



European Economic and Social Committee

INT/772
Retail financial services
and insurance

Brussels, 27 April 2016

OPINION

of the
European Economic and Social Committee
on the
**Green Paper on retail financial services – Better products, more choice, and greater
opportunities for consumers and businesses**
COM(2015) 630 final

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Rapporteur: **Ms Angelova**
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On 10 December 2015, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Green Paper on retail financial services – Better products, more choice, and greater opportunities for consumers and businesses
COM(2015) 630 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April 2016), the European Economic and Social Committee adopted the following opinion with 191 votes in favour and five abstentions.

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1. **Conclusions and recommendations**

- 1.1 The EESC welcomes the Commission's declared aim in publishing this Green Paper and the fact that the Commission is on track and has an ambitious programme for implementing the Action Plan on Building a Capital Markets Union¹.
- 1.2 The EESC endorses the Commission's idea of endeavouring to facilitate the cross-border penetration of retail financial services and the possibilities for consumers to switch providers. Such measures should ensure a more competitive market structure and increase the convenience to financial service consumers, including by promoting even access to out-of-court redress mechanisms across the Member States (MS)².
- 1.3 The EESC welcomes the Commission's approach in the Green Paper of seeking suitable policies to stimulate both sides of the retail financial services market: supply and demand.
- 1.4 The EESC endorses the idea that consumers should be given the opportunity, whenever possible, to compare different products, so they can make an informed choice. In this respect, the EESC fully supports the Directive on markets in financial instruments (MiFID) II – at the same time as still preparing its opinion on the recently proposed revisions³ – and the

1 [OJ C 133, 14.4.2016, p. 17.](#)

2 [OJ C 181, 21.6.2012, p. 93](#) and [OJ C 181, 21.6.2012, p. 99](#). The situation should also be improved now, when the Alternative Dispute Resolution Directive should have been transposed by the MS – [OJ L 165, 18.6.2013, p. 63](#) and [OJ L 165, 18.6.2013, p. 1](#).

3 COM(2016) 56 final; COM(2016) 57 final; [OJ L 173, 12.6.2014, p. 1](#); [OJ L 257, 28.8.2014, p. 1](#).

Regulation on packaged retail and insurance-based investment products, which require better transparency and disclosure of information⁴.

- 1.5 One of the Green Paper's goals is to reduce the market fragmentation in retail financial services. To this end, the EESC would like to point that there is no absolutely reliable evidence that the price differences are due only to a market failure within the EU. National and local factors also influence the prices of products and services, thus making price harmonisation between Member States (MS) more difficult. For example, the premium for a consumer's car insurance policy in one MS and the equivalent premium in another MS could be completely different owing to the loss ratio, which is based on the number of road accidents or number of fraud cases in each of these countries. Similarly, consumer credit interest rates can differ between MS depending on their level of bad debt. Such local factors are correctly referred to in the Green Paper, but they merit further analysis. The EESC therefore keenly awaits the results from the consultation and invites the Commission to look further for any evidence of insufficient competition and for clearer reasons to explain the price differentials detected. It should also pursue this examination in the impact assessment to be carried out before the expected legal proposals.
- 1.6 At the same time, the EESC wants to emphasise that many of the problems highlighted in the 2007 Green Paper on Retail Financial Services⁵ still remain valid – eight years later – in the present Green Paper. The EESC generally endorsed that earlier Green Paper⁶ and praised the actions that had been undertaken to find some practical solutions⁷. Despite some positive results, however, progress has been limited and the problems for the functioning of a single market in retail financial services remain. In the EESC's view, therefore, results from the consultations on this Green Paper need this time to be translated into a more ambitious programme that overcomes the longstanding problems.
- 1.7 The Green Paper takes into consideration a wide variety of financial products, for which the greater choice and opportunities cannot come about simultaneously for all. Clearly, they will need different prioritisations and timeframes. The EESC suggests that the results from the consultation process be applied as a matter of priority to simpler products for which local factors have comparatively less importance. In this way the process of creating a single market for financial products will gain momentum and confidence. Examples of such products could be payment services, pan-European pension products (PEPP), savings accounts, and car and life insurance. One of the first steps could be the application across all MS of the Bonus Malus system in automobile insurance, which diminishes the importance of local factors and ties insurance premiums closely to the profiles of individuals. Products such

4 [OJ C 191, 29.6.2012, p. 80.](#)

5 COM(2007) 226 final.

6 [OJ C 151, 17.6.2008, p. 1.](#)

7 [OJ L 257, 28.8.2014, p. 214](#); [OJ L 60, 28.2.2014, p. 34](#); [OJ L 337, 23.12.2015, p. 35](#); [OJ L 26, 2.2.2016, p. 19](#); [OJ L 173, 12.6.2014, p. 349.](#)

as mortgages, consumer loans, professional insurance and asset management should follow in the timeframe.

1.8 While the Green Paper puts the emphasis mostly on digital technologies, the EESC sees two important factors for more cross-border demand of products which should be taken into consideration as well:

- financial education is clearly key to maintaining confidence in the financial system and ensuring the responsible consumption of financial products. The EESC has already expressed its view on this matter⁸;
- financial advice is to be well regulated at EU level and the distinction between advising and marketing to be made clear. To that end the services offered by independent brokers also merit attention.

1.9 The EESC finds it imperative to make every effort to avoid reopening Directives (such as PSD 2 and MCD⁹) that have been just adopted. Certain time has to be allowed for measures to be applied effectively and the introduction of new regulatory measures should be executed with caution so as not to over-regulate financial markets.

2. **Aim of the Green Paper. Previous Commission and EESC work on retail financial services**

2.1 The European Commission published the Green Paper in connection with the Action Plan on Building a Capital Markets Union¹⁰ in order to examine how the European market for retail financial services – namely insurance, loans, payments, current and saving accounts and other retail investment products – can be further opened up, bringing better results for consumers and firms, whilst maintaining an adequate level of consumer and investor protection at both European and national level.

2.2 The Green Paper is very much concerned with responding to the challenges of digitalisation, which can help bring down prices and improve the comparability of products, thus empowering consumers in their financial choices. In the long run, digitalisation should allow firms to make their products available anywhere in the Union, bringing a single European market closer to reality.

2.3 Another important issue raised by the Green Paper is how to build confidence and trust, since these are crucial to the expansion of the Single Market in financial retail services. To achieve these objectives, the document focuses on how to make the services and products more comprehensible.

⁸ [OJ C 318, 29.10.2011, p. 24.](#)

⁹ [OJ L 337, 23.12.2015, p. 35](#); [OJ L 60, 28.2.2014, p. 34.](#)

¹⁰ COM(2015) 468 final.

2.4 The Green Paper also explores what can be done to help the Single Market in financial services deliver tangible improvements to people's lives in the EU and to create new market opportunities for suppliers, thereby supporting growth in the European economy and creating jobs.

3. **Comments on the current state of the markets for retail financial services**

3.1 The EESC believes that the fragmentation of the markets for retail financial services underscored in the Green Paper is due to the combined influence of national and local factors on the prices of products and services (the constraints of laws, regulations, culture and public social protection systems), as well as to both demand- and supply-side market challenges that will need to be tackled in the future.

3.2 The main supply-side challenges are:

- unjustified and unnecessary differences in national regulations, as a result of gold-plating and national traditions and specifics and other national differences in factors that affect the costs of doing business;
- difficulties in cross-border identification of customers and the source of their funds;
- difficulties with cross-border evaluation of customers' assets and enforcement of collaterals;
- different legal mechanisms in the Members States and particularly with respect to seizing collaterals (i.e., length of foreclosure procedures, necessary recourse to a notary, different land register rules).

3.3 The main demand-side challenges are:

- consumers who are used to a given standard of protection in their own country, cannot rely on the same standard in another MS;
- uneven enforcement of compliance with European legislative requirements;
- uneven access to out-of-court redress mechanisms for financial service consumers in the different MS¹¹;
- language barriers;
- requirements for financial advisors' skills and qualifications are a prerogative of the national regulatory authorities but are not uniform across the MS. There are few competent financial advisors providing objective advice, especially on cross-border purchases.

3.4 The EESC also accepts that the development of digitalisation creates a new environment and considerably expands the scope for providing new services and for enhanced cross-border

¹¹ See footnote 2.

activity. Nevertheless, care must be taken to ensure that digital advances are not used to mislead the consumer by providing information about financial services that is too complex, irrelevant or difficult to compare.

- 3.5 The EESC points out that people's financial literacy still varies greatly from place to place and is relatively low compared with other developed countries, such as the USA, Australia and Canada¹². Pre-sale financial advice is not well regulated and does not guarantee that customers will select the most appropriate products and professional financial advice services are insufficiently developed compared to some non-EU countries.
- 3.6 The possibilities offered by new technologies and increased supply – including cross-border supply – create opportunities, but they also come with some potential risks. They could lead to high debt levels, mortgage defaults and more cases of insolvency if consumers lack the necessary financial knowledge. Consumers who buy insurance and pension products online might be at risk because they often do not do enough research and may sign up to contracts without knowing it¹³. National regulators should therefore ensure that companies selling products online comply with a "duty of advice" to protect consumers. There are more than enough arguments to show the importance of financial education and proper advice.
- 3.7 Consumers who do not understand the concept of compound interest accumulate larger debts and bear higher interest rates and transaction costs¹⁴, while those with financial knowledge plan better, save more for retirement¹⁵ and diversify financial risks¹⁶. The same also applies at macroeconomic level, where financial literacy can be seen to have a strong beneficial effect on national savings and wealth accumulation¹⁷. To that end, it is strongly recommended that a clearer distinction be drawn between activities involved in marketing products and those involved in selling products, especially in cases where advice is provided. Advice should on no account be used as a marketing tool and advisors should be truly independent. The pre-contractual information should be provided and presented in a clear and comprehensive manner. The EESC strongly believes that – in order to restore trust in financial service

12 The degree of financial literacy varies considerably within the EU. On average, 52% of the adult population is financially literate, with the highest figures (at least 65%) being recorded in Denmark, Germany, the Netherlands and Sweden. Southern European countries score much lower: Greece (45%), Spain (49%), Italy (37%) and Portugal (26%). Similarly low are the indicators for countries that joined the EU in 2004 and afterwards: Bulgaria (35%), Cyprus (35%) and Romania (22%). From a global point of view, Europe on average is lagging behind the USA (57%), Canada (68%) and Australia (64%). Data source: Klapper, Leora, Annamaria Lusardi, Peter van Oudheusden, *Financial Literacy Around the World*, 2015.

13 The European Insurance and Occupational Pensions Authority (EIOPA) says in an [opinion](#) on consumer protection and insurance and pensions sales that users do not do adequate research before buying products online – EIOPA-BoS-14/198 28 January 2015 EIOPA Opinion on sales via the Internet of insurance and pension products.

14 Lusardi, Annamaria and Peter Tufano (2015). *Debt Literacy, Financial Experiences, and Overindebtedness*, Journal of Pension Economics and Finance, Vol. 14, Special Issue 4, pp. 332-368, October 2015.

15 Behrman Jere R., Olivia S. Mitchell, Cindy K. Soo and David Bravo (2012). *The Effects of Financial Education and Financial Literacy: How Financial Literacy Affects Household Wealth Accumulation*, American Economic Review: Papers & Proceedings, Vol. 102(3), pp. 300-304.

16 Abreu, Margarida and Victor Mendes (2010). *Financial Literacy and Portfolio Diversification*, Quantitative Finance, Vol. 10(5), pp. 515-528.

17 Jappelli, Tullio and Mario Padula, *Investment in financial literacy and saving decisions*, CFS Working Paper, No 2011/07.

markets, increase cross-border activity and improve the portability of financial products – targeted measures are required for educating individual investors and improving financial advice.

4. **Answers to the questions in the Green Paper**

4.1 General questions:

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

4.1.1 The Green Paper contains questions concerning various banking and nonbanking products and services, but there are considerable differences between the main transaction products (such as current accounts or fixed-term deposits) and contractual products (such as mortgages or saving and investment products). When it comes to saving and investment products, some other EU legal instruments (such as the MiFID or the initiative on building a capital markets union) will have an effect on the market when they enter into force.

4.1.2 For all products discussed in the Green Paper cross-border provision has the potential to increase competition in national markets. However, those with the greatest potential at this stage are undoubtedly pension and investment products. The Commission's scorecard-based system ranks the market for these products as the worst of 31 consumer markets¹⁸. The pension products offered are characterised by localism and high fees. If inflation, management fees and additional payments are taken into account, these products often have negative real return and display worse results than the relevant market indices¹⁹. For this reason, the EESC strongly supports the idea of a single market for pension products and, more specifically, for developing a pan-European personal pension product²⁰ that will lead to increased economies of scale, lower prices and greater consumer choice.

4.1.3 Concerning insurance products, some of these are easily portable, such as life insurance products, in which the customer is protected even when he moves outside the local boundaries. However, others have elements that are locally regulated and require adaptations when entities try to distribute them in different countries. Article 11 of the Insurance Distribution Directive (recast)²¹ stipulates that MS must establish a single point of contact responsible for providing information on "general good" rules in their respective MS and charges EIOPA with including on its website the hyperlinks to the websites of competent

18 http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/10_edition/docs/cms_10_factsheet_en.pdf.

19 The European Federation of Investors and Financial Services Users, *Pension Savings: The Real Return*, 2015 Edition, A Research Report by Better Finance.

20 European Insurance and Occupational Pensions Authority (EIOPA), *Consultation Paper on the creation of a standardised Pan-European Personal Pension product (PEPP)*, 2015.

21 [OJ L 26, 2.2.2016, p. 19](#).

authorities where information on these "general good" rules is published. Furthermore, full cross-border provision will still not be possible – or even desirable – because of the actual client needs that are serviced by the products and because of differences in behaviour and risk factors that affect product conditions. The EESC welcomes solutions that will help to mitigate the lack of portability of products and recommends that in some cases at least partial solutions could be found, such as possibilities for policy holders to pay only for the differentials between the higher coverage and the lower coverages in different MS.

2. *What are the barriers preventing firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border?*

4.1.4 The most substantial supply-side barriers are listed in point 3.2. To overcome those, it is necessary to:

- simplify the cross-border legal procedures connected to the effective enforcement of court judgments;
- have common rules/standards for:
 - ✓ identification of customers, in connection with the know-your-customer and anti-money-laundering requirements;
 - ✓ identification of companies, based on how they conduct their business or – alternatively – suitable identification of end-beneficiaries;
 - ✓ financial products' online contracts (for example, funds, cash share purchases, etc.);
 - ✓ marketing and advertising of financial products and services (especially in the case of aggressive advertising campaigns);
 - ✓ distribution companies that deliver products to customers (insurance products, for example);
 - ✓ standardised minimum information requirements for confirming the source of funds;
 - ✓ transparency/comparability – minimum standardised information on products and services (provision of information not only about the expenses consumers will incur, but also about the benefits they will enjoy);
- take into account fiscal barriers, especially for savings and investment products, because they can have a big impact on profitability. Many products are developed, for example, in order to profit from opportunities created by fiscal regulators in order to encourage savings in a specific way (i.e., long-term savings are generally favoured but the thresholds or vehicles that receive this beneficial treatment differ very much from country to country);
- the communication to a host regulator by the home regulator is supposed to be sufficient to avoid imposing additional requirements or burdens, while at the same time maintaining the established level of consumer protection (e.g. insurance products). Moreover, action should be taken to avoid situations where suppliers incur additional costs in complying with local regulations.

4.1.5 The most significant demand-side barriers are addressed in point 3.3.

3. *Can any of these barriers be overcome in the future by digitalisation and innovation in the financial technology sector?*

4.1.6 Thanks to new technologies, digitalisation in particular, it is possible, for the first time, to make a real breakthrough in cross-border provision of financial products. They could play a considerable role in providing more and better-quality information, in increasing product transparency and comparability and in identifying customers. Also, they could offer cost-saving benefits, by removing the need of maintaining physically located contact points. However, they are no substitute for overcoming other important obstacles, such as the uneven level of harmonisation of legal regimes and consumer protection.

4. *What can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, particularly of the digitally illiterate?*

4.1.7 There can be no doubt that, in the future, there will still be people who, for one reason or another, are unable to use digital technologies. This should not deter efforts to encourage the use of such technologies in the provision of financial products. This is because, firstly, traditional means of supplying such products will continue to exist for a long time and, secondly, such people will be able to access a wider range of products on the basis of well-regulated financial advice services.

5. *What should our approach be if the opportunities presented by the growth and spread of digital technologies give rise to new consumer-protection risks?*

4.1.8 The widespread use of digital technologies will undoubtedly create certain challenges for information security and data and consumer protection. Therefore, along with the various regulations governing the supply of – and demand for – financial products via such technologies, an assessment of the risks presented by these challenges should be conducted and ways of minimising them proposed.

6. *Do customers have access to safe, simple and comprehensible financial products throughout the European Union? If not, what could be done to provide such access?*

4.1.9 There is no commonly accepted definition for safe, simple and comprehensible financial products. However, the general understanding is that such products should possess characteristics such as price transparency, appropriateness and comprehensibility in the user's language for effective communication, possibilities for comparison with similar products, clarity, and straightforward outcomes. These are not easily achievable in so complex a world as the financial marketplace.

4.1.10 Products with these characteristics in the strict sense are rarely available on markets and as a result consumers do not have an easy access to them. This is true both for countries with well-

developed financial markets and for those with less developed markets. The wide variety of products existing in some MS does not necessarily make things easier for consumers, because it can lead to confusion, to difficulty in deciding and to making the wrong choice in the end.

4.1.11 Access to such products can be provided by establishing a basic class of financial products²² at European level that comply with specific standardised requirements depending on the needs they are targeted to satisfy. They should be certified and bear a specific name in order to be easily recognised by consumers. Such a class may include common products such as different savings accounts and fixed-term life insurance. The relatively high cross-border marketing rate of UCITS gives grounds to expect that PEPP could be created based on UCITS success factors and be included in the same class. The existence of such a class of products would increase confidence in financial markets.

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

4.1.12 In many countries, "gold-plating"²³, different interpretations of European legislation, delays in harmonisation, and differences in the transposition of European legislation into national legislation, as well as differences in the concrete application, have been observed, in a way that leads to excessively high administrative requirements and barriers. All these are obstacles to integration and have an adverse effect on consumer confidence.

4.1.13 European Supervisory Authorities (ESAs) are responsible for consumer protection. The EESC would encourage the implementation of this task, in compliance with the following principles:

- consumer mobility between different providers should not be an absolute aim: it always depends on consumer's choice and this choice is determined by different factors: quality and diversity of the products and services offered, potential complementarity of the offers, level of satisfaction, and so on;
- the practice of connected sales of packaged financial products should be exercised with caution and clear and transparent information should be provided to customers. Where such products are offered, they have to be traceable²⁴.

²² As described, for example, in Appendix 1 of the EESC own-initiative opinion "Financial Education and Responsible Consumption", [OJ C 318, 29.10.2011](#), p. 24.

²³ In its communication "Better regulation for better results – An EU agenda", COM(2015) 215 final, p. 7, the Commission defines "gold-plating" as follows: "Member States also often go beyond what is strictly required by EU legislation when they implement it at national level ("gold-plating")." The Commission adds in the same paragraph that: "This may enhance the benefits but can also add unnecessary costs for businesses and public authorities which are mistakenly associated with EU legislation." The INT Section is currently drafting an information report on "Transposition practices" that deals precisely with the addition of national provisions to EU Directives. The European Parliament is also carrying out a study on "Gold-plating in European Structural and Investment Funds".

²⁴ [OJ C 82, 3.3.2016, p. 1](#).

4.1.14 Finally, the ESAs should always favour practices that are better for customers. Priority should be given to:

- reducing the complexity of the current regulatory framework;
- ensuring the resources required for ESA activities;
- encouraging better financial literacy among consumers.

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?*

4.1.15 The Green Paper deals well with the currently predominant trends, namely weak cross-border competition in retail financial services and limited choice of financial products for consumers.

4.2 Helping consumers to buy financial products cross-border

4.2.1 Knowing what is available

4.2.1.1 Better information for customers and helping them switch

9. *What would be the most appropriate channel for raising consumer awareness of the different retail financial services and insurance products available throughout the EU?*

4.2.1.1.1 Increasing financial literacy and the accessibility of financial advice are undoubtedly essential. Consumers should not only have accessible information, but also be able to understand it or to have access to high-quality and appropriate financial advice services.

4.2.1.2 In spite of the growing trend among consumers to use digital services to obtain information, a considerable proportion of them still prefer personal contact, especially when negotiating products. Given the current state of consumer knowledge, behaviour and preferences, however, banks could think of more suitable channels for increasing consumer knowledge of financial services – a pan-EU consumer website, for example. The sources of financing such a website should be further discussed, but they may combine the efforts of the national governments, local authorities and third party aggregators. When creating such a tool, the fact that the insurance comparison facilities belong primarily in a context of national cultural understanding should be taken into consideration. It will therefore be very challenging for a pan-European insurance comparison service to successfully cater for the diversity of users/clients in Europe, especially regarding comparison of the risk to be covered, which exists in a national and local cultural, legal, fiscal, social etc. context.

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

4.2.1.2.1 The EESC supports efforts to make the market more effective, flexible and transparent and backs the present regulatory initiative's focus on better consumer protection. It takes the view that the quality of the services accompanying the provision of financial services could also be improved by means of better use of the advantages of digitalisation and by exploiting the potential of different intermediaries, with well-trained and qualified staff and an adequate methodology for providing complete, objective and comparable information for consumer choice.

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 so, what action and for which product segments?

4.2.1.2.2 The information provided should be precise, comprehensible and relevant to users. Flooding consumers with information should be avoided, as should oversimplifying the reality in order to stress better returns. A good example here is the practice for switching financial service providers in the United Kingdom, where the accuracy of the switch between the sending and receiving banks is guaranteed by an independent third party, which ensures that the switching process takes place simply, transparently and within seven working days. Another best practice is the portability of mortgage loans in Italy introduced in 2006²⁵.

4.2.1.3 Tackling complex and prohibitively high fees for foreign transactions

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 within the EU?

4.2.1.4 The EU Regulation 924/2009²⁶ has already eliminated the differences in charges applicable to cross-border payments in Euro with respect to corresponding payments in Euro at national level. An *ad hoc* assessment could be conducted to check whether the application of this provision to all currencies within the EU (i.e., aligning cross-border and domestic fees for a payment denominated in a given currency) would make sense and benefit consumers. Regarding the information provided to payment users, under the new PSD2²⁷ Payment Services Providers have to inform the client - the Payment Services User (PSU) - before it is bound by a contract or an offer, about all charges it has to pay to the PSP as well as the actual or reference exchange rate to be applied to the payment transaction, in the case where a currency conversion applies. Once the transaction has been executed, the PSD2 contains similar provisions on the information that PSPs have to provide to the payer and to the payee.

²⁵ This was done without any charge for consumers and hundreds and thousands of households and SMEs are using this opportunity every year to renegotiate their mortgage loans thereby saving thousands of euros. This practice also inspired the adoption of the Mortgage Credit Directive, 2014/17/EU, 4.2.2014, [OJ L 60, 28.02.2014](#), p. 34.

²⁶ [OJ L 266, 9.10.2009, p. 11.](#)

²⁷ [OJ L 319, 5.12.2007, p. 1.](#)

The EESC believes that no further action is needed, as PSD2 already imposes clear transparency requirements on payment providers. Besides, the application of Regulation (EC) No 924/2009 on cross-border payments could be extended to other non-Euro currencies in the EU.

13. In addition to existing disclosure requirements²⁸, is any further action needed to ensure consumers know what currency conversion fees they are being charged when they make cross-border transactions?

4.2.1.5 The EESC believes that the PSD2 sets clear transparency requirements that will allow both payers and payees to be duly informed of the exchange rate applied prior and after making a cross-border transaction. This Directive has to be transposed into national law by 13 January, 2018, therefore no further action is needed.

4.2.2 Accessing financial services from anywhere in Europe

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

Provision of retail financial services abroad is not easy and could prove economically unviable for the operators concerned. Cultural differences between consumers with regard to willingness to take risk, behaviour, experience and financial literacy could prove too significant. Banks are aware that confidence is a key aspect of financial relations. For this reason, they may prefer to contact customers who share the same knowledge and have expectations that they understand. In any case, harmonisation of the rules listed in the answer to Question 2 will help considerably in this respect.

4.2.2.1 For insurers residence is of significance because:

Local factors such as climate or seismography need to be taken into account when deciding, for example, the conditions and pricing of home insurance; without a certain critical mass, it is impossible to provide services on a convenient basis. Actuaries' models operate with a high margin of error when the number of events used for calculations is not high enough. Moreover, when hedging risks through reinsurance, the reinsurance models price the hedging differently based on locality.

- These elements make providing insurance services and products abroad more difficult than in those countries where there is enough volume of operations and this should not be considered as a discrimination based on customers' place of residence.

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[OJ L 271, 9.10.2002, p. 16](#); [OJ L 176, 27.6.2013, p. 338](#); [OJ L 267, 10.10.2009, p. 7](#); [OJ L 319, 5.12.2007, p. 1](#); (COM(2013) 547 final – C7-0230/2013 – 2013/0264 (COD)). See Articles 59 and 60(3).

- Cross-border provision of certain insurance products is very challenging, almost not possible in cases where the actual client needs that are serviced by the products are strongly dependent on cultural diversity and on differences in behaviour and risk factors that are strictly nationally determined.
- The psychological aspect of services should be taken into account. The insurance service is rendered when the customer is actually experiencing problems. At this moment, he can be expected to need support and understanding. If he has contracted his insurance product through the internet with a company based abroad, and perhaps using a language which is not his mother tongue, he might feel insecure at the time he needs this support.
- Customers in some MS tend to prefer reimbursement in case of damages, while in other MS they prefer everything to be repaired.

4.2.2.2 Increasing portability of products

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

4.2.2.2.1 In general terms, insurance products that deliver a remuneration or simple pay-out would be more easily portable than those that deliver a service or claims handling.

4.2.2.2.2 Life insurance products are already portable to some extent in the sense that the customer is covered when travelling abroad, except in certain cases if he travels to high-risk countries. Local life insurance also provides him with coverage irrespective of where he is located. But there still remains the case when a policy holder moves to another country not as a traveller but as a permanent resident. In such a situation he should be able to continue with his insurance by adjusting the premium or the coverage of the policy. All these would be cases in which insurance products deliver a determined amount of money.

4.2.2.2.3 Other insurance products are not easily portable per se, because their conditions are intrinsically related to country elements. For instance, in the case of health insurance, the product design and pricing is pretty much dependent on the coverage provided by the public health system in each particular country.

4.2.2.2.4 Linked to this, there is also a question of scale: adapting the product specifically for the customer to the actual conditions that he might demand when living abroad is theoretically possible, but that would imply renouncing the possibilities of attaining economies of scale. The product would be too tailor-made to his case and the entity providing the product would be less competitive than actual local providers. The best option here would be to promote collaboration between insurance companies with a presence in different European countries.

4.2.2.3 Another case of insurance products that deliver services are home and car insurance. Those products that deliver damage repair or deal with car accidents require the insurance company to have agreements with service providers across the country, which requires a certain scale to

be commercially viable. However, a feasible option is to promote cooperation with local (insurance) companies to offer this service in other countries.

4.2.2.4 Facilitating access to – and recognition of – professional indemnity insurance across borders

16. What could be done at EU level for facilitating service providers' access to mandatory professional indemnity insurance and its cross-border recognition?

4.2.3 One way to enable access to mandatory professional indemnity on a cross-border basis would be to harmonise mandatory professional indemnity amounts and conditions.

4.2.3.1 Giving people the trust and confidence to benefit from opportunities elsewhere in Europe

4.2.3.2 Facilitating access to – and recognition of – professional indemnity insurance across borders

17. Is there a need for additional action at EU level to increase the transparency and comparability of financial products (especially by means of digital solutions) with regard to increasing consumer confidence?

4.2.3.2.1 The EESC finds the independent websites that provide information and enable comparison of the specific products and services offered by different providers in the various MS to be one possible good option to increase awareness. It strongly supports the idea of a purpose-built official website, which could be supported either by an administrator assigned at legislative level, with the providers obliged to themselves update the information at certain time intervals, or through a network created by consumer organisations in the MS. Different websites could also be linked in a decentralised, inter-connected system.

When digital solutions are used for comparison, the platforms should provide clear information for the purpose of comparing equivalent products and the risks consumers could face when using them. When there are more differences than the platform can compare (the main focus of platforms is usually price), the characteristics not compared should be clearly specified. All significant conditions relating to product differentiation should also be listed. Consumers should be clearly warned about the possible risks involved when using comparison platforms (for example, by aggregating their personal data).

4.2.3.2.2 The comparison should be of the significant parameters and should not be misleading. Use of personal data should be limited to the absolute minimum necessary to offer consumers benefit, while information should be provided in a way that is clear and easy to understand.

4.2.3.3 Improving redress in retail financial services

18. *Should any measures be taken to increase consumer awareness of FIN-NET and its effectiveness, in the context of implementing the Alternative Dispute Resolution Directive?*

4.2.3.3.1 Out-of-court dispute resolution is a considerably more flexible procedure than court proceedings: cheaper, faster and with far fewer formalities. Such a procedure is particularly useful internationally and, in view of the desired increase in cross-border supply of – and demand for – financial services, FIN-NET should be given a larger role. Sadly, consumer awareness of what FIN-NET has to offer is comparatively low at this stage and measures should be taken to improve this. Moreover, not all EU MS – only 22 out of 28 – are members of FIN-NET²⁹. If this situation persists, it will obviously not be possible for FIN-NET to be used as an infrastructure for facilitating the building of a single market for financial services. As such, the possibilities of regulatory requirement in this regard should be carefully considered.

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 guarantee such access?*

4.2.3.3.2 In most cases, there is no such access. The concept of mis-selling is still largely not understood and it is not practically applied because of its unclear formulation and the lack of experience among regulatory authorities³⁰. In many places, the tests for determining the financial products suitable for customers are formal and do not result in selection of the most suitable products for them.

4.2.3.3.3 It is possible to guarantee access to financial compensation if a single, precise and practical definition of "mis-selling" is introduced and a pan-European regulatory practice is enforced to sanction such sales³¹.

4.2.3.4 Protection of victims where motor insurers are insolvent

20. *Is action needed to ensure that victims of car accidents are covered by guarantee funds from other MS in the event of the insurance company becoming insolvent?*

4.2.3.5 There is an example of best practice in Spain. The Spanish entity "Consortio de Compensación de Seguros" acts as an insurer in the event that there is no insurance company that accepts the risk or in the absence of an insurance company – in the event of insolvency,

²⁹ FIN-NET currently has 56 members coming from 22 MS, with new organisations are constantly applying for membership – a process that can be expected to accelerate after the ADR Directive is adopted - Large Business and International Directive on Information Document Requests Enforcement Process, 28 February 2014.

³⁰ The concept of mis-selling is explained in detail in 3.7. This problem will be partially overcome with the application of the MiFID Directive and the stability test envisaged by it for certain types of products. See footnote 3.

³¹ [OJ C 271, 19.9.2013, p. 61](#) and [OJ C 18, 19.1.2011, p. 24](#).

for example, and always on a subsidiary basis. The guarantee of this entity only applies to Spanish entities. To ensure that victims of car accidents are covered at the same level, the EC will have to require a similar guarantee scheme in all MS. It could be envisaged to extend a similar instrument on a European basis to countries where it does not exist.

4.2.3.6 Increasing transparency and comparability of ancillary insurance

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? In relation to the car rental sector, are specific measures needed with regard to add-on products?

4.2.3.6.1 The new Insurance Distribution Directive³² has strengthened the requirements of transparency in the information for insurance distributors, including – although with certain restrictions (threshold) – for ancillary insurance intermediaries. Furthermore, five major car rental companies committed themselves in 2015 to improving their websites to better inform consumers about optional waivers and insurance products. These are good steps forward. MS will have until 23 February 2018 to transpose the Insurance Distribution Directive and it is thus too early to tell whether further measures are needed. At the same time, it seems advisable for the Commission to monitor whether the commitments of car rental companies have been met, which is not just about insurance products, and to consider further measures to enhance transparency and to prevent consumer detriment.

4.2.3.6.2 In the case of car rental sectors, it is important to take into account the fact that the requirements of the add-on insurance products are often differentiated depending on the risk profile of the renter (usually linked to a credit card limit) or depending on the motor claims ratio or other market features of the MS. But in any case, the pre-contractual information and the efforts to make different offers comparable are important for consumers and it would therefore be advisable to wait until the requirements of this Directive are fully in place to analyse whether further measures are needed.

4.3 Creating new market opportunities for suppliers

4.3.1 Meeting the challenges and opportunities presented by digitalisation

4.3.1.1 Helping firms make better use of digitalisation

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

³² [OJ L 26, 2.2.2016, p. 19.](#)

4.3.1.1.1 The EESC welcomes the promotion of innovative digital financial services across Europe. However, it admits that banks are the biggest providers of financial services and they also need to be encouraged to actively take up the opportunities offered by the digital revolution. To that end, they must be subject to the same rules as their competitors providing similar services, which necessitates a review of the main layers of bank regulation in a considerable number of areas so that equal competitive conditions are provided in terms of:

- prudential requirements;
- provision of payment services;
- applicability of the requirements to know-your-customer and anti-money-laundering procedures;
- recommendations with regard to security during payments;
- state-of-the-art electronic security.

4.3.1.2 Enabling electronic signatures and identity verification

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?

4.3.1.2.1 There are still differences between electronic identification regulations and the know-your-customer and anti-money-laundering requirements. Existing regulations require personal identification and personal evaluations to be carried out in order for customers to be accepted on a permanent basis. Such requirements limit the development of fully digital financial services, raising significant barriers to the taking on of new consumers and increasing costs.

4.3.1.2.2 Further action is needed to overcome the lack of a Europe-wide mechanism for electronic identification and signatures due to differences in national practices: Although the regulations set common standards for digital signatures in the MS, the way they are applied at national level by local operators impedes the cross-border recognition of digital signatures. Local digital operators are not interconnected and this limits their capacity to offer European consumers fully digitalised financial services.

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?

4.3.1.2.3 Yes, action is necessary with regard to:

- supporting the establishment of independent certifying agencies to verify the identity of digital customers and conduct investigations for personal recognition of customers;
- clarifying the contradictory aspects of the regulations regarding digital identification and anti-money-laundering and know-your-customer procedures;

- establishing cooperation between financial businesses and the European and national regulators on developing common standards for digital identification of signatures, which are also to be applied by public authorities and financial businesses;
- considering the possibility of adopting unified European digital identification and signatures, which will eventually also be the basis for consumer identification in financial institutions.

4.3.1.3 Improving access to – and usability of – financial data

25. In your opinion, what kind of data are necessary for creditworthiness assessments?

4.3.1.3.1 Although there is general agreement about the aspects of a customer's financial situation that should be used for assessing creditworthiness, lenders use their own expert assessments and internal methods to assess and manage each particular case. For this reason, initiatives obliging banks or other credit institutions to share processed information that they acquire about their customers' creditworthiness should be avoided. At the same time, raw (non-processed) data could be shared – with the permission of the customer concerned and in compliance with EU data protection standards. This would improve the comparability of the creditworthiness assessment.

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?

4.3.1.3.2 Financial institutions make efforts to become more familiar with consumer behaviour so that they can diversify and personalise their products and services more successfully. There are no clear rules, however, on how the collected data should be used, even when consumers have given their consent. The EESC finds it good to provide greater clarity about the applicability of the rules in this area in order to ensure consumer protection and, at the same time, enable consumers to benefit from financial innovations.

27. Should requirements about the form, content or accessibility of insurance claim histories be made more stringent (for instance in relation to period covered or content), to ensure that firms are able to provide services cross-border?

4.3.1.3.3 Insurance histories contain sensitive personal data from customers. The home insurance company cannot transmit this information to any other stakeholder, but only to the actual customer. It is up to the customer to provide this history to a new insurance company. This does not amount to creating a barrier to cross-border services, since the customer can take his history to a country that he might prefer. At the same time, the Commission, assisted by EIOPA, should explore ways to promote the standardisation of the exchange of claims histories between insurance companies and the acceptance of bonus-malus systems.

4.3.1.4 Facilitating the provision of after-sales services

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

4.3.1.4.1 Post-contractual services in another MS should not differ from those in the country where the products in question are available. This means that the product in question and related post-contractual services should be considered as a single entity for the cross-border supply of financial products. The application of this principle must be guaranteed, otherwise consumers will be put on an unequal footing. It is important that the relevant regulatory authorities monitor the application of this principle.

4.3.1.4.2 Platforms supporting businesses (firms) in offering their products cross-border should also include sections for post-contractual services. A practical way for such post-contractual services to be offered is for companies to be encouraged to form groups and work together to get a sufficient scale of operation.

4.3.1.5 Moving to harmonise procedures for personal insolvency, property valuation and collateral enforcement

29. Is further action required to encourage lenders to provide mortgages or loans cross-border?

4.3.1.5.1 The main problem in this area concerns the forced recovery of debts in the event of borrowers failing to meet their credit agreement obligations. In the light of this, lenders do not currently regard cross-border mortgage lending an attractive proposition, so additional action is needed to stimulate the EU's internal market in this area.

4.3.1.5.2 Mortgages and loans are among the financial products whose marketing across borders face numerous barriers that are difficult to overcome. It is likely that, of the whole range of financial services, these will be the products for which it takes longest to overcome the barriers. Consequently, at this stage, it is better to focus initial efforts on other retail financial services, where there are fewer barriers, and to gain practical experience and momentum through actively working on these.

4.3.2 Compliance with differing regulatory requirements in host MS

4.3.2.1 Making it easier for firms to meet legal requirements applicable in other MS

30. Is action necessary at EU level to make practical assistance available from MS governments or competent national authorities (e.g. through "one-stop-shops"), in order to facilitate cross-border sales of financial services, particularly for innovative firms or products?

4.3.2.1.1 Application of European legislation in many areas – such as, but not exclusively, in the offering of investment products – is inconsistent and contradictory in the various MS. As a result, assistance needs to be sought from national authorities in order to eliminate "gold-plating".

Another good initiative is the SOLVIT network, which gives businesses EU-level support when they encounter problems with public authorities that are not applying EU law correctly and "Points of Single Contact" provide assistance to the firms regarding their obligations when providing services across borders³³.

4.3.2.1.2 Capitalising on the SOLVIT experience, it makes sense for efforts to be made to achieve a solution targeted specifically at financial products, at better cooperation and coordination between national regulators, including help from regulators for innovative firms to understand their obligations.

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)?

4.3.2.2 Fully exploiting freedom of establishment

For insurers, a local presence is often necessary in order to have a better knowledge of the on-the-spot risk and of the consumers to be covered. Freedom of establishment on the spot is therefore essential for insurers such as mutual insurance companies. The fact that there is no European recognition of forms of social economy enterprises, including mutual insurance companies, prevents the establishment of these kinds of enterprises in Member States which do not recognise them, thus holding back their cross-border development, as well as the development of markets and competition. The EESC calls on the Commission, the Council of the European Union, the European Parliament and the Member States to push forward recognition of the mutual model in the European Union.

4.3.2.3 Creating autonomous or more closely harmonised EU-wide regimes

32. For which retail financial services products might standardisation or opt-in regimes be most effective in overcoming differences in MS' legislation?

4.3.2.3.1 From the point of view of cross-border distribution, the following issues merit attention:

- customer identification via electronic certificates. The EESC believes that register of recognised issuers of electronic certificates needs to be kept at EU level (for example by

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http://ec.europa.eu/internal_market/eu-go/index_en.htm.

the European Securities and Market Authority) when distance financial services are being provided;

- the possibility of financial service providers knowing customers' credit histories. Maintaining an EU-level credit register is crucial for the cross-border offering of financial services, especially those connected with extending credit;
- the procedures for seizing the collateral which is pledged for granting a loan. Resources and efforts should be channelled into creating a unified EU legislative framework for collateral enforcement in the cross-border provision of financial services;
- concerning insurance products, those that deliver indemnity are more easily standardised. The customer will receive an amount of money irrespective of where he is based. The company needs only to be able to assess the risk. Life insurance would be a good example. However, for those insurance products that deliver a service (such as damage repair, for instance), standardisation and portability are not possible. This is especially true for products such as health insurance products.

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?

4.3.2.3.2 The location of risk is usually the place of habitual residence of the insured person, with some exceptions in cases of real estate, where it is the location of the building. This principle is usually standardised worldwide and it has legal and tax implications for the parties involved. The EESC believes that the location of risk principle in insurance is fit for purpose. However, it understands that the rules on the "general good" need to be revised, as they give MS the opportunity to adopt legislation that is likely to hinder cross-border distribution of insurance products.

Brussels, 27 April 2016.

The president
of the
European Economic and Social Committee

Georges Dassis
