



Green Paper on retail financial services: better products, more choice, and greater opportunities for consumers and businesses

Fields marked with * are mandatory.

Introduction

The Green Paper seeks the views on how to improve choice, transparency and competition in retail financial services to the benefit of European consumers. It also inquires on how to facilitate cross-border supply of these services, so that financial firms can make the most of the economies of scale in a truly integrated EU market. Finally, it is discussing the impact of digitalisation on retail financial services with a view to allow for growth of innovative solutions in this area in the EU.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-retail-green-paper@ec.europa.eu.

More information:

- [on this consultation](#)
- [on the Green paper](#)
- [on the protection of personal data regime for this consultation](#) 

1. Information about you

* Are you replying as:

- a private individual
- an organisation or a company
- a public authority or an international organisation

* Name of your organisation:

Fédération bancaire française

Contact email address:

The information you provide here is for administrative purposes only and will not be published

vlaregina@fbf.fr

* Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#))

- Yes
- No

* If so, please indicate your Register ID number:

* Type of organisation:

- Academic institution
- Consultancy, law firm
- Industry association
- Non-governmental organisation
- Trade union
- Company, SME, micro-enterprise, sole trader
- Consumer organisation
- Media
- Think tank
- Other

* Where are you based and/or where do you carry out your activity?

France

* Field of activity or sector (*if applicable*):

at least 1 choice(s)

- Consumer protection
- General civil society representation (non-profit)
- Accounting
- Auditing
- Banking
- Credit rating agencies
- Insurance
- Financial intermediation
- Fintech firms
-

- Pension provision
- Payment provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- Social entrepreneurship
- Other
- Not applicable



Important notice on the publication of responses

* Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?

(see [specific privacy statement](#) )

- Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- No, I do not want my response to be published

2. Your opinion

Disclaimer: the proposed options as responses to some of the questions do not commit the European Commission to any follow-up action.

The questionnaire contains 34 questions which seek the views of a broad range of stakeholders. However, not every question will be relevant to everyone and therefore stakeholders are not obliged to respond to all the questions.

The questionnaire below follows the structure of the [Green Paper](#) in which Section 3 outlines all the consultation questions.

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

Please [refer to section 3 of the Green paper](#)  to read context information before answering the questions.

If you are a firm...

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

Please tick all relevant boxes

- Current accounts

- Saving accounts
- Mortgage credit
- Consumer lending
- Payment services (e.g. mobile payments)
- Car insurance
- Life insurance
- Private health insurance
- Saving and investment products
- Other
- Don't know / no opinion / not relevant

Please specify for which other financial products could improved cross-border supply increase competition on national markets in terms of better choice and price:

We do not feel that the initial assumption is very realistic. Contrary to what appears to be stated, French banks undertake cross-border transactions on a regular basis and in many different ways. French banks have taken on board the opportunity offered by the Single Market and offer a broad range of solutions, including:

- meeting the needs of non-residents for banking services in France (for example, to finance a real estate purchase);
- accompanying a customer who moves outside France to a different Member State (a student studying abroad under the Erasmus programme, for example);
- selling their services and using their skills directly in another Member State by setting up a branch or subsidiary there.

In our view, the low level of cross-border transactions reflects more the lack of need from most consumers than a lack of competition within Member States (cultural preferences, and the relative importance of price and quality of service). The price gaps mentioned by the Commission cannot be said to be due to a lack of competition only. They can also result from a difference in the content of offerings, different market set-ups, and so on.

For example, interest rate spreads in the European Union do not reflect the degree of competition (as calculated by the ECB in its report on financial structures), nor the margins charged by the banks.

According to the Eurobarometer 373 survey, consumers themselves have expressed very little need. Not only have 94% of citizens surveyed never bought financial products in another Member State, 80% have no plans to do so in the future. Moreover, this trend is increasing - the percentage was only 75% in 2005 (table, p. 34 of the Eurobarometer).

The main reason that consumers do not buy financial products in other European countries is that they feel they can obtain whatever they need in their own countries. Therefore it seems useless to create new obligations since they would not fit consumers' needs. Prior to adopting any new measures, impact studies must be done to ensure that a need does indeed exist and to prove that the European consumer with standardized needs exists.

If you are a consumer or consumer organisation...

1B. 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?

Please tick all relevant boxes

- Current accounts
- Saving accounts
- Mortgage credit
- Consumer lending
- Payment services (e.g. mobile payments)
- Car insurance
- Life insurance
- Private health insurance
- Saving and investment products
- Other
- Don't know / no opinion / not relevant

If you are a firm...

2A. What are the barriers which prevent firms from directly providing financial services cross-border?

Please tick all relevant boxes

- Language
- Differences in national legislation
- Additional requirements imposed by national regulators
- Impossibility of verifying the identity of cross-border customers
- Lack of knowledge of other markets
- Cost of servicing clients cross-border (without local infrastructure)
- No EU passport available
- Other
- Don't know / no opinion / not relevant

Please specify what other barriers prevent firms from directly providing financial services cross-border:

The banking profession profoundly regrets that the main obstacles to developing cross-border transactions are not addressed directly by the Green Paper:

- Language: Consumers' main concern is dealing in the language of their habitual residence country. Culture: consumers care about the close-up relationships with professionals whom they can meet in person and who understand their needs more easily and the best solutions for them. The sale of financial products and services is based on trust and a feeling of security. And that feeling of security can be lessened by the impression of not understanding or being understood. This is even truer in culturally different financial environments where the same word may have different

connotations.

With 24 languages and 3 alphabets, how many employees for each bank would be needed to deal with specific national regulations and local customs? Since the financial crisis, all texts have focused on customer disclosure, sales acts, education, and so on. Even when setting aside the marketing aspect, understanding the local language and culture is imperative in fulfilling these extensive disclosure obligations.

- **Taxation:** the failure to harmonise tax legislations is a major obstacle to developing cross-border transactions, in particular for the purchase of savings products.

- **Applicable law:** The rules of international private law require that professionals comply with the consumer-protection rules of the consumer's habitual country of residence when the professional directs his activities to a consumer from another Member State. Unfortunately, even maximum harmonisation of consumer-protection rules in retail financial services has not prevented a divergence in national legislations, particularly due to Member States' growing tendency to gold-plate, either when transposing or in the extensive interpretations of the texts by national regulators, which prevents all European banks from being on a "level playing field".
Example: MCD transposition. France is the only country that requires a quota of initial training hours for its new salespersons (60 hours in all). In this context, complying with procedures under a number of different national laws would be far too costly. This is why, in order to achieve economies of scale, which will be beneficial for consumers as well, banks prefer to establish in the consumer's country of residence via subsidiaries or branches.

- **Burdensome regulations**

Banks and insurance companies must be familiar with and take into account many regulations in advising their customers. These regulations cover a vast field of operations and have several different origins, thus being complex to implement:

- **National legislation on financial products, often linked to public policies:** for example in France many products are regulated, particularly in the area of savings and loans.

- **Different labour and social welfare laws:** such differences must be reflected, for example, in the loans distribution during creditworthiness analysis or the nature of savings products to recommend.

- **Different laws (personal wealth, families, civil codes, real estate, etc.),** which have an impact on most bank activities (e.g., legal capacity and marriage laws).

- **Various rules on collection and insolvency procedures.**

These obstacles must be analysed using the yardstick of business cases and in particular whether the "cross-border consumers" often mentioned by the European Commission actually exist. Their existence has never been demonstrably proven (including in the European Commission's own studies; see below), at least as a large group whose needs are going unmet.

These obstacles are ignored or underplayed in the Green Paper. And, as long as barriers last, harmonisation of legislations may not achieve its goal and will not be able to achieve the internal market for retail financial services, as defined by the Commission, i.e., a market in which the offering of retail financial services is available to all consumers from any EU Member State, based on the premise that the consumer is highly mobile. This premise does not stand up to scrutiny. On the contrary, French banks are helping to expand the internal retail financial services market by developing their activities and moving them very close to European consumers by setting up agencies in their countries of residence. This fulfils their need for proximity, as a physical presence on a market is often considered a prerequisite for understanding the culture and specific features of this market (see above). However, it requires heavy investments, something that obviously constitutes an obstacle and requires being selective on markets that are already highly competitive and mature.

Lastly, considering the many regulations being enforced or implemented in the financial sector, the priority appears to be legislative stability.

If you are a consumer or consumer organisation...

2B. What are the barriers that prevent consumers from directly purchasing products cross-border?

Please tick all relevant boxes

- Language
- Territorial restrictions (e.g. geo-blocking, residence requirement)
- Differences in national legislation
- Lack of knowledge of the offer of products in another Member State
- Lack of knowledge of redress procedures in another Member State
- Other
- Don't know / no opinion / not relevant

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

- Yes
- No
- Don't know / no opinion / not relevant

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

Please tick all relevant boxes

- Language
- Territorial restrictions (e.g. geo-blocking, residence requirement)
- Differences in national legislation

- Additional requirements imposed by national regulators
- Impossibility of verifying the identity of potential cross-border clients
- Lack of knowledge of other markets
- Lack of knowledge of the offer of products in another Member State
- Lack of knowledge of redress procedures in another Member State
- Cost of servicing clients cross-border (without local infrastructure)
- No EU passport available
- Other
- Don't know / no opinion / not relevant

Please specify what other barriers can be overcome in the future by digitalisation and innovation in the FinTech sector:

We pointed out in the preamble that banks are big actors in digital innovation and that it therefore makes no sense to draw such a distinction between banks and fintechs.

Moreover, can the banking relationship be fully digitalised? Customers in France say they are quite satisfied with their remote banking services but under no circumstances do they wish to see branches, i.e., their proximity-based relationship, vanish completely. Moreover, without knowing the local language or culture, it is even more challenging and awkward to go through the various stages of remote-identifying the customer.

Digitalisation and innovation make the processes more fluid. We would point out here that fintechs are not the only innovative actors. Banks innovate too, to comply with their customers' new modes of consumption. So it is essential that all players carrying out the same activities be subject to the same rules. If the rules are to be eased, they must be eased for everyone.

Digitalisation and innovation can help at each technical stage. For example, digitalisation and innovation in financial technology could help facilitate remote KYC procedures and remote signing of contracts, particularly through a more suited offering of services, backed by the innovative services offered by banks.

Digitalisation and innovation ease access to information, but users still mostly rely on language to understand products.

We believe that digitalisation of financial services actually addresses an alternative mode of consumption by our customers. Physical and digital channels are complementary, including in our own country.

Moreover, digitalisation of the entire relationship could raise misinformation issues. See question 17.

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?

Please tick all relevant boxes

Improved access to digital means

- Digital training offered by the financial industry
- Digital training offered by NGOs
- Digital training offered by public authorities
- Other
- Don't know / no opinion / not relevant

Please specify what else can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate:

In France, the banking profession already produces educational material for all customer segments through its "clés de la banque" (key points on banking) programme and via banks' individual initiatives. However, these spontaneous initiatives by the banking industry is just one of the actions that are possible in France or that are already being implemented. Financial instruction and education are everyone's concern, specifically including the public authorities, as these are issues that go far beyond the framework of a mere banking relationship.

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?

The financial sector is no doubt the sector in which consumer protection is the most developed. Such protection has been built up over the years based on observation of practices. It now covers all areas of activity. Consumer protection today is provided mainly through national rules that come on top of the banks' formalism obligations. A new channel must be addressed not by creating a new body of rules but, rather, by harmonising existing rules to make them applicable to all distribution channels. It is their universal character, which is simple for the consumer and adjustable to technological developments, that will make them last. Digital offers great opportunities but also presents new risks. Consumer protection built up from years of observation of practices must not be sacrificed merely to keep up with trends. Dissemination of digital technology could potentially lead to several new types of risks: risks involving the quality of information, Internet security risks, data-protection risks, and the emergence of new models and new players, with resulting challenge for supervision. Among the new risks created by digital technology are Internet security risks, with financial institutions among the main targets.

Our customers' personal and banking information must be protected from leaks of information in internal systems as well as in "new players'" systems. This dissemination of information can, for example, help identify theft, the main consequence being fraud. All actions that a bank takes may be impacted and undermined if these new players do not comply with the same obligations. Moreover, without realising it, consumers may have a lower level of protection when they deal with financial institutions.

We believe it is necessary to extend the perimeter of regulation and supervision of Internet security to all players offering financial services and managing financial data.

We also suggest that a European standard on traceability be quickly developed, as banks' fraud detection systems cannot perform well without end-to-end traceability. In an environment in which the customer's banking and personal information will be increasingly shared in the industry, it is essential that each player be able to ensure traceability, so there is a complete audit trail. This standard must specify what must be traced, the classification rules, and the level of protection that is suited to these traces, based on the level of risk pertaining to them.

6. Do customers have access to safe, simple and understandable financial products throughout the European Union?

- Yes
 No
 Don't know / no opinion / not relevant

Please explain your answer to question 6:

Regarding payment services and means, banks already allow their customers to have access to payment means that are useable on a pan-European level, including transfers (SCT), withdrawals (SDD) and payment cards, which allow them to pay any professional in Europe in the same way. The organisation of the financial sector allows the use of these payment means throughout Europe. Limits may be placed on their use by professionals, particularly in withdrawals (SDD) if they are not confident enough in the quality of the counterparty (for example, the debtor of the withdrawal).

More generally, in France, customers have access to simple, understandable and safe financial products:

- French consumers, for example, have access on the domestic market to a full range of products and services covering all their needs. Moreover, they have access to these products from a large number of institutions. Competition is robust and increasing so, and this is the first guarantee of quality and of how banks have an incentive to take their customers' needs into account.

- Customers can, of course, seek out an equivalent product in another EU country, but, while exceptions are always possible, it makes no sense for them to do so, as the entire range of financial products and services is covered by several other French banks.

- Foreign customers have access to our products and services within the limit, of course, of substantive law applying to residents and non-residents.

It would be illusory to try to standardise products at the European level, as that would be tantamount to a "one-size-fits-all" approach to extremely

different regulatory, cultural and financial environments. Rather, the solution consists in promoting the emergence in each country of product ranges that are comprehensive but suited to the specific features of these countries. Moreover, it has often been found that standardisation can have the effect of excluding consumer segments, by excluding any person not matching a sample profile. Banking duties require a precise analysis of the customer's situation, even when he is buying common products, such as bankcards (for the choice between a no limit and a deferred debit card, etc.).

As the Commission pointed out during the 18 November 2014 conference, there are two challenges in introducing rules and principles on simple and safer financial products:

1. Choosing the most effective policy approach

The European Commission acknowledges that direct intervention on the market (i.e., forcing banks or insurance companies to offer certain products) could raise issues of both legality and proportionality. It would be hard to justify without a true, demonstrated gap in market coverage.

Moreover, can the Commission rely on conclusive studies showing that consumers have specific needs in terms of simplicity? Do consumers prefer simplicity or profit? The debate is clouded by confusion between complexity and risk. Complexity is often the technical response to consumer needs for maximum reward at limited risk, while markets offer interest in proportion to the risk incurred. Hence, complexity might imply reduced risk for the customer. A client positions himself with regard to the benefits and advantages from a product, and not its technical characteristics.

2. Coordination with existing rules and initiatives

The European Commission points out in the Green Paper that many measures have already been adopted in recent years to ensure the dissemination of useful, transparent and comparable information (MCD, CCD, MiFID 2, etc.) (p. 21). Moreover, MiFID 2 and IDD already include measures on product governance. Before going further, it would be best to take some time out to reflect on already adopted regulations and to undertake the necessary impact studies before adopting any new regulations.

According to Mr Frans Timmermans: "while the natural tendency of politicians is to focus on new initiatives, we must devote at least as much attention to reviewing existing laws and identifying what can be improved or simplified".

Banks spontaneously take part in the efforts made to simplify European practices, even when it was not legally imposed. European standardisation of cards is being tackled by the Card Stakeholders Group, in which all stakeholders are represented. In the area of payments, standards were voluntarily and freely drafted by the banking industry to simplify the system. There are other instances at the European level of the many improvements in standardisation that were made under the pressure of European authorities

(e.g., SEPA transfers and withdrawals and the recent instant payments initiative).

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 7:

We have just undertaken an in-depth study of the negative effects of excessive regulation at the European level, based on many examples, as part of the response to the “call for evidence - impacts of European legislations”. Unnecessary legislation that in some cases is actually contrary to consumers’ interests and protection, the increasing number and complexity of pre-contractual and contractual documents provided to the client, inconsistencies between different legislations or between level 1, 2 and 3 texts, etc.

The Commission must refrain from taking any unwarranted and costly measure which might be contrary to:

- Its plans for better regulation. At the Joint Conference of the European Commission and the ECB of 27 April 2015 Jonathan Hill said “We are also bringing a new approach to regulation [...] we are working to legislate less and do fewer things better”.
- Its priorities, which are jobs and growth. Would it be reasonable to impose unjustified costs on banks, given their essential role in financing the economy?

Moreover, in recent years, France has widely gold-plated European directives when transposing them, either through the transposition texts themselves or through the interpretations of those texts by national regulators. For example, required remarks and specific formats have been added in France for consumer information on consumer loans, in violation of the principle of maximum harmonisation. But even when complying with this principle, it is very easy for Member States to maintain or adopt additional national measures in an area covered by a maximum harmonisation text.

Indeed, Member States can:

- extend the field of application of European rules (e.g., while the Consumer Credit Directive excluded all free credit agreements from its scope of application, the French transposition law covered free credit contracts of a duration of more than three years; the Consumer Credit Directive excluded contracts guaranteed by mortgages from its scope of application, but Romania put them back in its transposition text);
- add additional rules in the area governed by the European text but on points not dealt with by it (e.g., the French law transposing the consumer credit directive adds special provisions on revolving credit, whereas the

directive does not make a distinction between such loans and other consumer loans);

- maintain national provisions that are stricter than those contained in the European text in fields or points harmonised in that text;
- extend the scope of concepts used by the European text, which indirectly amounts to extending its scope of application.

National specificities introduced when transposing European directives make it harder to compare offers and worsen the issues involving applicable law.

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?

With a rate of access to banking services in Europe of more than 90% and more than 50% of the population saying it has put aside savings (source: Global Findex of the World Bank), competition and consumer choice can be said to exist.

The opening of the market to new players is worthwhile but must be done on a level playing field. All actors exercising the same activity must enjoy the same rights and be subject to the same obligations, including in supervision.

The development of competitive cross-border offers must take into consideration several other difficulties which limit their economic value:

- Client risk is often higher and often requires a more complex and costlier individual analysis.
- Suppliers are having an increasingly hard time checking the identity of cross-border consumers.
- Some prudential regulations restrict free movement of capital and liquidity. These regulations fail to comply with the European Commission's principles stated in June 2014 and slow the emergence of cross-border offers and competition between countries.
- Local rules of supervision by competent authorities are not identical, which creates barriers and skews conditions of competition - an example in France is the necessary certification as a financing firm when distributing credit. Credit distribution as a normal activity is in all cases subject to certification in all Member States.

3.1 Helping consumers buy products cross-border

3.1.1 Knowing what is available

Please [refer to section 3.1.1 of the Green paper](#)  to read context information before answering the questions.

9. What would be the most appropriate channel to raise consumer awareness about the different retail financial services and insurance products available throughout the Union?

Please tick all relevant boxes

- Independent pan-European comparison websites, including the information on cross-border products
- Information campaigns by regulators
- Information campaigns by consumer organisations
- Marketing campaigns by financial services providers or their associations
- Financial intermediaries empowered to offer cross-border financial products
- Other
- Don't know / no opinion / not relevant

Please specify what other channel would be the most appropriate to raise consumer awareness about the different retail financial services and insurance products available throughout the Union:

Comparison sites can be a very dangerous tool, because comparisons only make sense when products are standardised or if they are based solely on the product's basic characteristics. Google's recent announcement that it would halt its "Google Compare" service shows how hard it is to do so. Thus, regardless of the channel chosen, this information will be hard to deliver in the 24 official EU languages and three alphabets (see question 2). To get an idea of the translation needs, keep in mind that the European Parliament employs 1500 translators for its operations. It is extremely ambitious and even illusory to suggest that each European citizen can inform himself or herself of all equivalent offers available in all EU countries, given the lack of a common language and shared cultural references, even though new digital media facilitate the dissemination of information but not translation. Most of all, different products will not necessary be suited to the consumer's situation (e.g., French investments or regulated products), keeping in mind the difficulty of making relevant product comparisons. We feel it is necessary to assess the actual impacts of legislations currently being transposed (e.g., PAD with 21 comparers per country) before moving forward.

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

11. Is further action necessary to encourage comparability and / or facilitate switching to retail financial services from providers located either in the same or another Member State?

- Yes, at Member State level
- Yes, at EU level

- No
- Don't know / no opinion / not relevant

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

Please tick all relevant boxes

- Aligning cross-border and domestic fees
- Before every transaction, consumers should be clearly informed what fee they will be charged and for comparison should be presented the fee for national payment
- Before every transaction consumers should explicitly accept the fee they will be charged
- No further action is needed
- Other
- Don't know / no opinion / not relevant

13. In addition to already 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?

** Articles 59 and 60(3) of the revised Payments Services Directive (PSD2): European Parliament legislative resolution of 8 October 2015 on the proposal for a directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC (COM(2013)0547 – C7-0230/2013 – 2013/0264(COD))*

Please tick all relevant boxes

- No further action is needed
- Before every transaction, consumers should be clearly informed what conversion fee they will be charged and for comparison should be presented the average market conversion fee (e.g. provided by the European Central Bank)
- Before every transaction consumers should explicitly accept the conversion fee they will be charged
- Other
- Don't know / no opinion / not relevant

Please specify what other further actions needed to ensure that consumers know what currency conversion fees they are being charged when they make cross-border transactions:

Given the obligations which are currently imposed on credit institutions, no additional measure appears to be necessary, given that many measures already require specific information on the conversion rate for cross-border payments. DSP1 provides for ex-ante information on the benchmark exchange rate, as well as, on an ex-post basis, information on the exchange rate actually used; DSP2, which comes into effect on 13 January 2018, provides for specific disclosures to the payment service user on the fees that he must pay to the PSP, along with their breakdown. The 2002 Directive on remote-selling of financial services also provides for disclosure of all fees relating to the financial service provided, including fees not invoiced by the supplier. The Payment Account Directive also provides for detailed pricing information on the most representative services relating to the payment account.

On a related matter, note that distributing loans in foreign currencies has come under a special framework since Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property. This directive requires, in particular, regular disclosures of shifts in the exchange rate and how it is applied to the credit contract concerned.

3.1.2 Accessing financial services from anywhere in Europe

Please refer to section 3.1.2 of the Green paper  to read context information before answering the questions.

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

Discrimination occurs when a person is treated less favourably than another person in a comparable situation and the difference in treatment is based on one of the banned characteristics, such as the place of residence or nationality, for example.

Geoblocking must not be brought into general use. Nor must it overshadow the fact that, pursuant to the principle of contractual freedom, there is no banking contract law for consumers. Some regulations in practice ban remote contractualisation or complicate it, as the issue of residence or nationality is not always neutral (US persons and FATCA, for example). In many cases, the place of residence dictates the formalism and regulations that are applicable.

However, the cases dealt with by the European Commission are not, strictly speaking, instances of discrimination, given that, if credit institutions may occasionally refuse to provide a product or service to a consumer residing in another Member State, such refusal is not based on the difference in this consumer's residence or nationality but rather on European regulations protecting a greater general interest : fighting against money laundering and the financing of terrorism. In order to preserve this overriding general interest, the enhanced due diligence measures required by European legislation justify a difference of treatment in practice in cases in which the consumer or beneficial owner of the transaction cannot be verified.

Refusal to provide services abroad may also be due to non-money laundering constraints of a regulatory nature (e.g., the inability to manage the various applicable regimes), or of a technical, legal, or risk management nature (for example in real-estate lending, the cost of risk is different for residents and non-residents), for cost-effectiveness reasons (on top of the cost of risk, a customised transaction).

So there is no unwarranted discrimination in retail financial services based on the consumer's place of residence.

It was on the basis of this observation that Directive 2014/92/UE on payment accounts, while introducing the right of any consumer residing legally in the EU to a payment account in any Member State, provided for the refusal of such an account if it would lead to a violation of the Anti-Money Laundering Directive. A banking relationship is based on *intuitu personae* (i.e., on confidence and a risk analysis). So there is no obligation to enter into a contract, with exceptions such as the right to an account.

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

Please tick all relevant boxes

- Prohibit insurance firms from geographically limiting cover to the country where the policy-holder is living
- Encourage insurance firm to sell insurance products with wide geographical coverage
- Other
- Don't know / no opinion / not relevant

Please specify what else can be done at the EU level to facilitate the portability of retail financial products:

For most products, European portability is no longer possible, due to the existence of many legal, tax and social provisions. There are as many regulations as there are countries. Portability would also impact banks' asset-liability management (credit/deposits) or hedging of insurers' risks.

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

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

Please [refer to section 3.1.3 of the Green paper](#)  to read context information before answering the questions.

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

- Yes
 No
 Don't know / no opinion / not relevant

Please explain your answer to question 17:

Actions taken in recent years in the area of customer information have made it possible to formalise an entire range of sample consumer documentation. In all fields of application, there has been a big increase in disclosures regulated on the basis of precise formalism stated in many European texts implemented in Member States. The call for evidence points out the bias of excessive regulation (e.g., the Mortgage Credit or Consumer Credit Directives) and the formalism required lacks clarity and concision for all actors. These long and exhaustive disclosures make them unreadable, particularly on digital tools such as a smartphone screen. The digitalisation of contracts containing several pages can even undermine the issue of consumer trust, due to the sheer number of pages.

It will also be necessary to undertake ex-ante impact studies to see if there are still additional expectations from European consumers.

The Commission made two interesting observations in the Green Paper:

- many measures have been made in recent years to disseminate useful, transparent and comparable information (MCD, DCC, MiFID 2, etc.) (p. 21)
- new technologies, and the emergence of new distribution channels they allow, may make it difficult to supply suitable pre-contractual information to consumers (due, for example, to the small size of the mobile phone screen on which the mandatory disclosures are provided) (p. 13).

Above all, much recently adopted legislation (on consumer credit, mortgage credit, payment accounts, DSP2, MIFiD 2, PRIIPs, IDD, etc.) must be given time to produce their effects (for example, two years after their transposition deadline) before analysing those effects and, even more to the point, before undertaking new measures.

Confidence, which is a prerequisite for developing activities, including cross-border ones, as we saw in our previous responses, cannot arise in a legislative and regulatory environment that is in constant flux.

Moreover, it would make sense to adjust already adapted measures to new digital technologies.

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?

** FIN-NET is a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries that handle disputes between consumers and financial services providers*

- Yes
 No
 Don't know / no opinion / not relevant

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?

Please tick all relevant boxes

- Better inform consumers about the availability of out-of-court settlement schemes for cross-border disputes
- Provide out-of-court settlement schemes with effective means to solve consumers' cross-border problems
- Ensure that out-of-court settlement schemes operate according to the same rules and offer equally effective means to help consumers across the EU
- Ensure that out-of-court settlement schemes operate independently from the financial industry
- Other
- Don't know / no opinion / not relevant

Please specify what else could be done to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation:

Consumer information is the key to using the system. To use FIN-NET, the main requirement is that consumers be aware that the system exists.

To do so, the European Commission could organise information campaigns.

In addition, measures should be taken to ensure that all members of the FIN-NET network comply with the Consumer ADR Directive. The European Commission could also encourage alternative regimes to settle litigation and join them.

The profession is still in favour of measures for expanding the use of FIN-NET.

19. Do consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 19:

Thanks to the quite recent Consumer ADR Directive, low-priced mediation and reconciliation mechanisms will be expanded further. In addition, directives on unfair terms and unfair business-to-consumer commercial practices provide the consumer with sufficient protection from any abusive sale of financial products. And, lastly PRIIPs, MiFID 2 and the Insurance Distribution Directive provide for full and detailed information on the financial product the consumer has acquired.

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?

- Yes
- No
- Don't know / no opinion / not relevant

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?

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

- Yes
- No
- Don't know / no opinion / not relevant

3.2 Creating new market opportunities for suppliers

3.2.1 Meeting the challenges and opportunities presented by digitalisation

Please [refer to section 3.2.1 of the Green paper](#)  to read context information before answering the questions.

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

Here are some proposals linked to the idea of promoting innovation in financial services:

- Rules adjusted to digital media that are more flexible in implementation, more technologically neutral and that do not prevent creativity and innovation with overly strict rules.
- Possibility for all operators (banks or not) to be subject to a more flexible, but fully secured framework, to undertake tests of new products or services;
- regulators must adapt and have digital approaches; existing regulations do

not always take into account recent technological changes, changes in behaviour and changes in relationships brought on by digitalisation. A special study could be undertaken by the European Commission as early as this year. In particular, a revision of Directive concerning the distance marketing of consumer financial services seems necessary. For example, the need of a handwritten signature and the supply of printed customer documents or general terms and conditions are not necessarily suited to payments via Internet, pads, smartphones, etc.;

- technical and telecom infrastructures must allow secure and faster communications in order to promote secured and faster connections;
- partnerships must be developed between European institutions and private companies, in order to develop suitable safety measures and promote cybersecurity;
- all companies offering the same financial services and products to European citizens must in all cases be governed by the same rules. New actors are also offering new models of intermediation between customers and credit institutions, which are not necessarily covered by current banking regulation and supervision;

So it is important that a level playing field (i.e., the same rights and obligations for all players in all countries) be set up and, in particular that regulations and supervision systems cover the new players in financial services and be applied consistently within the same activity, whether or not the actors concerned are traditional financial entities;

- subjects such as e-identification should help move many processes to an electronic format;
- it is also important to ensure recognition of authentication methods in order to secure transactions;

Technological innovations are being made by both traditional players and new ones. Their success will depend on the use that customers make of them. Digital innovations cannot be developed without enhanced consumer Internet security and data protection, in order to maintain consumers' protection and trust of new technologies (see question 5).

Here are some examples: consistent obligations in Internet security, acceptance of videoconferencing systems to open accounts in some countries, different certification rules in different countries for the same activities. Once again, the need for a handwritten signature and the supply of printed customer documents or general terms and conditions are not necessarily suited to payment via Internet, pads, smartphones, etc.

23. Is further action needed to improve the application of European Anti-Money Laundering legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?

- Yes
- No
- Don't know / no opinion / not relevant

If further action is needed to improve the application of European Anti-Money Laundering legislation, particularly to ensure that service providers can identify customers at a distance,

whilst maintaining the standards of the current framework, please state additional comments on possible actions (e.g. guidelines at EU level, etc.):

Currently, the coexistence of national rules that diverge but which are mandatory raises a clear issue of remote contractualisation. The operator must both apply the rules of the country of the customer's place of residence and those applicable in the country where the bank is established. As a result, it is hard to verify whether identification is compliant or not. This is a matter handled by national supervisors.

As they are hampered by a plethora of rules and formalism, banks are unable to take full advantage of the ability offered by digitalisation. They must set up long and laborious identification systems. These time-consuming procedures are contrary to the spirit behind digitalisation, and the customer often fails to fill them out in full.

The FBF feels that further actions should be considered to address the increasing use of digital tools. One way that could be explored is identification through mobile devices (IP number, EMEI number, phone number, etc.).

It should be the Member States' responsibility to develop a secure digital ID that could be used by various public and private entities. Thus, in order to improve the application of EU anti-money laundering legislation and to facilitate identification of customers at distance it would be important that financial information units and national authorities of all Member States cooperate and work together to develop a valid identification system at EU level that could be used by all EU firms. In this way, an important barrier preventing firms from applying efficiently identification obligations of EU anti-money laundering legislation would be overcome

However, considering that this digital ID might be a long-lasting project, the FBF suggests strengthening identification at the time of getting an Internet or telephone access to the network and allowing the financial service providers to rely on this identification.

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?

- Yes
- No
- Don't know / no opinion / not relevant

If further action is necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards, please state additional comments on possible actions:

As a matter of principle any measure aiming to promote the dissemination and use of electronic identification and electronic signatures would help facilitate the development of digital channels. The reason is that possessing

a single and recognised framework for all Member States would make it possible to secure transactions and ensure that remotely signed contracts are valid and enforceable, including in the event of litigation.

The extension of the scope of the ISDA Regulation (applicable in July 2016) to the private sector in order to develop an “electronic identity card” looks like an interesting option. The private sector has drawn on this rule for identity services but an electronic authentication issued by a Member State that is consistent at the European level (an electronic identify card) would facilitate remote identification, particularly when beginning a new relationship and would help ensure consumer confidence.

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

Creditworthiness analysis is based on a wide range of information, the amount and content of which can vary from bank to bank, based on their internal risk management policy.

In any case, this analysis is above all an analysis of the customer’s net income and expenses that are more or less regular (analysis of projected long-term repayment ability and not just past capacity) and not limited to the acquisition that may be financed, as not all loans are legally assigned to a precise purchase. Outstanding non-rectified payment incidents must also be considered.

The analysis is based on a number of variables, such as age, family situation, professional seniority and type of profession, banking seniority, type of lodging, the purchased good, etc. It is essential to keep in mind that these data are also weighted in terms of the local economic situation. And this weighting can vary considerably from one country to the next (e.g., home-ownership rates and bank seniority vary widely from one country to the next).

The analysis must also take into account knowledge of the customer’s situation and not just mechanically apply a ratio and/or score. These are important tools but not the only ones.

So all this means:

- that the mere communication of data is not enough to transpose domestic decision-making processes to cross-border transactions;
- that risk control is made easier when a pre-existing network is bought or when there is access to considerable masses of information on such or such population. Such access is cost-effective only for massive moves into such or such country, as opposed to mere cross-border forays.

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?

- Yes, at Member State level

- Yes, at EU level
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 26:

The dissemination of personal and banking information in private IT systems or clouds aggravates the risks of leaks, fraud and reputational damage. The security constraints required by regulators must therefore be the same for all firms that handle or collect personal and banking data. Additional regulation could hinder digital innovation and investments. Consumer trust is essential and recent regulations should enhance that trust, without it being necessary to take any further measures. The revised Payment Services Directive and the General Data Protection Regulation are already enhancing the protection of persons, particularly in data security and transactions, along with the responsibility of all banking operators.

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?

- Yes
- No
- Don't know / no opinion / not relevant

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

- Yes, at Member State level
- Yes, at EU level
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 28:

For as long as barriers exist, regulatory barriers in particular, offering products will most often require a local set-up, to be familiar with consumer expectations and the market environment.

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 29:

No. The Mortgage Credit Directive on property loans, which is still being transposed in most Member States, creates a sufficient framework for consumer protection ensuring him transparency on the characteristics, risk and costs of credit and allowing him to compare the various offers available.

Details:

- For real-estate appraisals: there are already international professional standards (RICS, TEGOVA, etc.) covered by MCD in its provisions on the prerogatives and independence of real-estate appraisers who must use this type of standard to appraise the financed lodging when there is an appraisal (which is not mandatory).
- "Private insolvency" procedures (class actions for the payment of craftsmen, merchants, self-employed white collar workers and, probably, the excess-debt procedure) are closely linked to the economic and social context of a particular country and uniformising them does not seem to make sense. However, lenders' access to informations on such disclosure regimes of such procedures would improve cross-border lending.

Suggested solutions:

- Promoting the dissemination in Europe of loan guarantees by specialised firms.
In France, mortgage loans are guaranteed mainly by guarantee firms (53% of outstandings as of the end of 2014; source: ACPR - Financement de l'habitat, 2014). The guaranteed delivered to the bank is a direct first-tier guarantee covering 100% of the loan.
This system of ensuring real-estate credit risk, for which the borrower's ability to repay is the main criterion, is highly secured. The low level of risk of loans guaranteed is due:
 - to the second selection of risks carried out independently by the guarantee firm;
 - to the quality of the first-tier guarantee, which, in turn, is based on:
 - a) the risk premiums received;
 - b) recourse to the property covered by the loan and all the borrower's assets;
 - c) and, in as a last resort, on the equity funds of the guarantee firm.The EBA reaffirmed in December 2015 in its report on the NSFR that loans guaranteed with an endorsement are recognised in the same capacity as loans guaranteed by a mortgage and therefore receive equivalent treatment in the NSFR.

Other obstacles discussed elsewhere are the main causes for the weak expansion of cross-border mortgage lending.

30. Is action necessary at the 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?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 30:

Above all, we want legal stability. We have now adjusted to French constraints. Starting anew with other changes that do not offer much added value, do not appear to be a priority, given the other regulatory aspects that need to be harmonised.

One way forward could be better information on service providers through a contact point in each country.

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)?

The profession is in favour of a modernisation of the 2002 Directive concerning the distance marketing of consumer financial services and the 2000 directive on e-commerce, in order to adapt to new digital technologies.

Credit distribution as a habitual activity should be subject to systematic certification in all Member States, in order to ensure consistent consumer protection in lending and prevention of practices that encourage excess debt.

Enhanced contacts between supervisory authorities would no doubt promote standardisation of guidelines and their enforcement (e.g., EER via videoconferencing).

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?

Please tick all relevant boxes

- Life insurance (This work would build on existing EIOPA research on the Pan-European Personal Pension product)
- Mortgage
- Other
- None
- Don't know / no opinion / not relevant

Please specify for which other retail financial services products standardisation or opt-in regimes might be most effective in overcoming differences in the legislation of Member States:

To develop the use of these, an offer must address a consumer's actual need. And it has not yet been demonstrated that there exists a European consumer with standardised needs. Changing behaviour shows that customers often choose a branch near their workplace.

The task force on creating a European insurance contract law illustrates the difficulties in offering standardised products Europe-wide.

Mortgage loans

This does not look like the right time at all to standardise mortgage lending regimes or accessory insurance products, as that would reduce the overall supply and its suitability for consumer needs. Legal regimes most often reflect the economic and social context of a country to better adapt and respond to it.

Payments

The current framework is sufficient and no action is needed before recommendations and regulatory technical standards that must be supplied by EBA in relation with DSP2 have been completed and are effective.

33. Is further action necessary at the EU level in relation to the 'location of risk' principle in insurance legislation and to clarify rules on 'general good' in the insurance sector?

- Yes
- No
- Don't know / no opinion / not relevant

34. Please provide any additional comments in the box below:

5000 character(s) maximum

additional answer to question 11:

As we have already mentioned, it is essential to deal with the obstacles in implementing the rules provided to determine which law is applicable to the contract, combined with the growing development of gold-plating when transposing the directives.

Indeed, Articles 6 and 1 of the Rome I Regulation on the law applicable to contractual obligations provides that the applicable law is that of the Member State where the consumer has his habitual residence, as long as the professional directs his activities by any means to this country or several countries including this one. The notion of "directed to" is interpreted very broadly by the ECJ through a set of indicators, such as:

- The use of languages or currencies that are different from those of the service provider's Member State (specifically if it is possible to enter into contract in this language);
- The mention of telephone numbers with the international code;
- The use of a domain name other than that of the country of the service provider (".com", ".eu");
- A telephone hotline set up by a neighbouring Member State so that customers in this state will not have to pay the cost of an international

call;

- The reference of international clients; or
- The payment of costs in a foreign referencing service.

Notwithstanding this rule, Articles 6 and 2 of said Regulation allow parties to freely choose the law applicable to contracts between a professional and a consumer in this case, as long as the consumer is not deprived of the protection provided by the laws of the Member State where he has his habitual residence which cannot be contractually waived.

Clearly, in practice and for obvious competitive reasons, establishments that direct their activity to the Member State where the consumer has his habitual residence apply the law that is applicable there.

This is why banks prefer to establish themselves directly in the country of residence of consumers to whom they want to offer their products and services, in order to save on the high costs of legal advice and one-time adaptation of their pre-contractual and contractual documentation.

Moreover, it is up to each financial institution to decide its distribution policy and its target clients based on its competitive position. It is not the regulator's duty to decide if a bank should or should not use intermediaries to distribute its products on a cross-border basis. However, regulation should ensure that a bank that would like to distribute its products throughout Europe via intermediaries may do so. Issues of technological challenges and communication with the customer are the responsibility of the bank and the intermediaries with which they work. It would be necessary for the difference between free establishment and recourse to local intermediaries to be clarified. For the time being, there is a grey zone in which we do not know if, by using intermediaries in the host country, we do not fall over to the constraints of free establishment. Concerning control of the intermediaries, the supervisor should not put the responsibility of the control of the service providers on the credit institution.

Useful links

Details of the Green paper (http://ec.europa.eu/finance/consultations/2015/retail-financial-services/index_en.htm)

Green paper document (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:630:FIN>)

Specific privacy statement

(http://ec.europa.eu/finance/consultations/2015/retail-financial-services/docs/privacy-statement_en.pdf)

More on the Transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en>)

Contact

✉ fisma-retail-green-paper@ec.europa.eu

