/news/150713_en.htm)

Questions

21. *What further measures could be taken to enhance transparency about ancillary insurance products and to ensure that consumers can make well-informed decisions to purchase these products? With respect to the car rental sector, are specific measures needed with regard to add-on products?*

3.2 Creating new market opportunities for suppliers

Service providers face difficulties when going cross-border without establishing, i.e. by opening a branch or subsidiary in another Member State. As a result they often do not offer their products in other Member States nor ensure that they are portable. This section focuses on how the Commission could help to reduce the costs and risks inherent in providing financial services cross-border, making this possible for firms and increasing competition and consumer choice across the EU.

3.2.1 Meeting the challenges and opportunities presented by digitalisation

As firms digitalise, they have new opportunities to engage with their customers. However, they also face many challenges. For services which have been provided face-to-face in the past, providing these services at a distance or cross-border – through digitalisation – can prove difficult. This section explores these difficulties and the need for EU action to reduce them alongside work stemming from the Commission's Digital Single Market initiative. This has also been an area of particular interest for participants in the industry.[66]

Helping firms make better use of digitalisation

The speed of digitalisation means that some competitive, consumer-friendly developments may not be possible or may be hindered by legislative or other arrangements which were not drafted with them in mind. The Commission is interested in how innovative, consumer-friendly services can be encouraged at the European level and how fragmentation amongst domestic markets can be prevented.

Questions

22. *What can be done at the EU level to support firms in creating and providing innovative digital financial services across Europe, with appropriate levels of security and consumer protection?*

Enabling electronic signature and verification of identity

> A bank offers comparatively high interest rates, and has been approached by consumers from other Member States who want to deposit their money. However, the bank has to identify its customers under Anti-Money Laundering requirements – this is difficult at a distance, so it must verify their identities at a branch. Consumers do not wish to travel to its branches because of cost and time, so they choose not to deposit their funds there.

[66] See for instance, the European Banking Federation report, 'Driving the Digital Transformation', (http://www.ebfdigitalbanking.eu/)

Feedback from firms has indicated that the Know Your Customer (KYC) requirements of anti-money laundering legislation limit their ability to open and maintain business relationships with customers at a distance. This is an obstacle that has also been confirmed in the Commission study on the DMFSD.[67] This can affect many financial services, but has a particular impact on savings and investment products.[68]

These KYC requirements will generally include submission of documents from multiple sources which verify the customer's identity, as well as a face-to-face confirmation. The exact requirements vary between Member States, with some allowing distance verification of information (subject to certain requirements), for instance via the use of webcams and scanned documents, or with third-party verification of original documents through institutions such as postal offices. Not all Member States have options of this nature in place, and as a result the arrangements for engaging with third parties may not be accessible for firms providing products cross-border.

Requirements in some Member States also limit the use of distance contract signature, further inhibiting cross-border providers' capacity to open business relationships with new customers. This severely limits sales of products to customers at a distance, and could have a disproportionate effect upon cross-border business. The eIDAS Regulation[69] shows promise in this area; it will provide a solution for cross border use of e-identification as well of electronic trust services – electronic signatures, seals, time stamps, registered delivery service and website authentication. It should allow firms to more easily identify customers at a distance, or strongly authenticate parties to payment transactions under the revised Payment Services Directive. In this context, the financial sector has been identified as one of the areas which can benefit most from e-identification solutions.

This is an area where the potential for improvement could be considerable. The extension of measures for distance verification currently available in some Member States and the successful take-up of eIDAS may help remove a major barrier to the cross-border provision of services. Other solutions could include the removal of administrative limits on distance contracting, development of further e-identity schemes, or expansion of third-party measures for verifying identity or allowing consumers to carry their verification between providers.

---

[67] Analysis of the Economic Impact of Directive 2002/65/EC concerning the distance marketing of consumer financial services on the conclusion of cross-border contracts for financial services between suppliers and consumers within the Internal Market, Final Report (http://ec.europa.eu/consumers/archive/rights/docs/final_rep_financial_services_2009.pdf)

[68] It should be noted that earlier this year the fourth Anti-Money Laundering directive was adopted. It provides for a risk-based approach that allows for more flexibility in order to take into account national specificities and the circumstances of individual business relationships or transactions. See Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73)

[69] Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73)

Such solutions must not, of course, weaken the effectiveness of EU measures on money laundering or the financing of illegal activities.

<u>Questions</u>

23. *Is further action needed to improve the application of EU-level AML legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?*
24. *Is further action necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards?*

<u>Improving access to and usability of financial data</u>

> A lender is contacted by consumers from other Member States seeking loans. However, when it tries to assess their creditworthiness, it finds that there is limited information available on them, as they are from other Member States. The lender cannot substantiate the information they provide, so it decides not to lend to them.

Without access to data on consumers, it is difficult for firms to provide financial products (particularly credit or insurance) in other markets as they cannot assess the risks to which they would be exposed. They are also unable to assess the risks of mobile consumers whose data was accrued in another Member State. With the growth of digitalisation, firms' appetite for data is increasing as they use more sophisticated processes to price their products. At the same time, in some instances customers' data has become the price for ostensibly free-of-charge offerings from digital service providers, as these firms process and use this customer data themselves for marketing purposes or sell it on to other companies.

Under the CCD and MCD, creditors have the right to consult credit databases in other Member States on a non-discriminatory basis to assess the creditworthiness of potential customers. However, firms will still face issues when attempting to use this data as the techniques for its collection, distribution and use are still very diverse across the EU, and opinions vary on what data is relevant for creditworthiness assessments. Certain credit registers, for instance, only engage in 'negative' data reporting[70], whereas other databases also contain 'positive' data.[71] This means that accessing and using this data can prove challenging and that many firms may find it difficult to provide their services cross-border economically. Private cross-border credit data sharing arrangements have been initiated by the Association of Consumer Credit Information Suppliers (ACCIS)[72], but this currently links the credit registers of a limited number of Member States. At the same time, private credit registers often collect more data than necessary for the purposes of a creditworthiness assessment, or data which might be of questionable relevance to a creditworthiness assessment.

As the financial services industry embraces digitalisation, insurance companies and other financial services firms are using modern IT and big data analysis to offer increasingly customised insurance products with personalised risk pricing involving close, data-intensive

[70] Credits will only be reported upon once the consumer did not manage to meet his/her payment obligations.
[71] Every single credit is registered. Data on other types of commitments may also be reported.
[72] Further information on ACCIS can be found at http://www.accis.eu/

monitoring methods such as telematics devices. The increased use of data offers great opportunities to reduce prices for many consumers, but these practices also raise concerns about privacy and data protection which need to be taken into account.

Consumers will also want to benefit from the increased availability of data when they rely on a positive claims history or bonus/malus rating. The Motor Insurance Directive[73] currently includes a right for policy-holders to require at any time a statement of their claims over the last five years from their insurer, but in practice this often does not translate into a lower premium when concluding a new insurance contract. Among the reasons why are the varying methodologies of calculation of discounts, including different lengths of periods to be covered by such statements, a lack of confidence in non-harmonised statements provided by insurers and differing risk factors they take into account when determining premiums.

Questions

25. *In your opinion, what kind of data is necessary for credit-worthiness assessments?*
26. *Does the increased use of personal financial and non-financial data by firms (including traditionally non-financial firms) require further action to facilitate provision of services or ensure consumer protection?*
27. *Should requirements about the form, content or accessibility of insurance claims histories be strengthened (for instance in relation to period covered or content) to ensure that firms are able to provide services cross-border?*

Facilitating the provision of after-sales services

> An insurer wants to offer home contents insurance online in another Member State, but doing so would require investment in a customer service centre in the local language. It does not think it will have enough business to justify the expenses involved.

After a sale, firms have obligations toward their customers which can be challenging to fulfil at a distance. Answering queries, assessing and meeting insurance claims, discussing customer concerns and addressing complaints generally requires manual intervention by employees of a firm or claims handlers in insurance undertakings. Though this can be done at distance, this can still require substantial investment from a firm, particularly where there are requirements to provide services in other languages. This issue particularly affects insurers given their claims handling obligations, for which the presence of a representative of the undertaking (such as a branch or subsidiary) in the same Member State as its customers seems crucial. Though there are means of overcoming this through third-party contracting or outsourcing, these options are not always available or attractive, particularly given the need to oversee any contractors acting on a firm's behalf.

Questions

28. *Is further action required to support firms in providing post-contractual services in another Member State without a subsidiary or branch office?*

[73] Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ L 263, 7.10.2009, p.11).

Converging procedures for personal insolvency, property valuation and collateral enforcement

> A lender has been approached by consumers in other Member States, interested in the low fixed rates it offers for residential mortgages. However, it is sceptical about how the value of properties in other Member States is assessed and whether it could enforce the guarantee if necessary. It cannot provide loans to these consumers.

Creditors may hesitate to offer more cross-border credits because they do not have sufficient knowledge about the applicable personal insolvency regimes in other Member States (where these regimes exist). Whilst the CMU Action Plan takes some steps towards more convergence in certain areas of business insolvency regimes across all 28 Member States, such as on early restructuring and enhanced effectiveness of administration of cross-border business insolvency proceedings, there are still substantial divergences in relation to personal insolvency regimes across the EU. This creates additional risk for firms wishing to enter a cross-border business relationship with customers, particularly in relation to provision of credit – if lenders are unable to assess and quantify the outcome of insolvency proceedings and repossession laws, they will not feel confident lending to individuals. Member States' laws and practices on business failure and insolvency and on personal over-indebtedness are currently the subject of two studies due for completion in 2016.

Similarly, an accurate understanding of a property's value is essential for creditors to have certainty about the collateral's value in the event of default. Though MCD requires that reliable standards for property valuation be in place in all Member States, it does not fully ensure convergence of standards at an EU level. In the absence of full convergence, some creditors might still have doubts about the value of collateral situated in other Member States.

> Questions
>
> 29. *Is further action necessary to encourage lenders to provide mortgage or loans cross-border?*

3.2.2 Compliance with differing regulatory requirements in host Member States

The differences between Member State regulatory regimes have a significant impact on the cost and risk of providing retail financial services cross-border. Though there is some measure of legal harmonisation across the EU as a result of Union-level legislation, there are legal differences in areas such as contract law and firms must comply with a substantial body of regulatory requirements in each Member State.

Different requirements can originate from specific aspects of Member State financial sectors or legal traditions. National regulatory frameworks diverge substantially on issues including contracts, data protection, consumer protection, disclosure, anti-money laundering or taxation. As regards the law applicable to the civil aspects of contracts, a distinction has to be drawn between insurance contracts and other contracts. For insurance, the applicable law is in principle that of the country where the insured risk is located, often where the policy-holder has his habitual residence.[74] The parties' ability to choose another law is heavily circumscribed. For other contracts concluded with consumers, the parties may choose the contract law of the seller's Member State to apply to cross-border transactions, which may reduce legal compliance costs for firms in some cases; however where the seller carries out activities in, or directs activities to, the Member State in which a consumer is habitually resident, such a choice is without prejudice to the protection afforded to the consumer by that law.[75]

These differences can create significant costs and risks for firms which wish to do business with consumers located in another Member State. The average contract law-related costs for non-financial business are estimated at approximately €10,000 for each Member State.[76] Financial firms face significant extra costs on top of this figure in each Member State as a result of the specific laws and regulations which apply to the sector.[77] Requirements and costs can also differ depending on whether a firm operates on the basis of freedom of establishment (with physical presence) or free provision of services (including online). A firm providing services generally needs to comply with only a part of host Member State's rules, for instance on conduct or consumer protection.

EU passporting rights are currently available for a number of activities[78], and allow firms authorised in one Member State to provide its services in another Member State with reduced administrative burdens and a minimum of paperwork. However, passporting does not eliminate legal compliance costs, and passporting rights do not extend to all products. Potential other methods of incrementally reducing the costs and risks associated with differing legal requirements are outlined below.

Making it easier for firms to comply with legal requirements applicable in other Member States

An online financial platform has faced problems when attempting to offer savings products in multiple Member States. Information has not been easily accessible and it has received little constructive support from the Member State authorities, despite the benefits its products can bring to consumers. Its compliance and legal costs are high, and have made its offer less attractive.

Member States could do more to assist firms in working within the current legal framework and facilitate compliance with applicable requirements when providing services in other

[74] See Article 7 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6.
[75] See Articles 3, 4(b) and 6 of Rome I; Commission Communication: A Digital Single Market Strategy for Europe, p. 11 (http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf)
[76] European Commission Press Release: Common European Sales Law, p. 2 (http://ec.europa.eu/justice/contract/files/common_sales_law/i11_1175_en.pdf)
[77] Commission Expert Group on European Insurance Contract Law noted recently that some national requirements as to the form of insurance contracts clearly entail costs for businesses. See Final Report of the Commission Expert Group on European Insurance Contract Law (http://ec.europa.eu/justice/contract/files/expert_groups/insurance/final_report_en.pdf), p. 90
[78] Firms covered include, for example, credit institutions, insurance companies, insurance intermediaries and mortgage credit intermediaries.

Member States. At present, the EU-wide SOLVIT network[79] helps businesses when they encounter problems with public authorities who do not apply EU law correctly, and 'Points of Single Contact' give assistance to firms on their obligations when providing services cross-border.[80] Initiatives such as these could potentially be extended further in the financial services and insurance area in order to reduce costs and risks for firms wishing to trade on other Member States' markets.

Member State governments or national competent authorities could make further practical assistance available (e.g. through 'one-stop-shops') for cross-border compliance procedures. This could help support firms which encounter difficulties when going cross-border, encouraging future progress in integrating the EU's markets and facilitating the development and spread of new technologies and of innovative, market-led solutions to competition issues.

Questions

30. *Is action necessary at EU level to make practical assistance available from Member State governments or national competent authorities (e.g. through 'one-stop-shops') in order to facilitate cross-border sales of financial services, particularly for innovative firms or products?*
31. *What steps would be most helpful to make it easy for businesses to take advantage of the freedom of establishment or the freedom of provision of services for innovative products (such as streamlined cooperation between home and host supervisors)?*

Creating autonomous or more closely harmonised EU-wide regimes

An insurer provides a simple life insurance policy at a competitive price in its home market, and it complies with all legal and regulatory requirements. It has seen that premiums are much higher in other Member States, and sees a business opportunity. However, it cannot sell the product in other markets as the product is designed to meet its home state's legal and regulatory requirements.

In some instances, a separate legal framework might be the best way to increase choice of product while decreasing costs for business and ensuring that consumers are adequately protected. An opt-in regime could be a framework for identical product characteristics, to be used on a voluntary basis. Its advantage would lie in providing standardisation between Member States and in overcoming many national regulatory differences in some areas. Moreover, it could be a useful means for offering comparable and easy-to-understand financial products, thus increasing consumer trust and confidence for shopping cross border. The CMU Action Plan announces the Commission's intention to assess the case for a policy framework to establish a European market for simple, efficient and competitive personal pensions.

In 2015 EIOPA consulted on the creation of a standardised pan-European Personal Pension product (PEPP). In view of their similar features, the work carried out by EIOPA could serve

[79] Further information on the SOLVIT network can be found on its website (http://ec.europa.eu/solvit/)
[80] Further information on the Points of Single Contact can be found on their website (http://ec.europa.eu/internal_market/eu-go/index_en.htm). These entities were created in line with the Services Directive.

as a basis for developing an opt-in regime for a pan-European life insurance product. This could also prove valuable for other products.

Similar ends could also be achieved by bringing national regimes and rights closer into line to encourage convergence through guidance, improved comparability or standardised practices, potentially through further development of current or new passporting regimes, convergence in supervisory standards (led by the ESAs) to limit issues with host state regulators. The concept of 'general good' rules[81] in insurance, which are an exception to the fundamental principles of the Treaty with regard to free movement, would benefit from additional clarity. Inspiration could be drawn from UCITS as a current successful example of an EU-wide regime.

<u>Questions</u>

32. *For which retail financial services products might standardisation or opt-in regimes be most effective in overcoming differences in the legislation of Member States?*
33. *Is further action necessary at EU level in relation to the 'location of risk' principle in insurance legislation and to clarify rules on 'general good' in the insurance sector?*

Section 4 Next Steps

Interested parties are invited to send their answers to the questions in this Green Paper by 18 March 2016 through the **online questionnaire**: [Link].

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published unless respondents indicate otherwise in the online questionnaire. In order to ensure a fair and transparent consultation process, only responses received through our online questionnaire will be taken into account and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact: [email address].

The general rules on personal data protection are accessible on the EUROPA website here: http://ec.europa.eu/geninfo/legal_notices_en.htm#personaldata. The specific privacy statement for this consultation can be found here: [Link].

Please also reflect whether there are any obstacles which are not discussed in this document, and whether any of the obstacles described particularly affect Small and Medium Enterprises.

During the consultation process, the European Commission:

- will engage with the European Parliament to get direct feedback from its Members;
- invites Member States to organise consultations and events with the public and national parliamentarians to promote discussion on these issues at national level; and

[81] A Member State may have recourse to the concept of the general good in order to enforce compliance with its own laws by an insurer wishing to carry on its business within its territory under either the right of establishment or the freedom to provide services. However, insurance directives do not lay down the concept of the general good, but it is described in the *Interpretative communication of the Commission concerning the freedom to provide services and the general good of the insurance sector* (OJ C 43, 16.02.2000) on the basis of requirements laid down by the Court of Justice.

– will organise in a transparent and balanced manner workshops to consult those with specific technical expertise (such as academics and market participants) to reach an informed view on specific issues.

The Commission's goal is to maximise the practical benefits of a Single Market in retail financial services for as many European consumers as possible by opening up the market and making it work better for them, so that they have a bigger and better choice of financial products. Our action will also aim to break down some of the practical barriers that prevent businesses from offering their services across borders. The Commission will also maintain a focus on its broader goals of ending unjustified geo-blocking and other form of discrimination based on nationality or place of residence, supporting consumer confidence in the availability of appropriate redress, and improving access to comprehensible, comparable and proportionate information on retail financial service products.

The Commission will organise a conference in early 2016 to examine the evidence yielded by the consultation and discuss priority areas mentioned in the present Green paper. The Commission envisages publishing an Action Plan on Retail Financial Services to follow up the consultation around summer 2016.