



EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Annexe: Detailed summary of individual responses to the 'Green Paper on retail financial services'

This document provides a factual overview of the contributions to the Green Paper on retail financial services. The content does not reflect the position of the Commission.

DETAILED SUMMARY OF INDIVIDUAL RESPONSES 2

Overview of respondents 2

General questions 3

 Question 1: For which financial products could improved cross-border supply increase competition on national markets in terms of better choice and price?..... 3

 Question 1.1: Which financial products would you be most interested to buy cross-border from other Member States if they suited your needs better than products available on your local market? 3

 Question 2: What are the barriers which prevent firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border? 4

 Question 3: Can any of these barriers be overcome in the future by digitalisation and innovation in the Fintech sector? 5

 Question 3.1: Please specify which of these barriers can be overcome in the future by digitalisation and innovation in FinTech sector? 6

 Question 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?.... 7

 Question 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? 8

 Question 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?..... 10

 Question 6.1: If customers do not have access to safe, simple and understandable financial products throughout the European Union, what could be done to allow this access?..... 10

 Question 7: Is the quality of enforcement of EU retail financial services legislation across the EU a problem for consumer trust and market integration? 11

 Question 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? 12

Helping consumers buy financial products cross-border 13

 Question 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?..... 13

 Question 10: What more can be done to facilitate cross-border distribution of financial products through intermediaries? 14

Question 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 State? If yes, what action and for which product segments?	15
Question 12: What more can be done at EU level to tackle the problem of excessive fees charged for cross-border payments (e.g. credit transfers) involving different currencies in the EU?	17
Question 13: In addition to existing disclosure requirements, 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?	18
Question 14: What can be done to limit unjustified discrimination on the grounds of residence in the retail financial sector including insurance?	19
Question 15: What can be done at EU level to facilitate the portability of retail financial products – for example, life insurance and private health insurance?.....	21
Question 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?.....	23
Question 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?.....	24
Question 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?.....	25
Question 18.1: If measures should be taken to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation, what of the following could be done to ensure the above?	26
Question 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?.....	27
Question 19.1: If consumers do not have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance, what could be done to ensure this is the case?	27
Question 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?	28
Question 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?.....	29

Question 21.1: With respect to the car rental sector, are specific measures needed with regard to add-on products?.....	29
Question 21.2: If specific measures are needed with regard to add-on products, what of the following could be done?	30
Creating new market opportunities for suppliers	30
Question 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?.....	30
Question 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?	31
Question 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?.....	33
Question 25: In your opinion, what kind of data is necessary for credit-worthiness assessments?.....	34
Question 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?	35
Question 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?	37
Question 28: Is further action required to support firms in providing post-contractual services in another Member State without a subsidiary or branch office?.....	37
Question 29: Is further action necessary to encourage lenders to provide mortgage or loans cross-border?.....	38
Question 29.1: If further action is necessary to encourage lenders to provide mortgage or loans cross-border, on which particular area should the action concentrate?.....	38
Question 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?	39
Question 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)?.....	40
Question 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?.....	41

Question 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?..... 43

Question 34: Please provide any additional comments..... 44

DETAILED SUMMARY OF INDIVIDUAL RESPONSES

Overview of respondents

The Commission received 428 responses to the consultation. The breakout of responses by category of respondents is set out in Charts 1 and 2.

Chart 1: Respondents by country

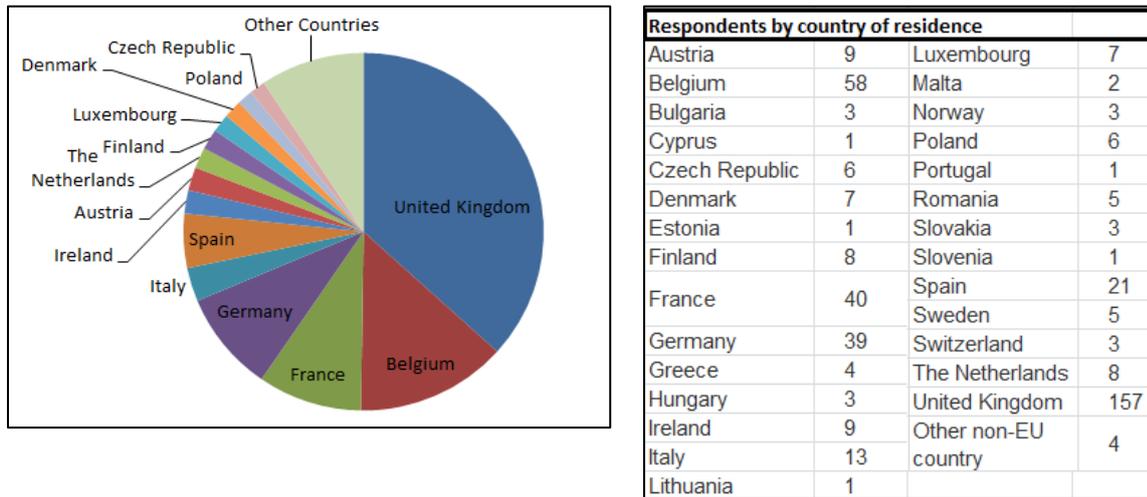
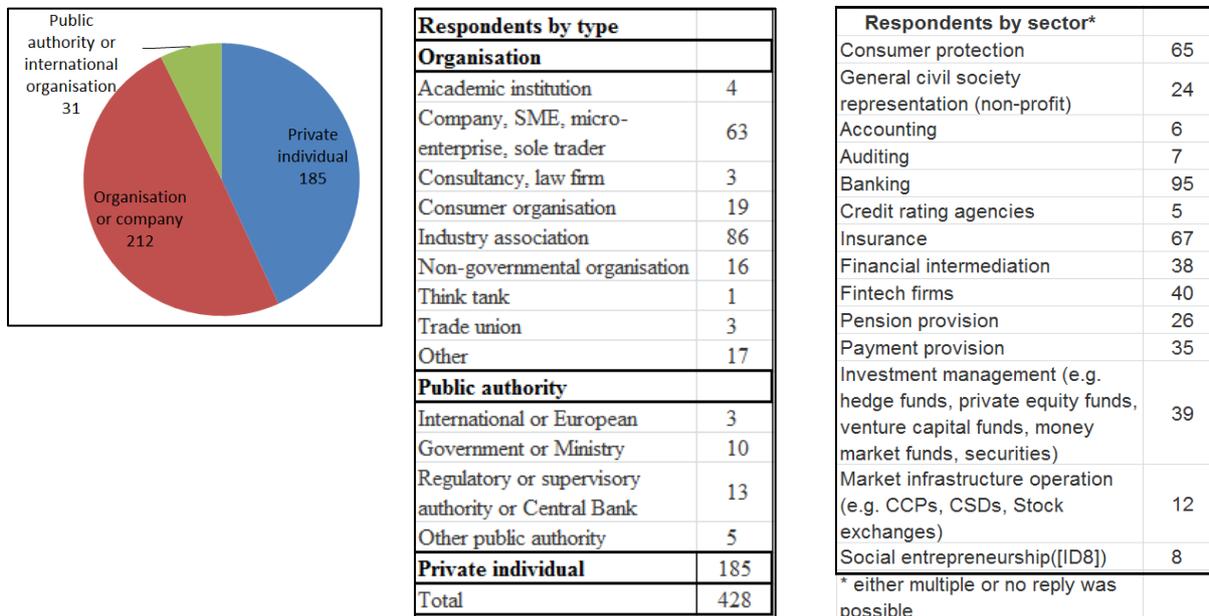


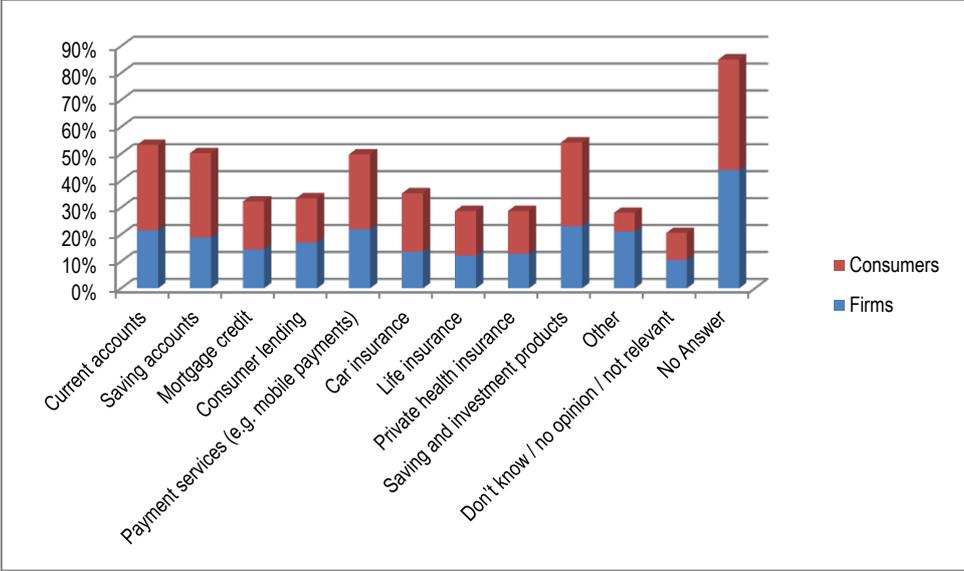
Chart 2: Respondents by type



General questions

Question 1: For which financial products could improved cross-border supply increase competition on national markets in terms of better choice and price?

Question 1.1: Which financial products would you be most interested to buy cross-border from other Member States if they suited your needs better than products available on your local market?



According to the industry, improved supply of saving and investment products, payment services and current accounts could best increase competition on national markets.

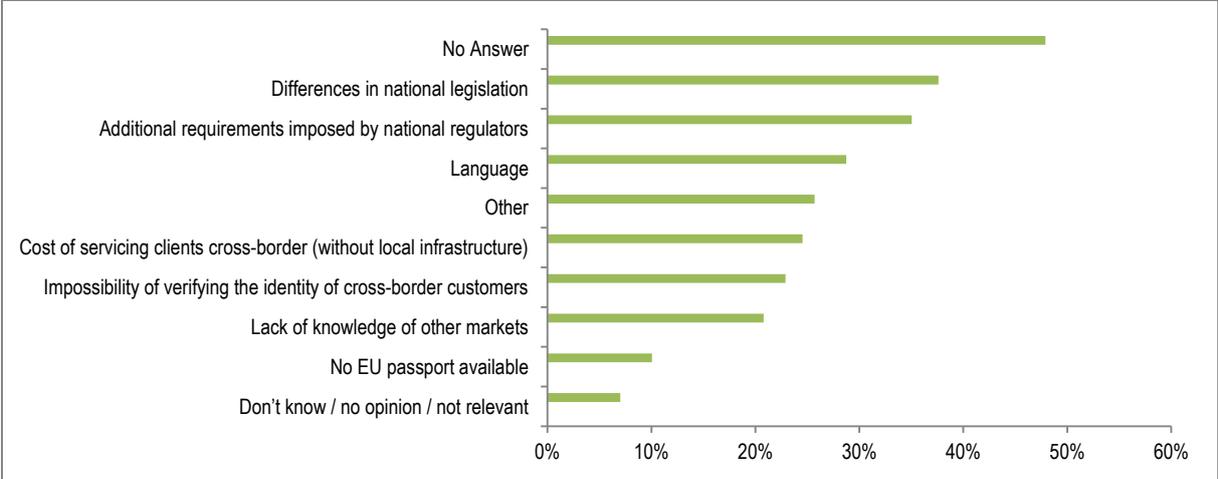
However, various providers first put into question the demand from consumers for any cross-border offer and indicated that mature markets such as retail financial services already proposed a vast range of products and may not need additional competition from cross-border offers. They also pointed to the fact that, though providers did not contract directly from other Member States, they established branches to compete on other markets. Some argued that offering products directly from abroad would be uncompetitive given that it might not be possible to recover funds.

They also outlined cases where cross-border supply was not achievable – for example, insurers required data on national markets and close relations with clients were necessary for more complex financial services given the heterogeneity and instability of national laws. However, cross-border supply of some products must improve given that a growing number of EU citizens work in different countries – the main example given was the Pan European Pension Product. If firms would supply products cross-border, they believed that they should focus on simple/standardised products, without local fiscal implications and with homogeneous regulation across countries.

Answers from consumers showed that they would be primarily interested in purchasing current and savings accounts cross-border, followed by saving and investment products, payments, car insurance as well as some digital financial services (such as on-line financial advice).

Question 2: What are the barriers which prevent firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border?

Providers



Financial firms raised regulatory uncertainty across Member States and diverging practices by national supervisors, including gold-plating of EU rules and additional requirements imposed on passported entities. They believe this creates an unlevel playing field with local providers and increases compliance costs for new entrants. They also mentioned that protectionist legislation gives advantage to national providers. As an example, some providers pointed to consumer protection rules, product intervention and enforcement, which differ widely (even if they originate from EU legislation). Some civil society organisations also advocated for improved national enforcement of existing consumer protection rules.

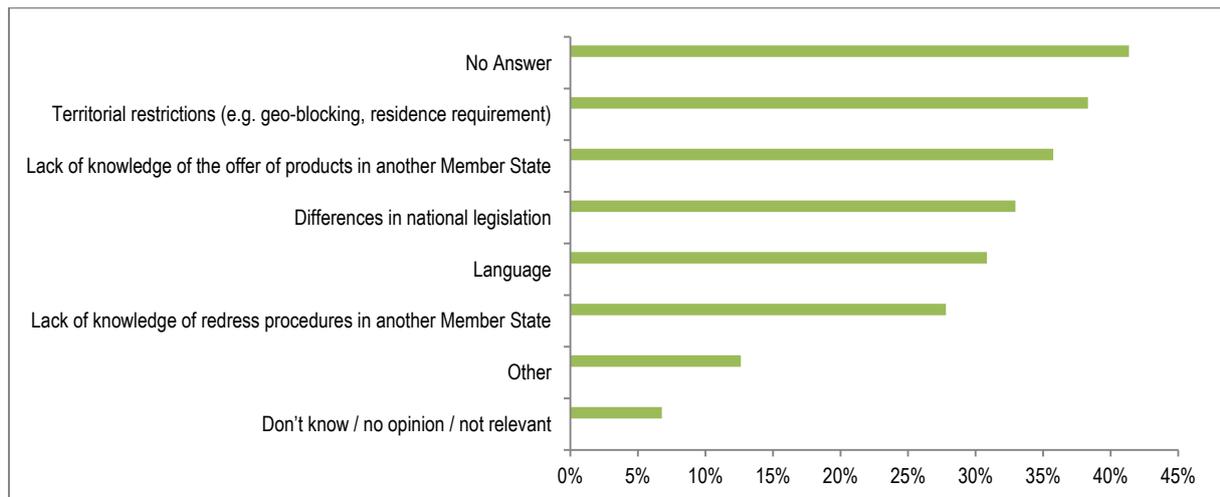
Many financial firms mentioned that language was an important barrier to offering financial services cross-border. Translating a number of documents into the consumer's language could be expensive and available machine translation tools were yet not a viable solution.

Other respondents outlined more sector-specific obstacles to cross-border supply:

- Credit providers are unable to assess borrowers' creditworthiness because they lack access to relevant data in other Member States. They also add that differing personal insolvency schemes add to the cost and difficulty of collecting non-performing loans.
- Varying tax frameworks are an important constraint for firms targeting consumers in other Member States, especially those offering saving and investment products, which may offer different yields to clients depending on their tax regime.
- In the area of payments, in some Member States providers face additional country-specific technical requirements and standards.

Insurance providers argued that their products were developed along the lines of national specificities such as risk pricing, claims handling, customer services and others, which make direct cross-border transferability of these products impossible. For instance, health insurance greatly depends on the national health system and life insurance products must comply with national social and labour laws.

Consumers

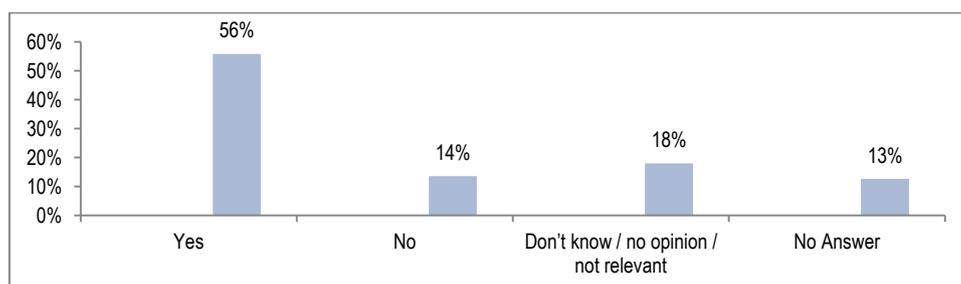


Individual respondents outlined several other barriers that prevented them from purchasing products cross-border, such as: hidden and excessive costs for cross-border transactions, lack of knowledge about taxation regimes in other Member States, insufficient clear and detailed information in local languages for cross-border financial services and a lack of trust.

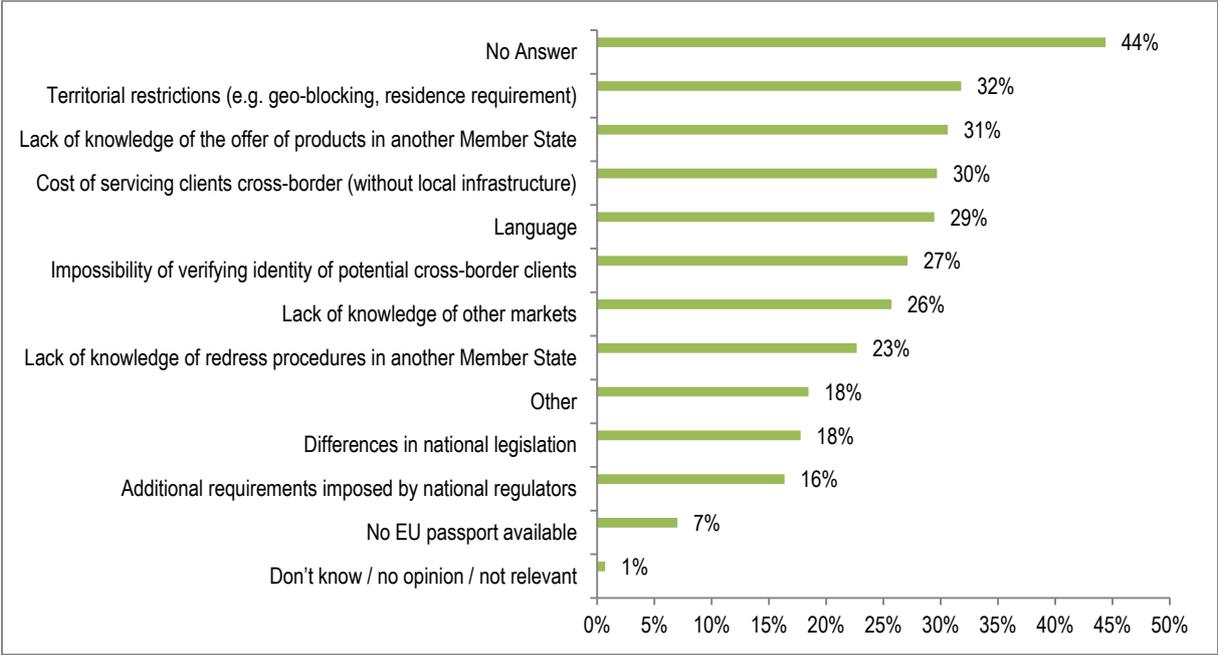
Though they acknowledged that markets are largely local, some consumer organisations argued that there is more need for cross-border products in small national markets where the level of competition in retail financial services is limited. They also emphasised the need for trust in providers, confirming that consumers need confidence there are effective means of redress in case something goes wrong, as they may be unable to take legal action in another Member State and another language. However, consumer organisations added that few consumers are aware of their redress options, including within their own Member States and many national redress schemes are not effective because their decisions are not binding on providers. They were also of the opinion that collective redress mechanisms would be helpful, in particular to address mis-selling scandals that may occur in a more open EU single market. Moreover, they pointed out that a lack of trust in providers is due to the inconsistent enforcement of EU legislation cross-border and that therefore measures should be taken to promote more consistent enforcement of consumer protection legislation.

Consumer organisations also claimed that distribution models are a barrier to consumers purchasing financial services cross-border.

Question 3: Can any of these barriers be overcome in the future by digitalisation and innovation in the Fintech sector?



Question 3.1: Please specify which of these barriers can be overcome in the future by digitalisation and innovation in FinTech sector?



Many respondents from across the categories noted that they see great potential benefits from digitalisation, such as providing better information to consumers, reducing costs for firms, allowing them to identify their customers at a distance, improving transparency on foreign exchange fees and supporting access to redress.

Many consumer organisations and industry participants noted that digitalisation does not solve existing problems for consumers, such as trust and the effects of poor incentives. They also pointed to new risks which could arise, such as manipulation of online reviews, reduced quality of service, use of tailored pricing by comparison sites, digitally illiterate consumers being exposed to scams, reduced understanding of products, biased robo advice and the potential for creation of new monopolies. Some industry players and one finance Ministry reminded the Commission that many consumers will still want to interact with their financial providers face-to-face, especially for more complex products.

Similarly, of those who responded positively, some said that the benefits will differ between simpler and more complex products. In addition, they provided some general comments:

- A number of consumer groups highlighted their belief that digitalisation needs to be balanced with protections for consumers and a public authority pointed out that digitalisation will create new risks for consumers and the market. Many participants raised that digitalisation needs to be inclusive, secure and trustworthy for consumers.
- Public authorities and firms were sceptical about whether digitalisation would support cross-border business, especially given the remaining structural barriers which firms face. However, one industry group raised the example of online advice and mortgage intermediation, which could support future sales cross-border.
- Negative respondents from the industry pointed to laws (including tax laws), regulations and regulatory approaches that constrain the benefits of digitalisation, such

as obligations to provide information or advice physically, or their need to be present at a court in order to enforce a debt.

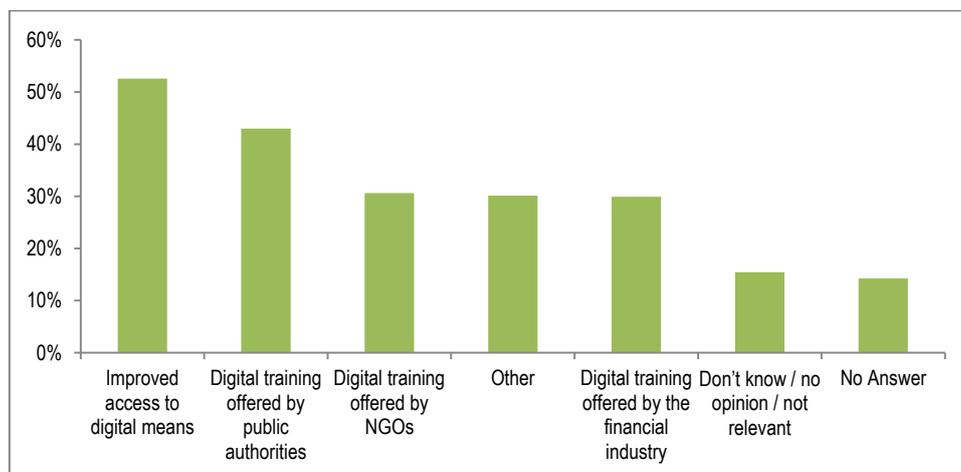
- Many insurance firms and associations noted that, despite the benefits of digitalisation, they would still be unable to offer cross-border services, given the need to understand local conditions and laws.

Others respondents from the industry gave examples of more work that is needed to encourage cross-border digital sales:

- Greater legal harmonisation and certainty is needed and that specific barriers must be removed, such as in the admission of electronic evidence in some Member States.
- Harmonised technical standards in payments.
- Better understanding on technology issues by regulators, including supporting digital disclosure
- Technology-neutral EU legislation (for instance, by not requiring disclosure specifically on paper).
- Know Your Customer ("KYC") requirements adapted to digital environment.

However, two firms suggested that limited action be taken at present at European level, leaving space for firms to develop new offers and fix existing problems.

Question 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?



Respondents from the industry, consumer organisations and Member State authorities reiterated that digital training is required for consumers, but many added that this must be in addition to financial education led by Member States and partially by firms, with some adding that digital training is a wider problem not solely focused on the financial sector. Some banks and Member States added that they already offer digital education themselves and pointed out that digital training must be for all ages.

Many respondents from the industry, consumer groups and Member States noted that European and Member State authorities must ensure that services especially basic ones remain available and accessible for people who are digitally illiterate, as many consumers,

particularly the elderly, the rural and those suffering from disabilities, are less able to use online services. They further refined this into three major points:

- Some individuals and consumer bodies proposed that firms should be obliged to continue providing physical services. Some consumer organisations proposed that fully digital firms should financially contribute to the costs of maintaining physical infrastructure. Some firms also added that special arrangements should be available to assist people with special needs, for instance by signposting consumers to appropriate services.
- Multiple trade bodies, organisations and some consumer bodies reminded the Commission to avoid regulation which stops firms from offering offline services.
- Many consumer organisations and firms suggested that applications and websites should become simpler and more user-friendly – some encouraged action to ensure the information on these sites and their terms and conditions are accessible and transparent.

Many participants, primarily from the financial industry, suggested that access to the internet is crucial. In their view, broadband access should be spread more widely and that equipment should be made available in libraries and other public settings. Some added that making services like prepaid cards available was an example of accessible technological advancement and that automated financial advice may be a way of avoiding exclusion from advice markets for lower-income customers. Several investment organisations noted however that this advice may be of lower quality than the equivalent from a human.

Multiple consumer bodies and public authorities also added that there needed to be action to ensure for instance that use of data analytics does not exclude people (especially for insurance and consumer credit) or increase their prices (especially for insurance) by segmenting them as higher risks. A public authority underlined the need for cooperation and powers to identify and address aggressive online sales practices.

A number of industry participants held the view that further action is not needed as offline services are available and will remain available, as the industry has moved toward a "multi-channel" approach, using digital systems alongside traditional branch networks. Some banks pointed out that their legacy branch networks mean they have a cost disadvantage as they support clients whilst newer digital-only firms focus on more profitable areas without costs.

Question 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?

279 respondents contributed to this question (101 consumers, 155 organisations and 23 public authorities). Many respondents outlined the potential risks that could emerge from digitalisation, highlighting areas such as consumer understanding of products, digital exclusion, bias in 'trusted' online advice or intermediaries, cybercrime and data breaches.

Many consumer organisations emphasised that consumers must have equal protection no matter how they purchase their products or their legal definition. On the other hand, a few

consumer and industry organisations called for more access to redress and guarantee schemes for online business.

Many consumers and consumer organisations (as well as one public authority) took the view that regulators should have more power and ability to combat risks, even across borders. Consumer organisations (as well as some firms) added that regulators need to do more to understand digital issues and their potential risks and that there should be a specific group at European level to monitor developments and determine where action is necessary. Many respondents noted that regulators should monitor the sector and intervene if necessary to ensure that these products are well-regulated and accessible; for this purpose, they proposed that regulators provide support for firms and create 'regulatory sandboxes' allowing firms to test new ideas and establish the viability of new business models.

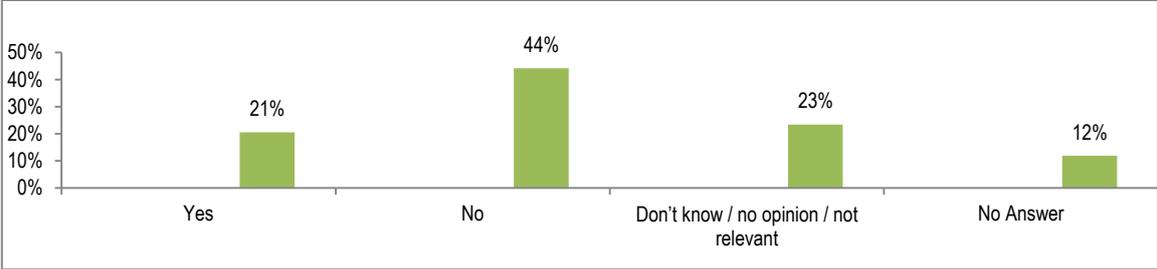
Many consumers, firms, representative bodies and some public authorities underlined that cybersecurity and data protection must be a priority for governments. Some raised that there should be more cooperation in combating cybersecurity threats and many pointed out that the General Data Protection Regulation (EU 2016/679) ("GDPR") needs to be implemented effectively.

Respondents from across the industry and two public authorities called for simpler and more effective disclosure via digital channels. Some from the industry added that this should be standardised across products; others said that behavioural theory could help to maximise its effectiveness. Some individuals and industry representatives raised that consumer education could also be helpful.

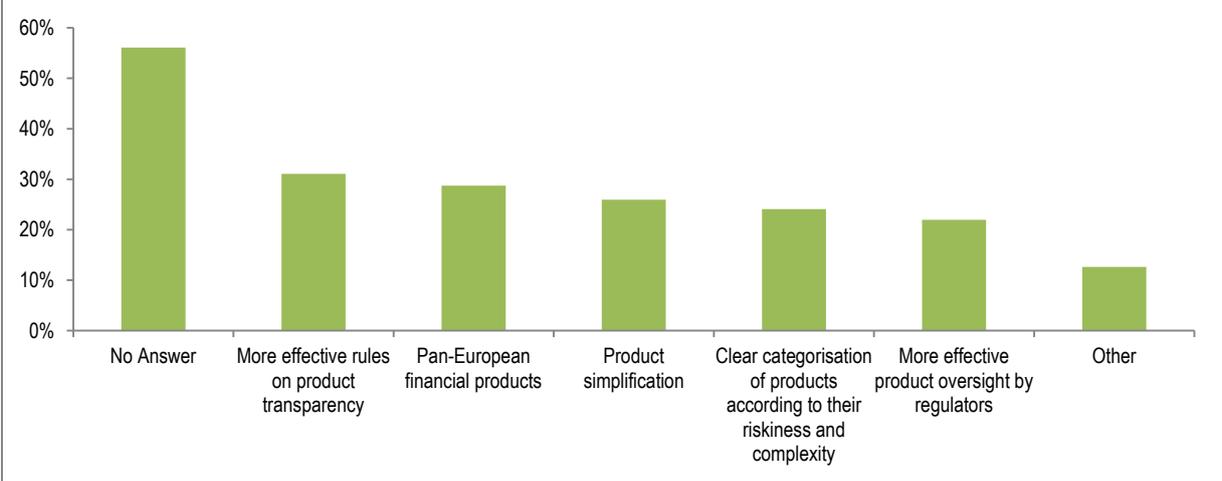
Industry respondents (but primarily the banking industry) called for a 'level playing field' in the security and consumer protection standards applying to different products and different types of firm. They stated that the same or similar services should be subject to the same rules; some praised the Insurance Distribution Directive No2016/97/EU ("IDD") for achieving this. Others (as well as one public authority) added that legislation must be technology-neutral, relying on principles which would leave space for firms to meet them in different ways.

Industry players raised that some new technologies present risks for consumers and must be regulated. However, a number of firms and some public authorities cautioned that an excessive regulatory response could risk limiting innovation; some suggested that the Commission should first study digital developments before considering further action, including regulation.

Question 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?



Question 6.1: If customers do not have access to safe, simple and understandable financial products throughout the European Union, what could be done to allow this access?



Individual consumers advocated for greater transparency as well as clear and simple information about products and for labeling of simple financial products through an EU accreditation scheme.

Consumer representatives considered that providers prefer to offer complex products on which margins are higher, also because complex products are more difficult to compare. Therefore, in the opinion of some organisations, financial firms should be legally obliged to offer simple financial products developed according to a set of criteria defined at EU level.

Some consumers raised tying and bundling practices which, according to them, make financial products even more complex for consumers. They also considered that if independent financial advice were accessible to all consumers, simple financial products would not be so critical for them.

A few public authorities from Member States agreed with the opinion of some financial industry stakeholders that the European Commission should evaluate the impact of recently adopted legislations in retail financial services before proposing new legal initiatives in this area. They also considered that in many instances, consumers already have access to simple financial products. One national regulator pointed out that independent and good quality

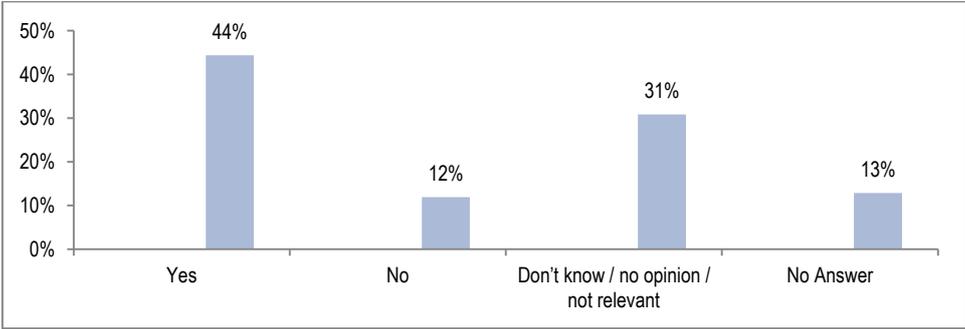
advice is needed to ensure the access of consumers to simple products (where advisor would act exclusively in the interest of the client).

A great majority of industry stakeholders are of the opinion that consumers across the EU have access to safe and simple products, in particular within their Member States and only to a very limited extent at a cross-border level. As an example of simple products which will soon be available to consumers regardless of their place of residence, some financial firms mentioned basic payment accounts introduced by the Payment Account Directive No 2014/92/EU ("PAD"). According to industry respondents, rules in the Mortgage Credit Directive No 2014/17/EU ("MCD"), the PAD, or the PRIIPs Regulation No 1286/2014 will help consumers have access to more understandable and standardized information about products. They suggested that the Commission should first assess the impact of the new rules before coming up with new proposals.

In order for simple products to be more commonly available at a cross-border level, some firms proposed harmonising consumer protection rules or contract law in the EU. According to others, it is necessary to develop minimum products' standards that will allow for competitive product design and pass-porting in the Union (like in the case of UCITS Directive No 2009/65/EC). However, product standardization should not impede product diversification to ensure their suitability for different clients' needs. Some consumers have a preference for complex and sometimes risky products because they expect higher profits.

In addition, there are already certain EU rules on product oversight and governance (e.g. the guidelines of the European Banking Authority ("EBA") , IDD) which set out the requirements for manufacturers when designing and bringing retail products to the market, which ultimately will make products much safer to consumers. Finally, some industry stakeholders envisaged that the development of simple products would be encouraged by the digital channels of distribution for which many conventional financial products do not fit.

Question 7: Is the quality of enforcement of EU retail financial services legislation across the EU a problem for consumer trust and market integration?



Most consumers considered enforcement to be a problem, mainly due to its quality. The quality of enforcement will depend on factors such as the mandate, tools and capacities of enforcement authorities, as well as on potential conflicts of interest with other mandates, typically with micro and macro prudential objectives. When talking about private enforcement, consumers in very few Member States can rely on effective mechanisms for filing complaints and resolving disputes.

There were also views that retail financial products are not trustworthy due to their complexity, often poor suitability to consumers' needs, lack of necessary protection rules in some market, unfair providers' behaviours and low effectiveness of enforcement mechanisms, both public and private. In order to restore consumer trust and allow for market integration, they argued for actions similar to those voiced by the industry representatives:

- strengthening and widening the scope of cooperation between national authorities;
- providing a clear mandate to the European Supervisory Authorities ("ESAs") to lead the work on the convergence of conduct-of-business supervision practices across MS;
- ensuring a minimal level of market supervision and enforcement across the national markets.

Financial industry views were mixed. Some answered that the quality of enforcement of EU retail financial services legislation across the EU is not a problem for consumer trust and market integration. Other financial firms mentioned problems of inconsistent implementation, "gold-plating", national differences in interpretation. In that, some industry respondents argued for adoption of Regulations instead of Directives. Some financial firms considered that powers of host Member State supervisors should be limited in terms of assessment of compliance of financial products approved by home Member State.

There were also voices in favour of fostering minimum common set of supervisory powers, better co-operation and co-ordination between national competent authorities. Industry representatives also argued for the harmonisation of provisions on complaints handling and right to redress. Few even mentioned the creation of a pan-European Alternative Dispute Resolution regime.

Most of the public stakeholders also considered that the enforcement of EU legislation dealing with retail payments can differ significantly per Member State due to differences in the interpretation and/or intensity of enforcement. They asked the European co-legislators to provide for legal certainty on how existing EU-legislation should be applied or interpreted on a pan-EU-scale and considered that the competent authorities should charge the same supervisory fees. Other considered that inconsistent implementation of legislation can make it more difficult for firms to offer products on a cross-border basis and proposed for ESAs to play an important role in improving the quality of enforcement.

Question 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?

Given the similarities between questions 8 and 34, many contributions to this question are instead included in the summary of question 34. However, some respondents did provide extra evidence for use by the Commission:

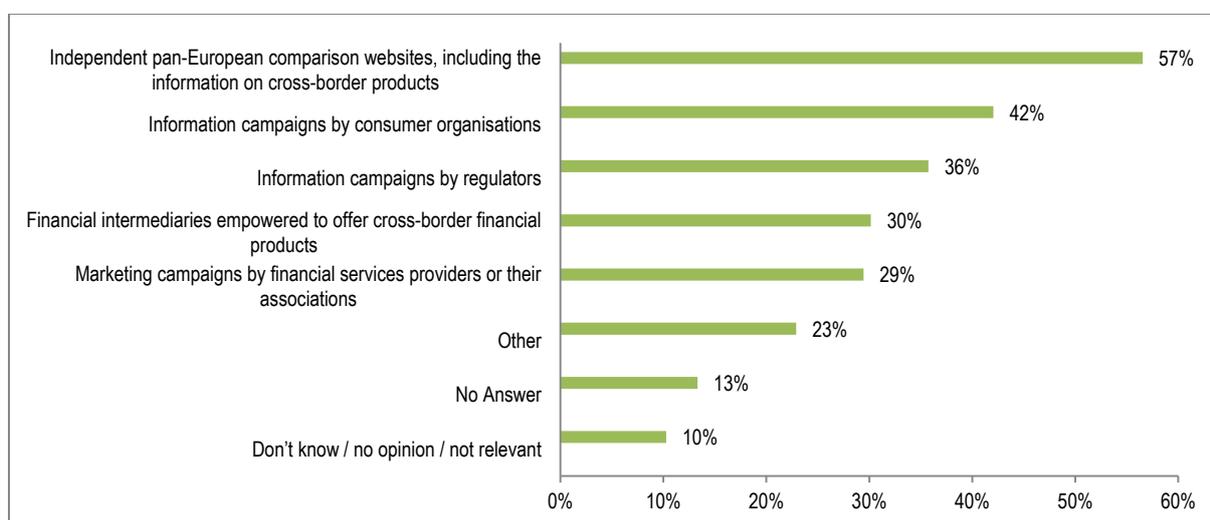
- One bank offered the results of research it commissioned, which showed that 7% of 1,000 adults aged 18-65 surveyed in the UK would consider taking out a financial product in another EU country in the next 5 years. Those in France and Sweden (8%) and Spain (10%) had similar levels of interest. Poland demonstrated higher interest,

with 22% of respondents saying they would consider it. Respondents explained that they did not want to purchase a product from another country because they lacked knowledge about the applicable laws and products available and were reluctant to deal with providers in another language. This was the most frequently cited reason in the UK (64%), Sweden (54%) and Spain (50%) and the second most cited barrier in France (54%) and Poland (57%) after “no reason to do it” (57%, France) and a lack of residence, business or family reasons (59%, Poland).

- One industry group offered the results of a study on banks’ image, which noted that 78% of customers had a good image of their bank and that 83% did not wish to change banks in the 12 months ahead.

Helping consumers buy financial products cross-border

Question 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?



Consumers' stakeholders advocated for a pan-European portal that would compare retail financial products from across the continent. In their opinion, it would stimulate competition between providers and make it easier for consumers to choose financial products that suit their needs. Consumer organisations also stressed that many comparison websites are run by financial firms and brokers and therefore provide misleading and biased information to consumers. In their view, these sites should be supervised to ensure that they are objective, fair and fully transparent about their business model and owner. Consumer organisations also pointed out that users should be clearly made aware that products from other Member States might not be subject to the same level of consumer protection, such as on compensation or redress.

Financial firms generally believed that setting up a pan-European portal might be impossible, raising a number of challenges such as different national languages, traditions and context as well as the difficulty of comparing products from different countries, which may differ substantially even if they seem similar. Along with some public authorities, they raised that it would be very costly to build, maintain and update a pan-European site.

In the financial industry's view, providers of financial services are best placed to advertise, offer and inform consumers about products available on the market if there is a business case for such a commercial activity. Only if really necessary, this could be supplemented by the awareness raising campaigns conducted by regulators or other entities, but many industry respondents consider that public funds should not be spent for this purpose. Some public authorities also highlighted that consumers show home bias when choosing products and will continue doing so in the close future.

Several respondents pointed to the added value of independent comparison websites. However, some financial firms mentioned that there were risks since users often over-emphasise the price of products and do not consider other factors such as their terms and conditions.

Given the complexity of products, in the view of the financial industry and some public authorities, comparison websites would be more likely to work for products that are highly standardised, where comparison would cover basic features only, though this could mean missing some key features. It is also proposed by some financial firms that, as a first step, simple products should be made available to consumers at a cross-border level. Once consumers are confident about using simpler products from other Member States, the demand and supply of more complex products would follow.

Finally, some providers mentioned that face-to-face contact is still appreciated by many consumers and that enhancing financial education may help raise consumers' knowledge about available financial services and their features. Some consumers' representatives are of the view that given the complexity of many financial products, the only manner to ensure that consumers are aware of related risks and costs is by giving them access to independent financial advice. One public authority is of the opinion that independent financial advice would also help empower consumers in financial services.

Question 10: What more can be done to facilitate cross-border distribution of financial products through intermediaries?

Individual consumers listed how intermediaries could better be able to offer services cross-border, i.e. via technology platforms that can provide access to financial products and consumer information from financial institutions; cross-border partnerships, for instance with EU wide banks; or the establishment of centres of competence with the expertise to address the needs of citizens and companies from other Member States.

Consumers were also concerned that having more products on the market, including those offered by cross-border intermediaries, may add to the complexity of financial services which consumers already struggle to understand. Some individual respondents also added that intermediaries themselves may be unable to keep up-to-date on the wide array of products available. Some consumers also proposed that further intermediation should not be an objective, as they believe that intermediaries complicate the process and increase costs. To help consumers access simple and understandable products, one major financial institution proposed setting an EU-wide best practice standard for product governance.

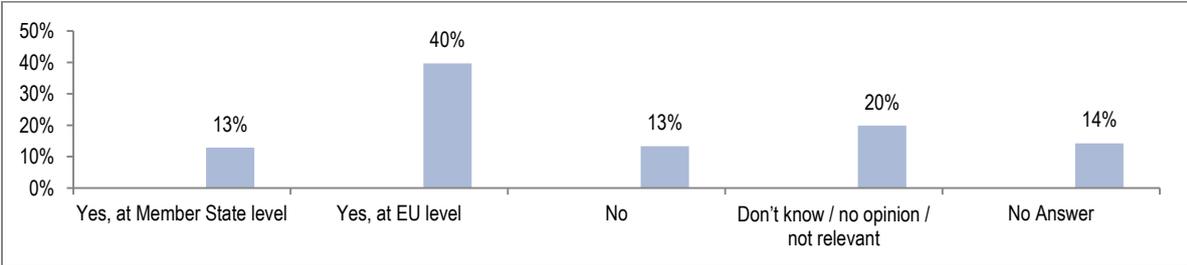
Consumer representatives and individuals noted that regulators should ensure that intermediaries offering financial products are independent from financial institutions. Some consumer representatives and a regulator said that a ban on commissions for intermediaries would offer a basis for cross-border intermediation which prioritises consumers' interests.

Many in the financial industry, including financial intermediaries' representatives, suggested that there should be simpler and clearer requirements for intermediaries when they offer services cross-border. They noted that they face compliance costs and liability risks because EU rules regulating intermediaries for each area of financial services are inconsistent and sometimes contradictory (e.g. disclosure requirements) and Member States often gold-plate certain minimum requirements. In addition, licensing requirements and conduct of business rules can differ between Member States and one public authority noted that intermediary status has not been defined in any EU legal texts for some products. Several financial institutions also used this opportunity to advocate for intermediaries to be subject to the same legal requirements as banks, in particular for consumer protection.

Some financial firms mentioned that it might be challenging for intermediaries to provide advice on other countries' tax rules, restraining them from offering products such as pensions. Similarly, consumer representatives noted that consumers could be uncertain about the conditions and protections that they would receive when shopping cross-border.

The industry called for harmonised EU qualification standards for intermediaries which would allow regulators to easily recognise authorisations granted in other Member States (similar to a passporting system). Similarly, consumer representatives and consumers proposed an EU accreditation system, with training and criteria (e.g. local knowledge) which intermediaries could meet in order to be recognised as fair and reliable. Some regulators also underlined that intermediaries should know the local market – including its language, tax regime, specific national rules and consumer habits – before being allowed to distribute products there.

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



Consumer organisations and some regulators called for more work to help consumers exit products without restriction, penalty or excessive time-burden. For instance, they point to high product termination fees, or clauses in insurance contracts requiring three months' notice (via a registered letter) to avoid renewing the product. Consumer organisations also pointed out that collective switching should be considered.

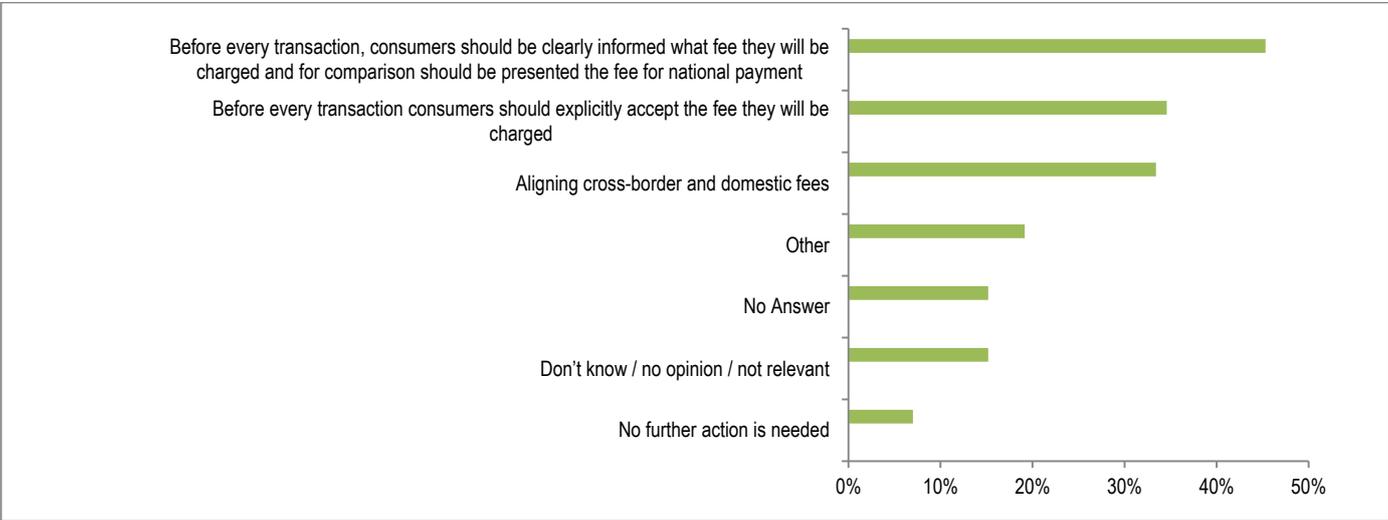
Many individual respondents indicated EU legislation is necessary to ensure equal treatment of all EU citizens and impose sanctions on providers if they restrict consumers' access to financial products or discriminate against them based on their place of residence.

For some innovative companies, a key factor in encouraging customers to compare and switch is to enable them to understand their own financial situation and needs. Similarly, some consumer organisations point out that many consumers are not aware they can already switch some products and encourage action to make them aware of the benefits of switching. A few firms proposed that a greater level of switching should not be a policy objective per se, but instead, the aim should be to increase levels of service and consumer satisfaction. Many financial firms and regulators pointed out that product comparison should not focus excessively on price; other product features, such as customer service, are also important.

Several industry stakeholders believe that there is no need for further switching measures until the Commission has assessed the effectiveness of the PAD's switching system. Overall, they believe that the demand for cross-border switching is low and that an expensive new switching mechanism would bring limited benefits. However, some regulators outlined efforts they had taken nationally to enhance switching. For instance, public authorities from one Member State encouraged the use of application programming interface ("API") technology to make it easier for consumers to compare personal current accounts and a number of other products such as mortgages and business current accounts.

Finally, some consumer organisations proposed that the Commission encourage switching between comparable simple products which might be standardised across the EU. Indeed, according to some financial services providers, comparing and switching between financial products is only possible when they are largely standardised (in itself an unattractive option as it could impede innovation). However, they note that terms and conditions for even similar products can differ widely due to divergent national taxation systems, legislation, enforcement, charges, insolvency rules and more. In their view, this prevents firms from expanding into new markets as it creates an unlevel playing field. Some innovative firms also believe that action is needed to reduce the disincentives to their expansion cross-border, such as to standardise intermediary market access, support digitalisation of the account opening process, or simplify local licensing systems and tax rules for capital income.

Question 12: What more can be done at EU level to tackle the problem of excessive fees charged for cross-border payments (e.g. credit transfers) involving different currencies in the EU?



The responses received from consumers and consumer organisations, on one side, and from the industry, on the other, were divided.

The vast majority of consumers were in favour of increased transparency in this area. Some would like to receive clearer information about the fee that will be charged before every transaction or even to accept formally the fee to be charged by the provider for the cross-border transaction before it is executed. Some national authorities advocated action to cap or ban additional charges for cross-border transactions.

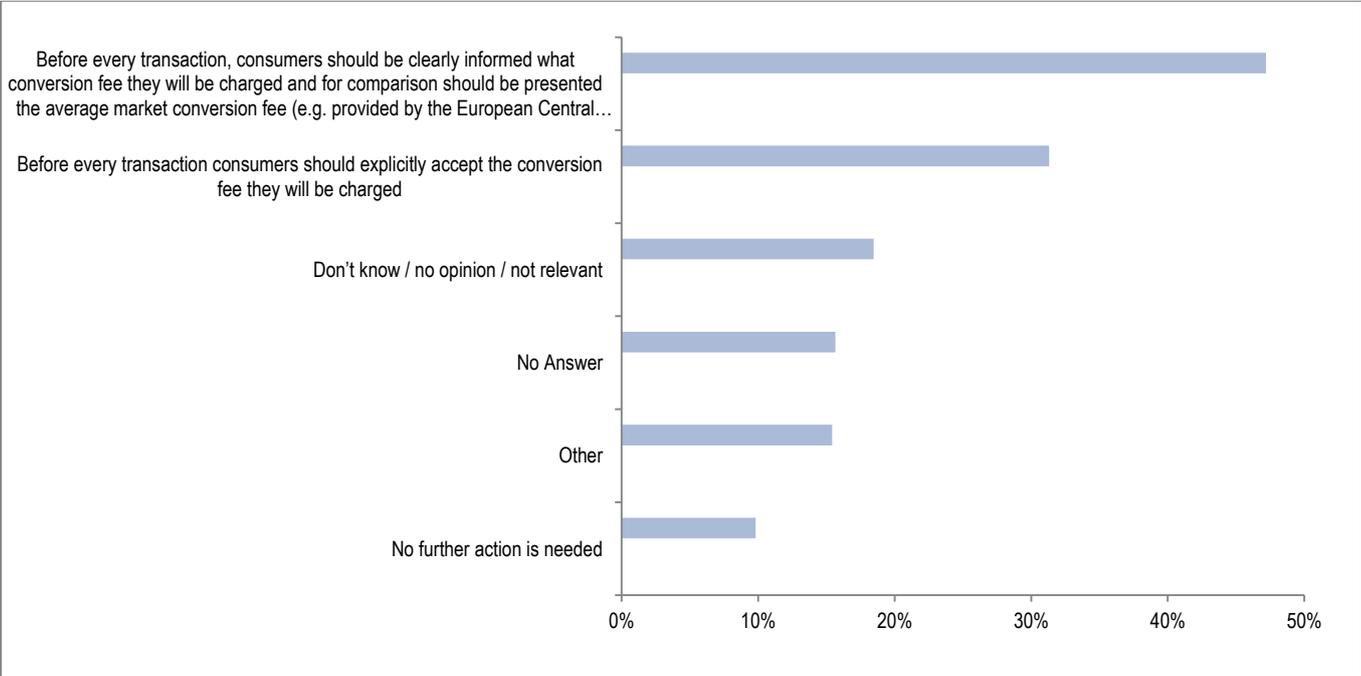
Many consumer organisations strongly encouraged action to extend Regulation No 924/2009 on cross-border payments (equalising the prices of domestic and cross-border transactions in euro) to all EU countries and currencies. While acknowledging that Regulation No 924/2009 has set the right goal, consumer organisations underline that it might not be as effective as the previous one (Regulation No 2560/2001) in some areas and gave examples of excessive fees charged by providers for cross-border euro transactions (e.g. money remittance). Consumer organisations and two banks also considered that the voluntary approach (an "opt-in" regime for non-euro Member States) set in Regulation No 924/2009 should be reviewed and the regulation extended to all non-euro currencies in the EU. Some respondents highlighted a risk that some banks may increase the fees charged for domestic transactions to compensate for any loss of cross-border fees; as a result, they proposed that a changed Regulation should explicitly mention that the policy objective is only to limit excessive fees charged for cross-border transactions.

A vast majority of respondents from the industry showed opposite views; most considered that no further action is necessary in this area and that the recently adopted Payment Service Directive No 2015/2366/EU ("PSD2") and PAD should bring full transparency to consumers. Alongside some national authorities, the industry respondents believed that these new requirements needed to be implemented and their effects assessed before it is possible to

consider any further measures. Representatives from the payment industry also explained that PSD2 would allow for new providers to offer services in this area, which would ensure stronger competition and potential impact on fees.

In addition, several respondents from the industry challenged the excessive level of fees referred to in the consultation and argued that further analysis would be necessary to understand the reality for consumers, an action supported by some public authorities. Moreover, some respondents reported that the difference in transaction pricing in euros and in other currencies could be explained by higher volumes of transactions and by the fact that the Euro has pan-European payment systems (Euro 1 and STEP 2) which was not the case for other currencies. In addition, several banks or payment providers underlined that the cost of anti-money laundering compliance is higher in a cross-border context.

Question 13: In addition to existing disclosure requirements, 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?



Consumers strongly supported increased transparency in this area. Several consumers proposed the removal of conversion fees across Member States or the complete regulation of the exchange rate conditions that may be imposed, while one of the answers suggested maintaining conversion fees when transactions do not take place in Euro, in order to promote the Euro zone. There was a general demand for further information regarding this type of fees and the specific obligations of banks in this regard as well as for information about digital alternatives, which could be provided by an independent informative and comparative Pan-European platform.

Consumer organisations were supportive of the disclosure requirements set by the revised PSD2, which should be applicable at national level by January 2018.

However, many consumer organisations also proposed specific actions in the field of Dynamic Conversion Currency (DCC). Consumers making payments or withdrawing money abroad can often opt for the exchange rate of the merchant's bank instead of the consumer's bank. According to several consumer organisations, this option lacks transparency and rarely offers advantageous rates to consumers. Evidence about detriment caused to British and German consumers travelling abroad was reported by some respondents, including some from the industry and from a national competent authority. As a result, many consumer organisations urged the Commission to look at this issue, suggesting potential actions such as a warning by the European Banking Authority or even a full ban on the practice.

Most banks and associations of banks, alongside several national governments and competent authorities, expressed opposite views and consider that no further action is required at this stage. They underlined that the Commission should first work on implementing recent legislation which will improve transparency in this area, including the PSD2 and the PAD. Some respondents from the industry cautioned the Commission not to overload consumers with additional paper-based disclosure and rather look for innovative ways to provide them with information, considering in particular the huge opportunities brought by digitalisation.

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

The views on how to address unjustified discrimination based on residence were diverging depending on the category of respondents. On the one hand, the large majority of respondents ranging from individuals to public authorities essentially took the view that such discrimination is not desirable in the Single Market. On the other hand, the respondents from the banking and insurance industry outlined the reasons why they should retain an ability to decide whether or not to serve certain customers, segments, markets according to their business strategy, risk appetite and commercial opportunities.

The ECB, majority of public authorities, individual respondents and consumer organisations shared the view that consumers should be treated equally regardless of their residence in the EU on the basis of their right of recipients to receive services under the Treaty. In addition, the ECB pointed out that geo-blocking of retail financial products based on the user's location runs contrary to the goals of the Single market and the continued financial integration. This is already reflected in the Single European Payment Area ("SEPA") and the PAD allowing consumers to make cashless euro payments to payees located anywhere in the EU and EEA, using a single payment account and a single set of payment instruments.

Consumer organisations stated that suppliers should not be allowed to decline a service on the pretext based on customers' residence in another Member State, particularly if, as it is frequently the case, they operate in multiple countries, knowing the local markets. They put forward an example of a bank operating in 17 Member States. They pointed out the existing rules on current accounts and on services as the source of inspiration for the way forward and called for removing residence requirement for consumers. In their view, the scope of this legislation should be extended to cover other retail financial services. However, several respondents from the banking industry argued that any further action should only be taken

once it is clear what effect the ban on discrimination introduced in the PAD had on the market. The Commission is set to prepare a report on the application of the PAD by 18 September 2019. On the contrary, many individual respondents were in favour of an action at EU level introducing a novel concept of European residence enabling them to access products across the EU. These respondents were also favourable to the idea of promoting optional standardized and simple pan-European products such as life insurance so as to limit the constraints linked to different legal regimes.

Many respondents, including from the banking, insurance or public sector, stressed that place of residence could also be a decisive risk factor preventing consumers from accessing products. This is, for example, the case of home insurance in areas at risk of flood damage or life insurance if the policy holder moves to another Member States with a different lifestyle. Yet, many respondents argued that if the person or family is the insured unit, location anywhere in the EU should be treated the same way as location within a domestic market.

In this context, many public authorities acknowledged that risks vary by products. For example, the customer, not the supplier, bears the risk when placing his savings, as opposed to taking out a loan, in another Member State. It would, therefore, be essential, based on the risk assessment, to determine the range of products for which the geographical restrictions are not justified. Some public authorities were also willing to support firms when reducing unjustified discrimination.

Majority of respondents from the banking and insurance sector argued that firms had freedom to contract and operate where they are equipped to do so. The residence requirement was intended to manage risks better, achieve scale and price competitively, rather than to discriminate. The respondents gave the following examples of constraints they face when operating in different countries; these depend on retail financial products in question and are either technical or risk-based linked to the inability to manage different legal regimes:

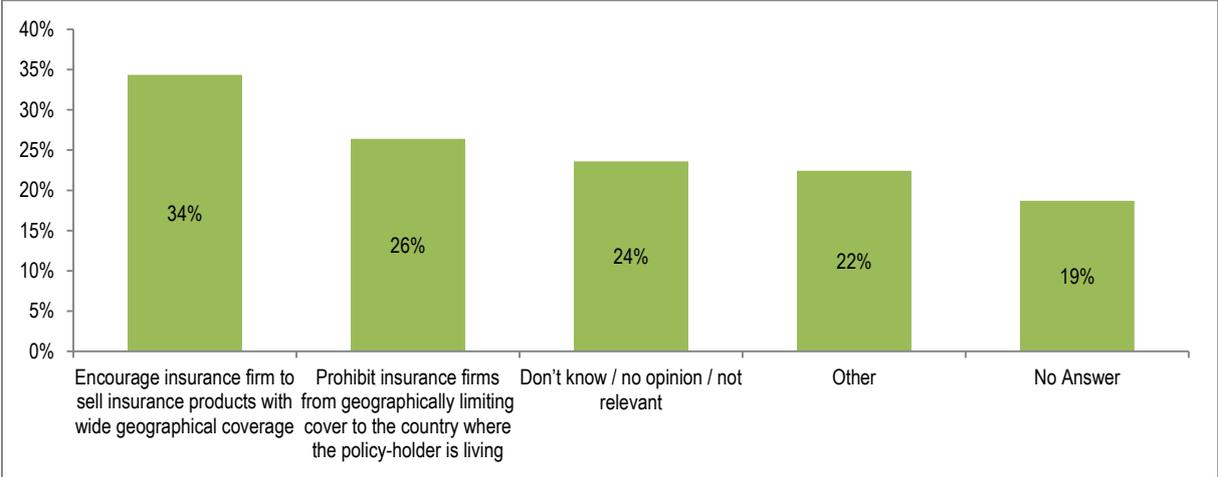
- When opening current and saving accounts, providers are liable to check documents and verify residence to comply with anti-money laundering rules. They also have to take into account differences due to tax incentives;
- The pricing of home insurance premiums is based on country- or region-specific statistics, e.g. taking into account the impact of local and environmental information;
- Lending to consumers from another Member State entails a higher risk for the suppliers. The reasons are: (1) difficulties to assess their creditworthiness, (2) legal compliance in the host markets, (3) handling of wage slips and other documents in a foreign language to (4) debt recovery in the event of default. In mortgage lending, the physical location of the collateral is crucial to the terms and conditions of the loan agreement.

Respondents predominantly from the banking and insurance sector were generally opposed to any action that would make cross-border provision economically non-viable. However, they recognised that removal of obstacles could increase their business opportunities. The following remedies, which could help reduce the obstacles or instances of discrimination, were mentioned: (1) limiting national gold-plating of EU directives to the necessary minimum or, alternatively, opting for regulations, rather than directives; (2) embracing technological

developments to increase legal certainty for the use of digital identification and compliance with anti-money laundering rules; (3) standardizing fraud and credit data to make easier the provision of pan-European online credit and identity check, including cross-border debt collection. Respondents from the payment sector called for creating official pan-European database of beneficial ownership information and valid IDs to increase availability of customer information, subject to strong data protection controls.

Several respondents also raised two specific issues. One of them related to the application of the SEPA Regulation and the use of IBAN, potentially preventing providers from setting up "virtual offices" without a presence in the countries targeted. The other related to the [notification requirements](#) under the Directive No 2009/138/EC Solvency II ("Solvency II Directive") for insurers that distribute insurance products in another Member State; in the respondent's view, insurers must restrict the ability of residents in other Member States to take out insurance policies with them in order to remain compliant with applicable financial regulation.

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



In general, respondents believed that the portability of retail financial products would be difficult to achieve. There may be a greater need for portability of products with longer term contracts, such as life and income protection insurance, since policyholders may move between Member States while the contract is still in force. In comparison general insurance contracts, such as motor and home insurance, are typically annually renewable, diminishing the need for portability since consumers can more easily renew contracts when moving between Member States.

For private health insurance, insurers often act as a complement to national regimes (i.e. social security or public pension schemes) which is a Member State competence. Each Member State has its own health care system and subsequently there are significant differences in the role and structure of private health insurance. The health system is designed according to distinct social, political, regulatory and economic factors that prevail in each country. Differences between national healthcare systems affect the scope of products and

level of cover available in each Member State. Usually private health insurance products are designed to dovetail with the public provision of healthcare by Member States. Therefore designing a portable product to fit with national healthcare regimes of more than one Member State is complex and costly for insurers, ultimately impacting consumers through higher premiums. Moreover, in some states individuals are required to comply with local compulsory insurance requirements. Pan-EU private health insurance products are currently available in some Member States (e.g. UK), but they are expensive, reflecting their complexity and low demand. It is suggested that the Commission should focus on understanding the level of demand before considering further action.

Furthermore, it was observed that the reimbursement method used by the providers varies significantly from country to country. For instance in Spain, the most widely offered product in health insurance is the provision of the health service itself, not just the reimbursement as in most other EU countries. Interestingly, there is a rule in Germany (and perhaps also in other Member States) that the insurer shall only remain liable up to the maximum benefits in another EU Member State which he would have to pay when the place of residence of the policyholder would still be in the former Member State, in this case Germany.

Several respondents would welcome it if more insurers sold insurance products with wide geographical coverage, although a wider (geographic) coverage of insurance products may be more expensive for customers. A first step should be to carefully analyse the need for enhanced portability of retail financial products and what impact such increased portability may have on, inter alia, consumer protection, tax avoidance and money laundering. Insurers argue that the decision to follow a customer into another market should be left to individual companies.

For most life insurance products, an important barrier is of a fiscal nature. When life insurance premiums are deductible for income tax and tax is due in the pay-out phase (as is the case for many pension insurance products in the Netherlands) portability is limited by the tax liability. Harmonisation of tax and prudential rules for the same type of risks would be desirable. As regards pure life insurance with no investment element, the policy is not necessarily invalidated when the policyholder moves to another EU Member State. Extra regulatory and fiscal intervention should be avoided and perhaps some safeguards should be put in place to ensure that such measures do not increase the opportunity for dishonest policyholders to commit fraud since insurers may not be familiar with the processes to verify death certificates in other Member States.

According to a consumer organisation, the portability of pension rights (private pensions) and of private health insurance (already exists for public health insurance in the EU) should be a basic right for anyone. A user group suggested promoting as far as possible an opt-in regime that could enhance new European standards, like portability or usage of past underwriting data, even though in case of long-term products the possibilities are limited.

One organisation remarked that the recognition of this type of health insurance cover differs a lot at European level. Especially students participating in European exchange programs are facing obstacles when their health insurance cover must be proved at foreign universities so that a uniform recognition of substitutive private health insurance throughout the European

Union is strongly needed. Furthermore, clarification in terms of collection of insurance tax on substitutive private health insurance would make a significant contribution towards simplification at the EU level.

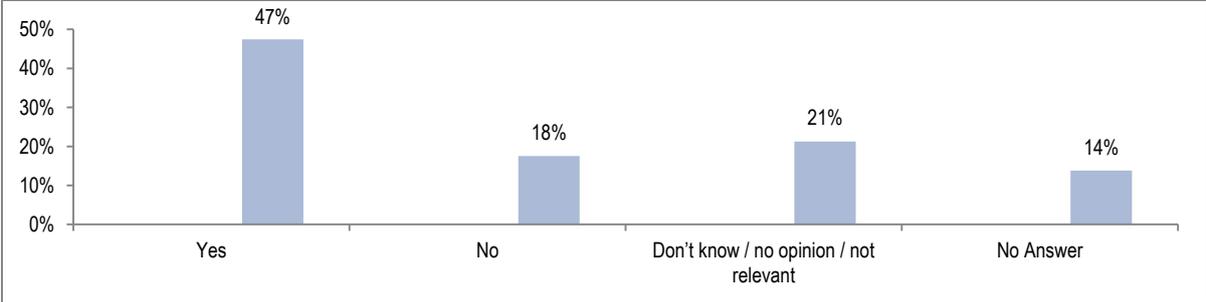
Another organisation suggested facilitating portability by setting-up a Big Data archive / central database allowing for collection, authentication and sharing of relevant information; creating the possibility for the customer to receive a claim history certification from their former insurer once they cancel their insurance plan.

Question 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?

Insurers agreed that better information is needed about the professional requirements for the market in which professionals wish to operate and how to obtain the type of insurance they need. This could conceivably be achieved through better use of the Points of Single Contact (PSCs) provided for in the Services Directive No 2006/123/EC. Publication of the various compulsory insurances in the Member States in a public register or database would also be useful. One national insurers' association suggested establishing a "European facilitator" to enable providers to trace concrete cases of possible barriers or ask specific questions in case of difficulties to underwrite insurance contracts. The "facilitator" would not have a coercive power but could contact national federations to unlock certain situations.

Respondents suggested that diverging professional risk profiles are the result of diverging liability legislation and insurance requirements at national level. Insurance regimes and requirements are different among Member States and there is no common reference model in terms of what is required to cover. Therefore some pleaded for harmonisation of some types of compulsory insurances (e.g. minimum cover) or standardization of liability regimes and obligatory professional indemnity requirements (both local legal and contractual conditions) in certain sectors to facilitate cross-border recognition of product offering. Others pleaded for a services passport with information necessary for the subscription of insurance policies (administrative, diploma, description of activity, etc.). In addition, it could contain information on the insurance contract in the country of origin to see whether it is necessary to take additional guarantees. Several respondents pleaded for EU-wide coverage of insurance contracts and mutual recognition of insurance policies to foster the creation of a true single market and to avoid the risk of double insurance (i.e. in the home and in the host Member State) for the same activity.

Question 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?



Several consumers pointed to the need to create an EU-level comparison secured portal, with enhanced transparency and information for consumers (especially in relation to risks), equal access, product standardization, extended EU warranty coverage and coercive measures in the event of breach of law or misinformation. Some answers also referred to financial education campaigns. Some answers from firms highlighted that the relevant point was appropriate information but not standardisation, as this would lead to less product diversity and decrease of choice for consumers.

A majority of answers from the industry pointed out that no further action was required at EU level, considering all the recent legislation in retail financial services. An industry association proposed to launch fitness checks and evaluations related to the European rules to evaluate if consumers are being able to process and understand all the information they receive. Some answers indicated that the national portals operated in line with EU rules such as the PAD) could be used for the provision of cross-border services and products. Several firms propose to harmonise formats such as the Key Information Document (under the PRIIPs Regulation) or Key Investor Document and extend their use to cover all other retail financial products.

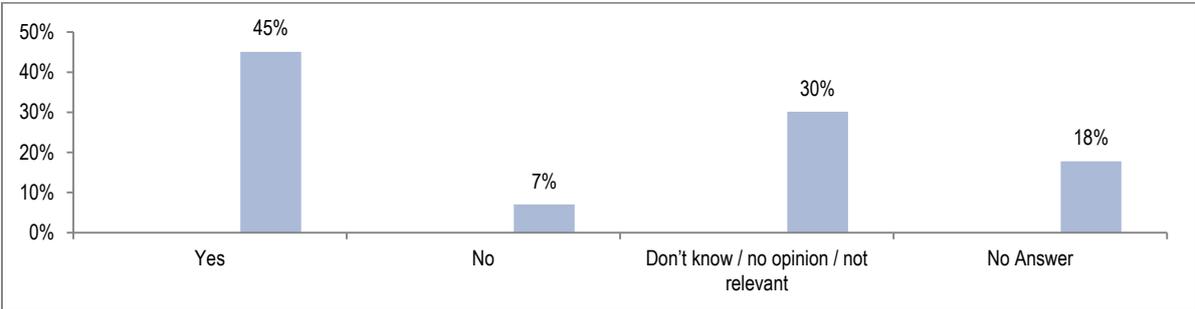
Regarding certain information requirements under the PRIIPs Regulation and the IDD, several answers in particular from the industry side indicated that, although it was too soon to assess, they may imply regulatory barriers, as the pre-contractual information should be provided on paper by default and certain duplicative rules could imply that consumers receive the same type of information twice. Some participants added that digital disclosure could imply removing disclosure instead of adding, enhancing consumer understanding of financial products via more interactive and engaging platforms such as smartphones or tablets. Digital disclosure could also consider common behavioural traits of consumers and could also be used by consumer organisations for aggregating useful data about products and financial services providers. Other firms have the view that comparability registers, definitions and standards should be future-proofed by addressing automated or robo-advice and that the EC should define the term "automation" to ensure that it is clearly understood by consumers and supported by developing a common standard.

Several answers understood that the portals for the basic overview of cross-border financial products should be certified and secure websites (preferably national), managed by independent entities, national governments or consumer organizations (could also be enforced

or monitored by the ESAs) and require companies to provide the necessary and objective information (including access to redress mechanisms and applicable tax regimes) of the online tool to be updated, reliable, functional and transparent. Some answers required that these portals are recognised by the EU as independent and that they include key information of ownership and revenue stream, market coverage, methodology for ranking, screening and recommendations for users. One Member State and consumer respondents pointed out that a key point was that firms include strong product oversight and governance requirements, which go beyond disclosure and include ensuring consumer’s understanding and consumer-testing. One firm proposed the creation of open banking standards (application programming interface) or other technological solutions which facilitate the entry to new providers in the market enabling them to access information held by banks to offer new products and services (new digital relationship ecosystem banks-Fintechs-consumers).

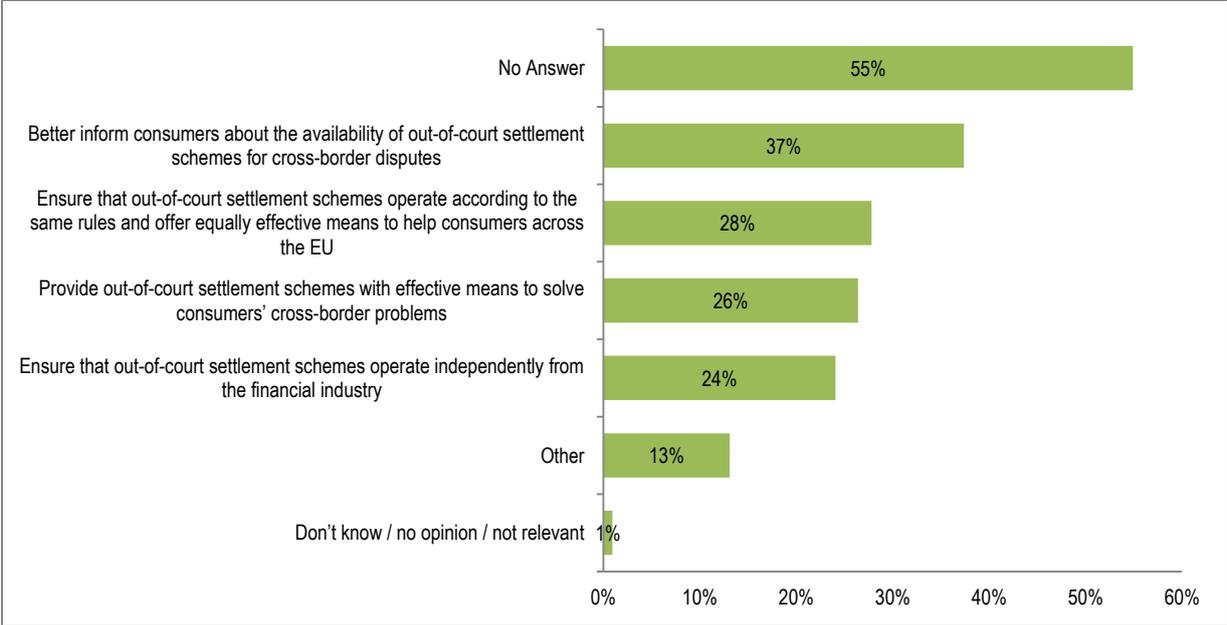
Other answers from the industry believed that the comparison of products would come when the market fully develops and that it should be left to the private sector. Several industry stakeholders indicate that comparison of product types should not be undertaken as there are significant risks: (i) most are not easily comparable, as they are normally customized; (ii) comparison based on a limited set of variables may not cater the actual needs of the customer, who could find services better suited if subject to a more detailed and personalised assessment; (iii) they do not take into account certain features such as service levels and reliability of payment of claims, (iv) consumer’s uncertainty regarding cross-border comparable consumer protection and dispute resolution due to legal differences; (v) difference between sectorial regulations on product transparency and rules of conduct for distributors; (vi) the independence of the comparison portal shall be ensured, as many providers of automated advice may be financial intermediaries or providers who could try to direct the consumer’s choice in one specific way.

Question 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 (2013/11/EU) implementation?



The high proportion of respondents who do not know or have no answer (48%) clearly indicates that awareness about FIN-NET is low.

Question 18.1: If measures should be taken to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive’s implementation, what of the following could be done to ensure the above?



Some respondents from the industry, public authorities and consumers were concerned that promotion of FIN-NET could be misleading as it should be sufficient to promote national alternative dispute resolution ("ADR") schemes (as already required under the Alternative Dispute Resolution Directive No 2013/11/EU – "ADR Directive"), which should serve a single contact point for consumers. Some respondents offered suggestions on how to inform consumers about FIN-NET:

- Through a campaign, conducted by the Commission, Member States, providers or the media
- Via the provider's website, flyers at their branches, or specific sections on pre-contractual disclosure documents
- Via a comparison website promoting the financial product on a cross border basis
- Via information available on the FIN-NET website

Some respondents noted that consumers will likely expect the same level of protection when buying cross-border, so they proposed that firms should warn consumers that ADR schemes in other countries may not have the same powers as their domestic ADR schemes. Many respondents of all types emphasised the importance of ADR for establishing consumer trust in cross-border financial services and offered following suggestions:

- Some consumers, organisations and national authorities asked for improvements to the FIN-NET website to make it available in all EU languages, promote 'success stories' and include user-friendly explanations about the advantages of using ADR.
- Some individual voices suggested that FIN-NET should become a centralised claim handling body, similar to SOLVIT.

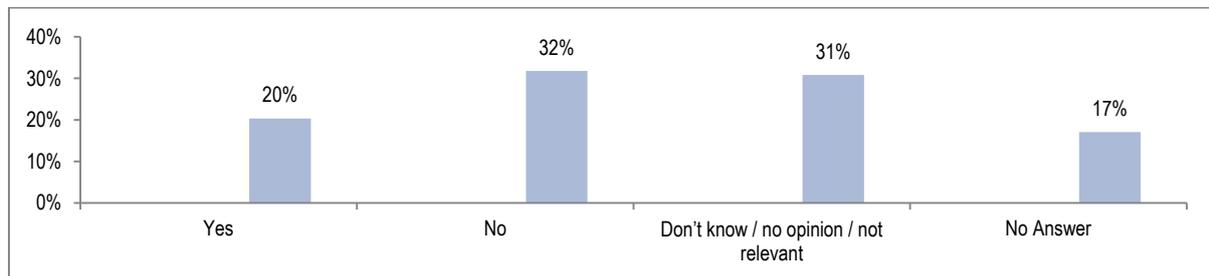
- In addition, some respondents from the industry pointed out that, since the Online Dispute Resolution Platform now offers consumers a way to handle claims related to online sales, FIN-NET should limit itself to handling disputes related to offline sales.
- Many individuals and industry respondents expressed the need to increase the membership of FIN-NET, adding that promotion of FIN-NET should only take place after the network covers the whole EU, as otherwise consumers may be misled.

Other respondents provided suggestions for changes to the broad ADR architecture:

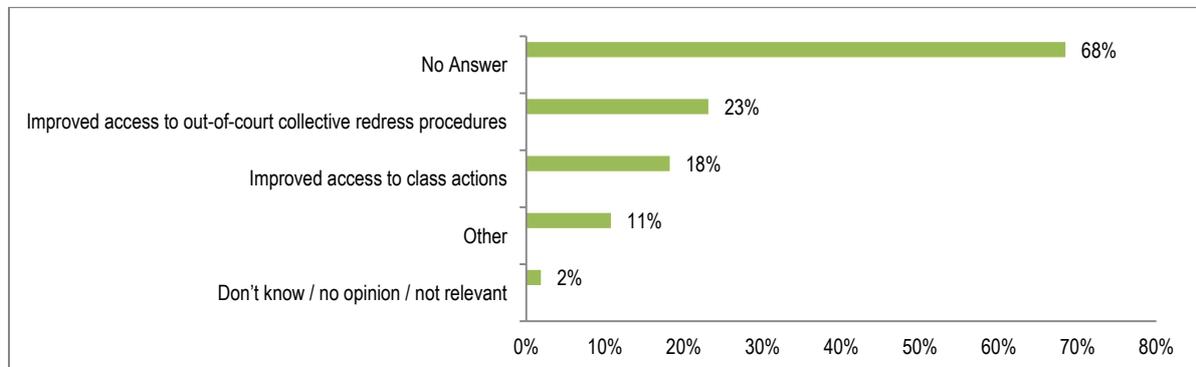
- Some consumer associations and, to a lesser extent, industry organisations proposed making participation in ADR mandatory for financial services providers.
- A couple of industry respondents referred to the need to clarify that the host country's ADR scheme is competent when services are offered cross-border; some companies are unable to offer their customers the option of solving their dispute with the local ADR scheme as the provider's home ADR scheme generally deals with disputes.

Some public authorities and industry stakeholders, however, stressed that it was too early to assess now whether any amendments to the ADR Directive were necessary.

Question 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?



Question 19.1: If consumers do not have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance, what could be done to ensure this is the case?



Consumer representatives argued access to financial compensation remains difficult. They also called for legal measures introducing collective redress. They pointed out that the

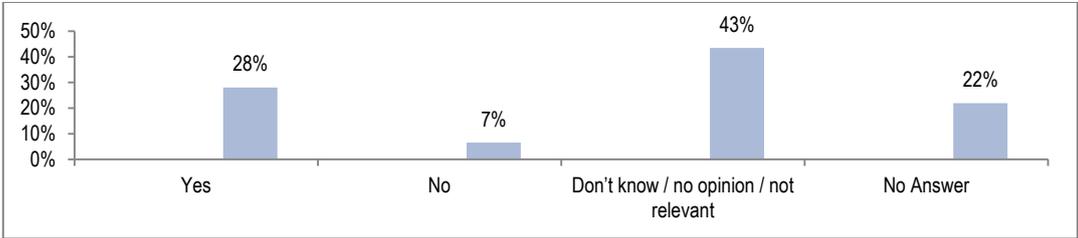
Commission recommendation No 2013/396/EU on collective redress ("Recommendation on collective redress") has not had much impact; only UK and Belgium have introduced new collective redress mechanisms. They refer to the success stories of the class actions – *"The experience proves that mass consumer detriment in financial services is solved relatively easily in countries that have a collective redress mechanism in place"* (BEUC).

Some respondents from the industry pointed out the UK system of out-of-court dispute resolution and compensation as a good example. Many noted that the financial compensation is based on the national civil law and therefore compensation varies across jurisdictions. A couple of respondents from the industry acknowledged that obtaining compensation on cross-border basis is very complex since civil law procedures vary from country to country. More information and harmonization could help and ensure access to compensation for consumers.

National authorities argued that the Commission should analyse measures that Member States have undertaken to implement the Recommendation on collective redress and, evaluate, on the basis of this analysis, the need for further actions in this area..

There was also a comment that more should be done to prevent mis-selling of products on a cross-border basis, with a role for the ESAs to react quickly to such practises, by banning a product or suspending temporarily the EU passport.

Question 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?



Victims of car accidents are generally covered by a guarantee fund in the Member State, where the insolvent insurance company is located. There are various guarantee schemes in places at national level and it appears that in most Member States a guarantee of financial compensation does not raise any difficulty, not even in the event of the insolvency of an insurer. However, some respondents point out that not all Member States have a backstop for insurance firms unable to pay out claims and suggest harmonising insurance guarantee schemes. Some underline that harmonisation should be in line with the concept of “home state prudential regulation”, i.e. losses should fall on the fund of the Member State where the insurer has its head office, not on the host Member State. According to some respondents, the low incidence of insurance insolvencies and the long timeframe over which claims are paid means that there is no need for pre-funding arrangements for insurance guarantee schemes.

Several respondents suggest that the issue should rather be analysed in a broader perspective and include all insurances, not only motor insurances. Possible minimum harmonisation on scope, minimum cover amounts and principles – country of supervision should bear financial

responsibility.

Question 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?

With a large majority, respondents wanted to give priority to the implementation of the IDD, adding that further measures would be premature. Some consumer organisations and intermediaries believed that the current threshold for applying the IDD to ancillary intermediaries was too high or should be abolished in order to have a level playing field.

Some respondents recommended rules banning opt-out selling meaning that consumers must opt-in if they would like to purchase an add-on product. But Member States alone should decide whether or not to introduce such rules. However, some respondents have warned against gold-plating the recent rules in the IDD.

One organisation suggested that sellers should always offer many alternatives for an ancillary product. There could also be the requirement for the seller to disclose how much of the ancillary premium actually goes to the insurer and how much of it is remuneration or commission for the seller.

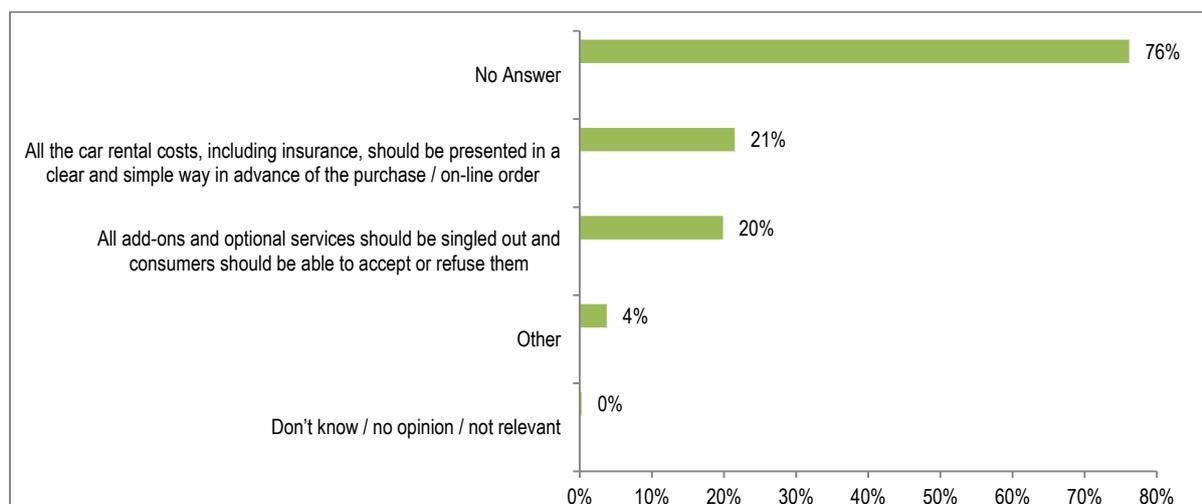
One organisation considered it inevitable that consumers sometimes buy several insurance policies which overlap or have gaps in their protection. They noted that this risk might increase when purchasing products cross-border, as the consumer will not be aware of specific features of products in other countries.

Question 21.1: With respect to the car rental sector, are specific measures needed with regard to add-on products?

Many respondents did not express an opinion on this topic. However, from those who did, several considered there should be more transparency in the car rental sector about ancillary insurance products ("add-ons"). It is important for consumers to know in advance the limitation of liability and the costs. As regards add-ons other than insurance products in the car rental sector, some believe this issue is best addressed at a national level. One organisation was concerned that regulation of add-on products would add immense cost to the sector, which would be passed on to the customer through an increase in rental rates and product costs. This organisation also pointed out that in general the staff of car rentals was adequately trained about the products offered to the customers.

Consumer organisations considered that in case of car rental and other services there was a need to specify standard coverage, appropriate for consumers. Casco insurance for example should be considered as standard coverage, so the offer ought to cover it.

Question 21.2: If specific measures are needed with regard to add-on products, what of the following could be done?



Creating new market opportunities for suppliers

Question 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?

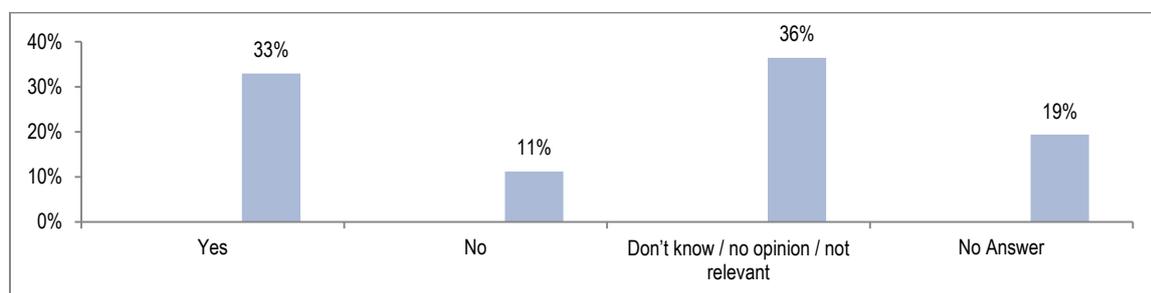
A great number of answers focused on the following main points:

- Enhance consumer trust in digital financial services (e.g. harmonization of legislations, creation of European labels or recognition systems for products and services so that consumers are able to know that they will be subject to the same conditions and requirements in any Member State). Consumers should receive clear information regarding the scope of the online service and the limits of the provider's liability;
- Establish EU-wide digital identity, standardise on-line KYC requirements and harmonise anti-money laundering provisions. Create a digital data system (financial dashboard) that allows consumers to change lender transferring information and allow financial intermediaries to cross-check information about potential consumers;
- Establish enhanced and strong security levels and improve consumer security awareness on the growing threats of cybercrime. Cooperation and cross-border sharing of best practices between firms, supervisors and regulators is crucial in cyber-crime prevention and incidents;
- Harmonise regulatory framework regarding tax policy, consumer protection (for example, valid choice of law for the legislations and of the relevant courts/ADR of the home Member State of the financial institution/Fintech) and data protection (possibly by softening the applicable data protection rules). Other answers do not agree, stating that the level of consumer and data protection and other requirements (such as capital requirements and caps on remuneration) must be the same across different providers if they provide identical financial services;

- Establish technologically neutral frameworks, open to new developments, as well as future-proof, cross-border and cross-sectors;
- Support innovative payment solutions, such as instant payments, mobile payments, transfers by SMS, etc;
- Create one-stop shop mechanism for incident notification to avoid unnecessary burden of double reporting requirements;
- Enhance support and cooperation between regulators across the EU, working together with Fintechs and digital experts and sharing of best practices, to identify trends, strengths and weaknesses;
- Create regulatory sandboxes where businesses, banks or other providers may test new solutions before launching innovative services or products, in a "secure freedom area" without applying them all regulatory requirements straight away. These instruments could be done at EU level or at national level but coordinated by the Commission to ensure cross-border effects and share best practices;
- Set up or coordinate innovation hubs to provide regulatory advice and support from the competent authorities to innovator business;

The following examples of assistance were put forward: (1) the fraud prevention system implemented by the Ministry of Economy and Finance of Italy enabling firms to cross-check information submitted by applicants on their personal data, personal ID documents and incomes, without prejudice to personal data privacy; (2) the EBA Guidelines on Product Oversight and Governance pointed out as an inspirational starting point; (3) the recent regulatory crowdfunding framework in France, which fosters innovation and new players, giving a more flexible framework for development than that applied to banks (i.e. lighter consumer protection, listing of simple financial products that can be offered) and combining it with the obligation to meet the consumers' needs in terms of trust, security and transparency.

Question 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?



Many respondents were hopeful that under the current legislation, such as the 4th Anti-Money Laundering Directive No. 2015/849/EU ("AMLD") and eIDAS Regulation No EU 910/2014 ("eIDAS Regulation"), along with the work of the EBA on the subject, customer identification at distance could be easier. This is because it should no longer require an automatic enhanced due diligence. However, they believed that there is still room for improvement in the area of digital customer identification within the existing framework of the AMLD. In practice, it

might limit the providers' ability to open and maintain business relationships with customers at a distance. A majority of industry respondents also considered that anti-money laundering rules should remove bias against innovative digital solutions. In their view, subject to adequate safeguards, online and paper statements should have the same legal value. The respondents also considered critical to limit the national divergences and gold-plating when transposing and implementing the anti-money laundering rules, including when banks remotely verify new customers.

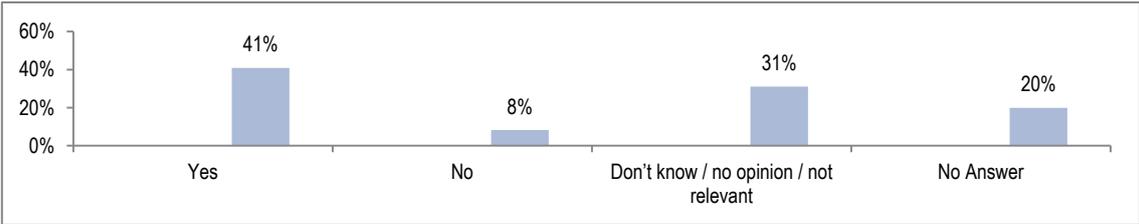
Consumer organisations pointed out that the customers should not be overburdened with requests for unnecessary supporting documents when opening a bank account. This is particularly the case where no suspect transaction has been identified; and if customers can prove their identity by a credit transfer from another bank account in EU Member State. Similarly, credit or debit card delivered by one financial institution in the EU could help identify his holder. However, some respondents from the banking sector argued that they cannot rely on anti-money laundering checks carried out by intermediaries. Some respondents also argued that digital verification should only become challenging in the event of cross-border business involving high-risk jurisdictions outside the EU. Several respondents stated that the national divergences create an un-level playing field. For example, a German bank, which makes use of an EU passport in Spain, can acquire Spanish customers via a video call; Spanish banks are unable to do so. In addition, different KYC requirements hamper the roll out of global digital offerings e.g. peer to peer mobile payments.

Many respondents reported on the developments on national level. In several Member States real time methods such as video calls or biometric techniques are already authorised. In others, only national electronic identity system or non-real time mechanisms such as requiring new customers to make a first transfer of fund from a bank account that they hold at another financial institution are used. Many respondents also gave examples of more or less advanced projects and national approaches in relation to distance verification in their Member States. These include screen shots of ID documents from the computer camera in Germany and potentially also in Switzerland, the biometric identity card, Idenum, France Connect, La Poste's electronic identification project in France, Gov.UK Verify or use of credit data for verification of the applicant's identity in the UK. Distance verification has proven reliable in Italy and Sweden; the latter reported the frauds linked to fake physical IDs. The Legal Entity Identifier (LEI) was put forward as another example of a functioning way of identifying entities operating in derivatives markets under the EMIR Regulation No 648/2012.

In addition, the respondents from the category of companies pointed to no clear framework for the private sector to use national eID systems on a cross-border basis. Some respondents suggested exploring the route to extend the eIDAS Regulation to the private sector. Several specific issues were raised in connection to the AMLD and eIDAS Regulation. The first one was related to the requirement of customer control throughout the business relationship under the AMLD in the context where banking detection models could be weakened by the arrival of new players facing less stringent regulatory obligations. The other related to an unlimited liability for possible misuse of eID under the eIDAS Regulation.

These respondents also proposed the following remedies: (1) creation of a certification agency to verify the identification of customers and KYC due diligence for the financial industry, including for example a common EU commercial register, interoperability among identification process is key to support customer identification; (2) public database allowing for identity verification of potential customers, such as for example SCIPAFI system in Italy or collecting data on stolen lost identification papers from national registers or sharing beneficial ownership information; (3) defining risk categories of customers and necessary compliance procedures, bringing in more flexibility in terms of reliance on electronic documents, electronic payment information, IP address, device ID and other metadata associated with online transaction automated solutions, machine fingerprint information as well as on KYC processes performed by non-PSP (such as in cases of integration with mobile wallets, telecom partners, issuers of retail prepaid cards) under the framework of 4th AMLD; (4) possible means to determine the veracity of documents provided by non-face-to-face customer applications, including guidance at EU level; (5) removing inconsistencies between the eIDAS regulation and AML; (6) addressing insufficient framework for international collaboration due to restriction on sharing information on AML incidents.

Question 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?



The majority of respondents were positive about the high potential of e-ID in retail financial services based on the eIDAS Regulation. Many respondents were in favour of extending a digital framework for eIDs to the private sector, enabling customers to identify themselves and sign up for services across the EU remotely. At the same time, some respondents proposed preventing Member States from limiting the use of distance contract signature, which could greatly expand the cross border provision of all services, including in the retail financial sector.

Many respondents believed that eID solutions (including finger print or blood vessel authentication) can ensure the same level of security and should have the same status as face to face identification. Respondents, however, identified issues which may require further action, including ensuring trust from consumers, maintaining the security of these systems, building interoperability between national eIDs and promoting high privacy and consumer protection standards (e.g. encryption of consumer data and limiting consumers' liability for transactions they did not authorise).

Some respondents also stated that if solution providers, including banks, offer different digital identity solutions, users will need multiple digital identities to use services across EU which might be problematic. Using one single eID to identify and sign any digital contract has been crucial to the wide use of eIDs in some Member States. Moreover, in the absence of a true

pan-EU solution, nationally driven eID solutions risk to be insufficient for the authentication of individual payment transactions across the 28 Member States. Instead, they were in favour of creation of common open API (Application Program Interface) which also enables instant KYC checks.

According to many respondents, the Commission should:

- focus on the private sector and undertake a study to look at the use of national eID schemes in the private sector, including in relation to security standards;
- develop an EU-wide compliance standard for eID providers, which includes a requirement to attest to the compliance of the eID solutions;
- raise awareness (through national campaigns) among online customers about advantages and functionalities of an eID;
- support the creation of independent certifying agencies to verify the identity of digital customers and conduct investigations for personal recognition of customers.

Question 25: In your opinion, what kind of data is necessary for credit-worthiness assessments?

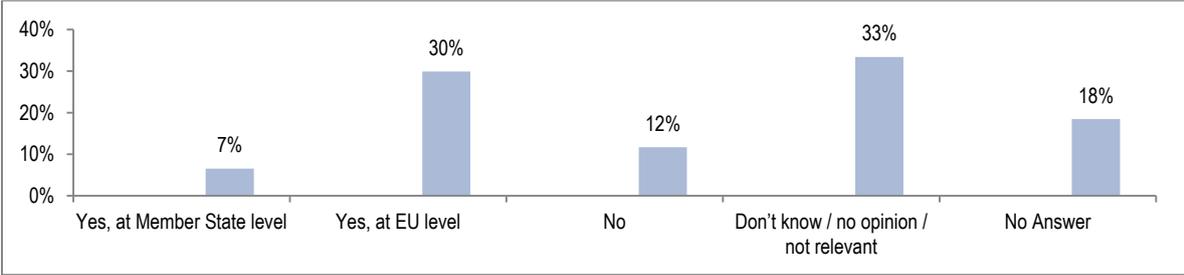
Less than half of the respondents from the category of private individuals answered the question 25. A majority of them saw a need for some sort of credit history. The parameters diverged, however. Whereas some considered bank account information sufficient, others were much more specific and saw a need for salary slips, credit card debt, mortgage debt, an assessment on the regularity of payments, payment defaults if any and reasons if possible. The large brunt of responses were split between the two. Some highlighted the importance of up-to-date credit register data. Others wanted to see the depth and the breadth of the data strictly limited to what is necessary to assess a consumer's creditworthiness.

Almost 50 % of organisations replied to question 25. The views expressed diverged strongly between these two spectrums. Banks, for instance, made direct reference to the existing legislation with regard to credit worthiness assessments (e.g. Consumer Credit Directive, EBA Guidelines on creditworthiness assessment) and considered the consultation of credit registers only as one possible element for assessing a consumer's creditworthiness. In contrast to this, several Fintech companies pleaded for more digital access to credit data. One credit register cautioned against harmonising credit data content at EU level since national reporting traditions were still very different. Consumer organisations, on the other hand, cautioned in general against credit scoring and the use of social media data. They suggested keeping the use of credit data to the strict minimum for creditworthiness purposes.

60 % of public authorities replied to question 25. This constitutes the highest reply rate to this question among the three groups. One ombudsman wanted to see the credit data reporting limited to negative data and focused on the consumer's debt and an income check. Public authorities often made reference to existing legal requirements to assess a consumer's creditworthiness (i.e. Consumer Credit Directive No 2008/48/EC and the MCD). One public authority recalled that differences in taxation, land registers and personal insolvency proceedings would still complicate the issuance of cross-border credit despite the existing EU legislation. Another public authority recalled that it was the creditors' final responsibility to

grant a credit or not. Another public authority suggested that more breadth and depth (i.e. negative and positive data) would lead to more responsible lending and could facilitate the access to credit also for those equipped with a 'thin' credit history. Another organisation questioned the link between more comprehensive data and easier accessibility to credit, however.

Question 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?



Around 60% of individuals replied to question 26. Less than 20% made use of the option 'don't know'. It is important to note that five times more private individuals asked for further action at EU level instead at Member States' level on personal financial and non-financial data. 6 respondents denied any need for further action.

Around 80% of the organisations replied to question 26. Almost 20% of respondents saw no need for further action, whereas around 30 % pleaded for further EU action; similarly, banks, insurance companies and associations were split on whether to support EU action. Consumer organisations were also supportive of further EU action. Consumer organisations and firms may agree on this point because the question asked about both provision of services and consumer protection.

Around 80% of the public authorities replied to the question. 20% of those indicated that they would not know the answer. Four times as many public authorities saw a need for further action at EU level compared to the national level.

Those private individuals who had identified a need for further action highlighted the following issues: - prerequisite for a licence; need for consumer consent prior to the use of personal data, ban on the sale of personal data to third parties; need for a high level of data protection and prudence with regard to 'big data'; sanctions for abuse and data breaches. Some private individuals also saw advantages in the easier availability of personal data via on-line means and across Member States (e.g. unified identifier, central register). One respondent suggested developing EU Guidelines in this area.

Of the organisations (e.g. companies, SMEs, consultancies, law firms, industry organisations, consumer organisations, NGOs, etc.) that had identified a need for further action, the replies from consumer organisations, trade unions and NGOs were very different in comparison to the ones from banks, Fintechs and industry associations. Consumer organisations cautioned more generally against the reliance on social media data and expressed concern that the use of

big data might lead to financial exclusion of certain consumers. They advocated more transparency by banks on the use of personal data. One organisation suggested a ban regarding the marketing or sale of personalised client data. The need for consumer's prior consent before data is shared came out strongly during the consultation. A trade union also called on financial firms to respect the data protection rules.

Banks, on the other hand, highlighted more generally that personalised data would allow them to offer more efficient and customer-friendly services. Some Fintechs and payment services providers advocated the harmonisation of personal data definitions to allow for the establishment of cross-border credit data transfers. Others also saw benefits in credit scoring in relation to fraud prevention. Whereas one bank considered the GDPR to establish a suitable framework against the possible illicit use of data, others expressed concern that its provisions might hamper the efficient processing of personal data. Banks and others seemed in general not against prior consumer consent, albeit with lighter procedures. One respondent from the banking and insurance industry considered differences in local banking secrecy rules as an obstacle to the transfer of customer data, even within organisations. Another insurer saw potential in aggregated data replacing claims histories in the long run. This would facilitate the market entry of new insurers and thus contribute to a deepening of the Single Market in this area. Reference was also made to storage (e.g. cloud) and cybersecurity issues, the protection of such data and the need for a level playing field between the EU and the US in this regard. An investment management company pleaded for strong industry standards to permit account aggregators to also transfer personalised data to trusted third parties.

The respondents from the category of public authorities particularly emphasised the need to limit the information to the strictly necessary (e.g. for creditworthiness assessment purposes only) and to ensure the consumer's prior consent. One ESA made part of recent market developments, such as the commercialisation and innovative use of consumer data, e.g. the mixing of in-house with external data sources. One authority claimed that consumers might not necessarily be aware of when and how their personal data is shared and advocated more transparency. One public authority expected the new electronic payments methods to result in a sharp increase of the availability of personal data. Several public authorities saw a role for the stronger consumer protection rules in this area. One authority suggested the EU to develop an overarching framework which would then need to be enforced nationally. Others were more cautious and did not want to see innovation stifled, whilst securing at the same time a high level of consumer protection. One public authority suggested launching a joint reflection both at EU and national level to identify the technical, ethical and privacy challenges in this area (e.g. a future for the solidarity model in insurance)

Question 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?

Some consumers argued for a wider recognition of claims statements in order to avoid the need to restart their records in another Member State after years with no claims. However, the

majority of respondents were not supportive of further action at EU level in this area.. They argued that:

- claim histories were not comparable between different Member States, for instance because of different frequency of accidents by region or Member State.
- the information to be provided on claims history statements varied from market to market, depending on the information needs of insurers and therefore the data used in the application of bonus-malus systems could not be standardised.
- these data was each company's proprietary information and could not be shared.
- it should be left to the discretion of each insurer whether or not to use claims histories when determining the bonus-malus rate they offer and the premium. For instance, insurers accept claims statements from foreign insurers in some markets.
- accepting claims statements from unknown providers presented a risk of fraud.

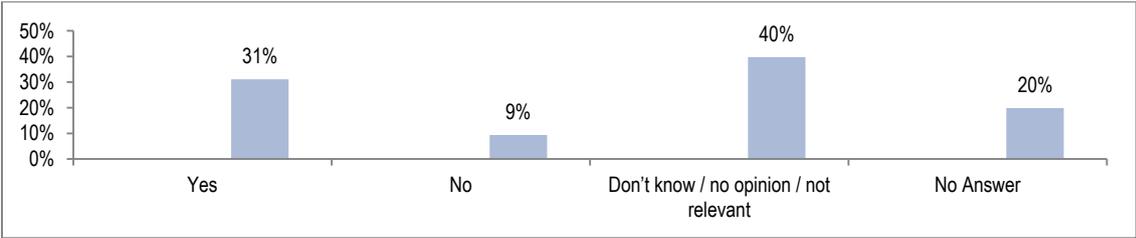
One insurer remarked that further legislation to strengthen such requirements would probably neither achieve greater harmonisation nor allow insurers to provide cross-border insurance. Nevertheless, some respondents were open to minimum standardisation of the form and content (scope, granularity and numbers of past years) for statements relating to motor insurance, affecting only basic information which is required in (almost) all EU countries.

Some respondents pointed out that in certain Member States, e.g. Spain, insurers have developed databases of claims histories for third-party liability motor insurance, which allows individuals to benefit from their historical behaviour when switching from one provider to another. They suggested that such practices could also be used in other Member States and possibly extended at EU level. Furthermore, local databases could be made available to companies from other Member States at non-prohibitive costs.

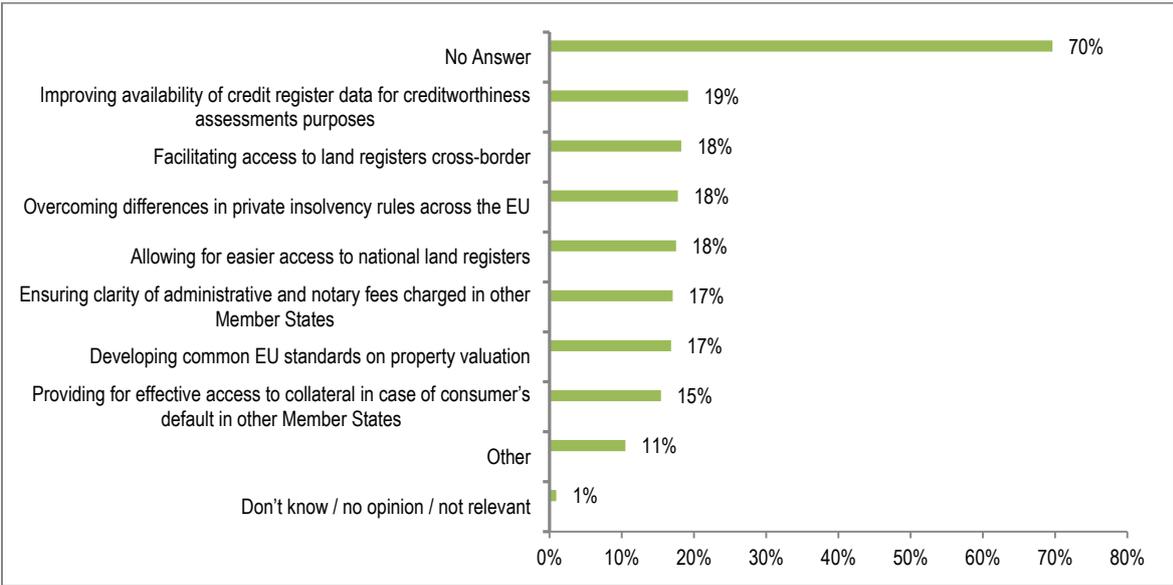
Question 28: Is further action required to support firms in providing post-contractual services in another Member State without a subsidiary or branch office?

The majority view is that no further action is required, because it is considered to be the commercial responsibility of each individual company. Insurance requires a local knowledge of the market in order to assess risk and design corresponding coverage, which contradicts the logic of post-contractual services (e.g. aftersales service) without being able to draw on a local subsidiary or branch office.

Question 29: Is further action necessary to encourage lenders to provide mortgage or loans cross-border?



Question 29.1: If further action is necessary to encourage lenders to provide mortgage or loans cross-border, on which particular area should the action concentrate?



Only around 30% of the respondents from each of the three groups (i.e. private individuals, organisations, public authorities) replied to this question. The great majority of private individuals and of the organisations named all of the multiple choice options available as further actions. Half of the respondents from public authorities, on the contrary, opted for 'other' or 'don't know' without further specifying their position. The options most often excluded by private individuals related to issues in relation to private insolvency, property valuation and effective access to collateral. The option most often excluded by the organisations related to land registers.

Whereas almost no private individual specified a particular action, organisations, on the contrary, answered to this question often in great detail. Half of the banks and industry associations saw a benefit in working further towards more cross-border lending. One bank simply encouraged to harmonise the loan management legislation, others identified next to the options additional challenges, e.g. different taxation regimes and national consumer protection laws, different family and inheritance laws, etc. Whereas some concluded that some EU legislation like the MCD would already constitute a step in the right direction (e.g. EU passport for credit intermediaries, best practice standards on property valuation), others identified remaining weaknesses (e.g. no EU passport for consumer loans, PSD I and II limitation on cross-border lending) or called for a harmonised scoring methodology at EU level or for a 29th regime for 'Grundpfandrechte' (i.e. mortgage lien) to overcome differences in civil and contract law across Europe.

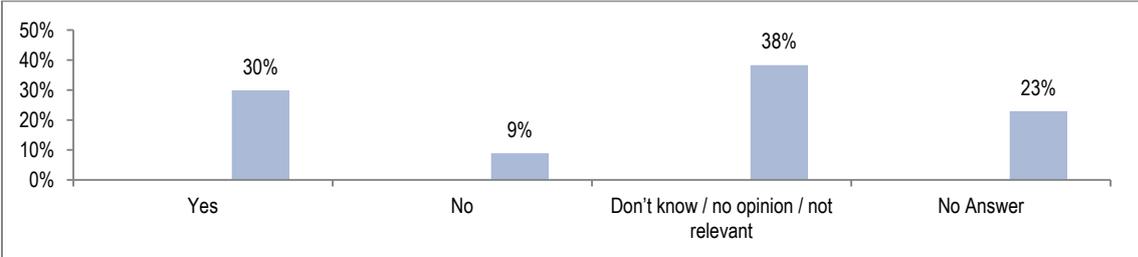
The other half of the banks and industry organisations were more negative on the future of cross-border lending. Though these organisations cited similar obstacles as their peers, they also made reference to past regulatory failures, lack of consumer trust (e.g. importance of face-to-face contacts, foreign languages) and resulting additional costs (e.g. need to monitor on-going legal developments, salaries for local service providers, etc.) which all made the business-case for cross-border credits in their opinion less acute.

Almost a third of the lenders or associations suggested following the French model of a property loan surety system as a possible solution. The others considered mortgages too complex as a product to be easily traded across borders.

Consumer organisations seemed equally divided on the issue. Whereas some cautioned against a possible race to the bottom for consumer protection standards in the event of further harmonisation, others saw the need for identical rules across Europe in this area.

Respondents from public authorities seemed generally more conservative and suggested to first await the MCD's effects prior to engaging in new measures. One Central Bank suggested developing a level 1 text on consumer protection and conduct rules for all financial services products, including on cross-border loans. Others cautioned against too prescriptive approaches in the area of property valuation or on insolvency.

Question 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?



As a first step, several respondents from the industry underlined that national governments and authorities should further harmonise their supervisory practices and interpretation of EU rules and avoid imposing restrictive local requirements that impede cross-border sales. As an example, some respondents mentioned that varying local licensing rules represent barriers for firms. Several consumers also stated that EU legislation is needed to harmonise national frameworks and ensure that conditions and products are homogenous across the EU.

Most respondents from the industry said that they would welcome the creation of 'one-stop shops' to provide assistance to firms, though they have diverse views on how these 'one-stop shops' could work in practice. At national level, several banks and Fintech companies consider that national regulators could create a section on their website dedicated to foreign providers, providing explanations about the specific local requirements in that country. Besides, the example of the innovation hub in the UK is presented by many contributors as a good practice on how national competent authorities can engage proactively with innovative firms. A number of national government and competent authorities would also be in favour of such initiatives.

Taking inspiration from the 'Single Digital Gateway', one respondent supports the set-up of a 'Single Market Centre' for financial services at EU level. Such central point could offer on-line information on applicable national and EU regulations and improve the support to companies who want to conduct business in the single market, in particular for newly started

companies. According to this respondent, this Single Market Centre could also enable to submit data and potentially to apply for licenses. Many consumers who commented on this question highlighted the need for more cooperation between Member States through 'one-stop-shops' (one consumer proposed a pan-European savings and investment bank). These 'one-stop-shops' should allow financial service providers to meet their reporting duties and have channels for consumers and firms to report deficiencies, ask for guidance, etc.

On the other hand, a limited number of respondents from the industry suggested that no further action is needed in this area, believing that assistance from national authorities would not reduce the fundamental barriers to cross-border business: a lack of demand and significant regulatory barriers. One respondent also underlined that advising firms would require extra resources and could expose national competent authorities to reputational risks. Finally, some respondents argued that any efforts in this area would be costly and instead more effort is required to make firms aware of pre-existing Member State and EU advisory services (such as the up-coming Digital Single Gateway), which would also benefit from streamlining. Some consumers expressed a view that assistance or intervention should be avoided, as it could undermine national sovereignty and innovation.

Question 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)?

Consumer pointed out the need to have harmonised and clear legislations, with simple rules that show without complex terms the responsibilities and obligations of all the parties involved. Several consumers and a consumer organisation expressed their support for European standards or EU labelled products equally recognised in all Member States to ensure consumer protection and level playing field for providers.

According to the vast majority of banks and bank associations, the major obstacles for cross-border activity in retail financial services are the lack of harmonised regulatory frameworks, the inconsistent interpretation of these regulatory frameworks at national level and the absence of a uniform supervisory approach across Member States. A number of banks and banking associations consider that the current EU passporting regime is sufficient and allows companies to provide services in another Member State with a minimum amount of documentation. However, several respondents including one competent authority consider it should be further strengthened in order to be applicable to firms offering innovative products. In that respect, a respondent representing Fintech companies suggested to set up a pan-EU Code of Conduct for activities that do not benefit from a passport.

According to many respondents, the reporting and disclosure requirements towards national supervisors should be better synchronised, with the aim of creating a common supervisory culture across the Union. The need for more consistent interpretation of KYC standards in the context of anti-Money-Laundering framework across jurisdictions is mentioned by several respondents. Several individuals underlined that closer coordination between regulators could

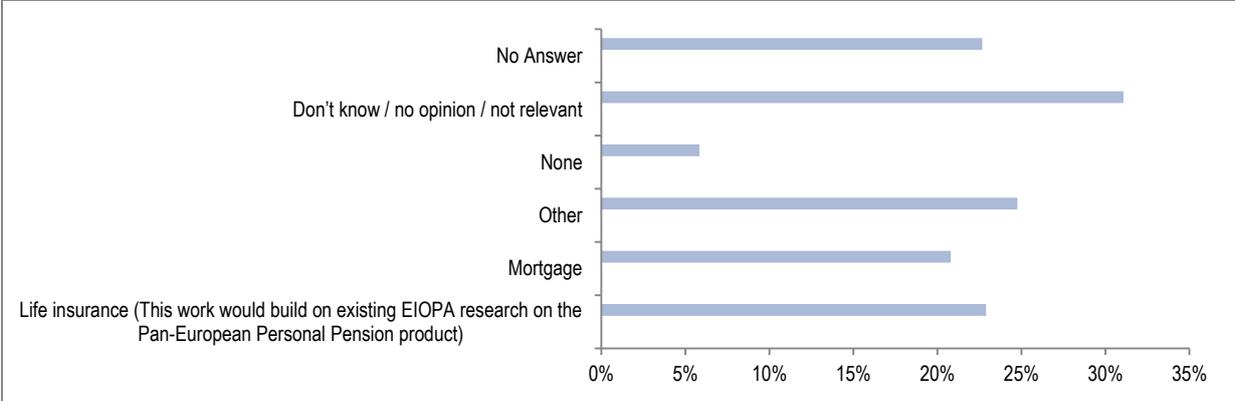
support innovative firms in dealing with diverse and complex regulations across Europe and the idea of setting up a 'one stop shop' for new entrants and innovative parties is also proposed by various respondents as a useful way of enhancing cross-border sales. In that respect, some respondents, including Fintech companies and public authorities, mentioned the example of the innovation hub in the UK.

On the other hand, one national government and its supervisor argued for stronger supervision of the consumer protection rules in the host country, in particular in the area of marketing practices. For instance, the host supervisor should be able to rapidly stop practices or marketing not adapted to the target population.

To enhance cross-border credit, some firms said that convergence in personal insolvency, property valuation, collateral enforcement and credit risk rules and standards are needed. One respondent also underlined the need for a published list of national authorities responsible for credit intermediaries, as well as an EU network supporting cooperation between them.

Finally, considering potential growth in cross-border on-line sales, several respondents suggested to set up a network of exchange of information about cyber-security threats and attacks and to review the Distance Marketing Directive No 2002/65/EC and E-Commerce Directive No 2000/31/EC to make them compatible with the Digital Single Market.

Question 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?



Several insurers consider the work on the Pan-European Personal Pension Product ("PEPP") as a valuable part of the European challenge around the retirement savings gap, whereby taxation rather than legislation remains the biggest barrier to cross border opportunities. They welcome a PEPP - in addition to national products - because a growing number of European citizens work in different countries and the portability of pension savings across Europe is necessary to simplify their life. Similarly, they are open to the development of an opt-in regime (or a so called 29th regime) for life insurances. Supporters of the development of a PEPP (and a pan-European life insurance product) consider that standardisation could be effective in overcoming differences of legislations, but this view is not shared by all respondents.

Some insurers are concerned that standardisation limits the freedom of design of products and does not necessarily meet the demands and needs of consumers. Furthermore, it may not be possible to standardise all obstacles and country specific provisions. It is also said that a pan-European product will not help to foster cross-border activity. They are sceptical that there is a real need for any standardised or opt-in regime and lack the evidence. It is believed that the introduction of a PEPP – much like a possible standardised life insurance product - faces major challenges, particularly in light of close links (i.e. subsidiarity) to areas of national competence (taxation, social and labour law structures). Furthermore, the demand for such a product is likely to depend on the maturity of the different national markets. Any proposed opt-in regime must allow for existing national practices to be respected.

In view of these challenges the majority of Member States stand to be convinced about the creation of an opt-in regime for financial products.

Some companies suggest an opt-in regime for money remittance, transactional banking and payments (deposit taking, secured and unsecured lending, wealth management, insurance and protection), insurance (e.g. motor insurance, life-insurance, pension plans), current accounts. Some respondents fear that pan-European products can distort competition if offered by foreign agents that benefit from rules that are less strict. Others consider that the development of financial products should be left to the market. Others are of the view that improving the EU passport with a better harmonisation of prudential rules, for instance for occupation pension activity, would be a better solution in the short to medium term to give larger choice to customers and improve competition between financial service providers.

Consumer organisations are generally favouring the development of opt-in regimes for retail financial products. It is seen as a good way to increase cross-border activity and quality of retail financial services products. But consumers emphasise that any product should be standardised and simple, e.g. basic bank account, basic saving account, basic life assurance, basic investment product, basic mortgages and basic pension products. Retail customers most often do not need complex financial products. Low financial literacy and behavioural biases also can lead to unsuitable choices when faced with more complex financial products. Others suggest that rules regarding disclosure and conduct for economically comparable products and services should be standardized.

Some consumers highlighted the need across Europe for consumers to have an easy access to a low-cost, transparent and standardised PEPP. Possible ways forward range from improving disclosure standards and capping charges to developing an easy to access, publicly supervised and standardised savings vehicle. In the short term, improving disclosure practices of personal pension products is essential for a better functioning market, as this should make comparison easier and drive effective competition. The PRIIPS for KID principles should be extended to all PEPPs. Moreover, consumers should be able to assess their overall pension situation in order to make an informed choice when buying a PEPP.

Another consumer considered that it is a need for opt in regime in others financial services like currency transfer, savings products, current accounts, saving accounts, consumer lending, payment services (e.g. mobile payments) and investment products.

Question 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?

The predominant view among insurers is that the 'location of risk' principle generally works satisfactorily and that no further action is needed. Insurance companies must know local situation in order to adequately price the risks and that is good for consumers. Location of risk is in line with Article 7 Rome I Regulation N° 593/2008 (the "Rome I Regulation") and customer's expectations. Customers are fine to have insurance contract and claims to be dealt with by their own national law. One consumer organisation stressed that a high level of protection is needed for policyholders, because they are generally the weaker party to the insurance contract. As a result consumers should principally be able to rely on the application of the law that applies in their home country or where the risk is located. Reference is also made to the review of the choice of law rules in cross-border insurance contracts, which awaits the outcome of a study on the Rome I Regulation in 2016.

However, some insurers point out that over time there has been some divergence in the understanding of this definition standard definition of 'Member State in which the risk is situated' (Article 13(13) Solvency II Directive), which can create inconveniences and there could be merit in action to harmonise views and would welcome some guidance by way of examples on where the risk is located (in case of holiday homes or imported cars). It would also be helpful if the EU location of risk rules would give guidance on the distinction between policyholder and insured as the policyholder is not always an insured (or sole insured) under the policy in cross-border insurance.

As regards general good rules, respondents acknowledged that Member States' practices vary widely. Some provide clear documents, setting out general good conditions precisely and without ambiguity. Others simply list applicable legal instruments, leaving it to undertakings to find and assess whether and to what extent they apply. Some insurers argue that general good provisions should be clarified in scope and they should be relaxed in relation to situations where customers wish to enter into a contract on a cross-border basis and choose their own national law rather than the law of the Member State where they are habitually resident. Clarity on residence rules would also be beneficial in cases where the person assured is not the policyholder.

One insurer advocated setting up a clear, comparable, transparent and publicly available database on the general good requirements of each Member State using identical terminology, language and reference to applicable coverages. Consideration could be given to extending this database to include relevant standard wordings in the language required by the Member State as per the mandatory requirements with an English translation. Also, a consideration would be to establish EU standard insurance types (certification of insurance products) to enable comparison of the products offered by the different carriers and to ensure adherence to or compliance with general good requirements across the EU. One insurer pointed out that from a provider perspective local particularities, including national rules on compulsory insurances, constitute severe challenge to offering standardized products on a cross-border basis. National gold plating of EU harmonized regulation should be avoided.

Some Member States are afraid that harmonisation of general good rules would effectively lead to lower national consumer protection standards in the insurance sector, whereas others insist that clarification of general good rules is needed. The new publication requirements of general good rules under the IDD are viewed positively. One Member State pointed out that EIOPA is already collecting and publishing data per Member State and that a careful analysis of this mapping exercise will help to determine whether question will be needed. (Pursuant to Article 11 IDD, EIOPA shall examine the general good rules before 23 February 2019).

One user group suggested investigating to what extent general good rules are really necessary and effective for end users. The work on 'general good' should be linked to design of opt-in regime and many provisions submitted by new European law. One organisation suggested establishing a system to examine the justification of the use of general good rules.

Several respondents suggested applying the insurance company's law to the insurance contract to facilitate the distribution of cross-border insurance products, especially if the conclusion of a contract is initiated by the consumer, i.e. future policy holder. Special attention should also be given to expats and persons living in border regions.

Question 34: Please provide any additional comments

The majority of respondents referred to issues already covered in earlier questions. Some additional comments referred to issues going beyond the scope of the Green Paper and were related to the earlier Call for Evidence (e.g. comments related to complex revision of disclosure obligations stemming from various EU legislation) or the Capital Market Union (e.g. comments related to asset management) or about implementation of PSD2. In addition there were also comments in relation to the following:

- Many representatives of the industry raised the issues of the determination of law applicable to consumer contracts regulated by the Rome I Regulation – in the situation when consumer protection rules are not harmonised, providers face the problem of multitude of consumer protection rules in case of cross border sale of financial services;
- Differences in tax rates for insurance policies or pension/saving products across Member States give rise to different price points for what may be essentially the same product;
- Pan-European Deposit Guarantee Scheme – some representatives of providers referred to the need to avoid problems with compensation in case of cross-border sale of savings products and avoid imbalances, in case of too much exposure of one country;
- Some industry representatives argued for adoption of the Insurance Guarantee Scheme Directive, stating that only a few Member States have such guarantee schemes in the insurance sector in place, and if the Commission wants to promote sale of cross-border insurance, should not at the same time put some consumers at risk;
- Review of prudential rules – some representatives of providers argued that the rules in the Capital Requirements Directive No 2013/36/EU and the Capital Requirement Regulation (EU) No 575/2013 put break on the emergence of cross-border offers due

to the systemic charge on capital for institutions, which depends on the number of countries they operate in, and additional charge for liquidity for institutions with a parent company in another EU country (as compared with those for a national parent company).

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