

The Consumer Voice in Europe

GREEN PAPER ON RETAIL FINANCIAL SERVICES

BEUC response to the Commission consultation



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Why it matters to consumers

Today financial services rank rock-bottom among all sectors in terms of consumer trust and satisfaction. It is crucial to restore consumer trust in retail finance across the EU. Consumers need to have access to simple, transparent and cost-effective financial products, irrespective of where they live in the EU.

Summary

BEUC welcomes the Commission's Green Paper, aimed at improving consumer outcomes in the retail finance area. We acknowledge that retail finance markets are still largely national affairs and that price differences in Member States exist, suggesting potential benefits for more cross-border sales and competition. It is in the interest of traditional financial service providers to maintain fragmented markets and substantial access barriers for new providers in order to limit competition. New business models and innovative players, together with increasing online distribution could also boost client switching levels, give access to a wider range of products, reduce costs and improve overall consumer outcomes.

However, solely relying on boosting cross-border sales will not suffice. Consumers buying retail finance products, regardless of where they live in the EU, primarily need better financial products and suitable advice, wherever they come from. Financial services rank rock-bottom among all the sectors in terms of consumer trust and satisfaction in the Commission's Consumer Scoreboards.

Efforts for boosting consumer trust in retail finance should focus therefore on creating better choice for consumers. Tools like product standardisation and simplification could really help, especially for the majority of the consumers who are not engaged in making active financial choices. Increased standardisation of financial products across the EU would also be instrumental in pushing more intra-EU competition.

In addition, digitalisation in retail finance will bring a whole new set of opportunities and risks to consumers. The way consumers will manage their personal finance is set for serious change. Consequently, protecting consumers in this area will require new approaches too.

In our consultation response we make suggestions on how to better raise consumer awareness, incentivise switching, enhance competition, enforcement and redress mechanisms, to ultimately raise consumer trust and achieve well-functioning EU retail financial services markets for them¹.

¹ Our UK member Which? is not signatory to this paper.

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

Consumers don't need more choice, but better choice! Retail financial services are characterised by low consumer engagement which could be explained by the supply of overly complex products that are difficult to compare and biased advice practices. Consequently, switching levels are very low in the (largely) domestic markets. With competition hardly working in national markets, it is hard to imagine that merely spurring more cross-border sales will lead to better outcomes for consumers in retail financial services.

This said, we acknowledge that for some product categories price differences exist between Member States and that digitalisation has the potential to help open up largely domestic markets.

Our study on savings account markets² echoes these points: we found substantial price and nominal interest variations among Member States, but national markets still differ widely in terms of the types of products offered, in distribution and in regulatory treatment.

Overall, this suggests that simple and standardised products, provided in the national currency, are likely to have the most potential to benefit from cross-border competition, e.g. bank accounts, savings accounts, travel insurance, personal pension products, life insurance, ETFs and UCITS funds in retail investment.

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

There aren't many consumers who have tried to carry out cross-border financial transactions. The very limited level of cross-border sales in retail finance merely reflects the current lack of consumer demand for cross-border action and lack of cross-border offer from the industry. More awareness about interesting offers in other Member States could partially offset consumers' inertia in this respect.

Nevertheless consumers who have tried to make cross-border transactions have often been faced with the refusal of financial institutions. BEUC has identified in its study on saving accounts markets that there are artificial barriers applied by firms preventing those consumers willing to purchase retail finance products in another country from doing so. We have often seen that interesting offers are blocked for non-residents of the home country.

The study carried by the German ECC (European Consumer Center) to check whether the insurance single market exists³ reports the same issue: when trying to sign insurance contracts with an address outside the country of origin of the insurance company, this was only possible with 14 insurance companies.

Access to some very popular financial services that meet consumer needs is impossible because banks do not want to distribute it to their customers. This is for instance the case of iDEAL, a very popular online payment service used by more than 60 % of Dutch consumers because it is convenient, cheap and safe⁴. iDEAL enables consumers to pay

² http://www.beuc.eu/publications/beuc-x-2015-101_savings_accounts_in_eu-a_dormant_market-study.pdf

³ http://www.eu-verbraucher.de/fileadmin/user_upload/eu-verbraucher/PDF/Berichte/Resume_final_EN.pdf

⁴ <https://www.ideal.nl/en/>

online through their online banking. In addition to web shops, iDEAL is increasingly used to pay energy bills, make donations to charities, buy mobile credits, pay local taxes, traffic fines, etc. But banks located in other EU countries are not interested in implementing it. We suspect that is because it is less profitable than card payments, even though online card payments record significant levels of fraud.

Consumers who are considering buying cross-border retail finance products are also blocked by the lack of trust in firms operating in another Member State, who might be subject to lower consumer protection standards. A perceived lack of redress when things go wrong is also a concern.

Lack of trust in foreign financial supervisory bodies is also a barrier for buying cross-border. For instance, Belgian consumers who had invested their savings in an Icelandic Bank 'Kaupting Bank' which operated in Belgium under a Luxembourg banking license have realised that the Luxembourg supervisor did not properly supervise this bank which collapsed in 2008. The Belgian savers had to wait for a long time before getting their money back: all accounts were frozen on 9 October 2008, and the amounts above €20,000 only became available after a takeover by Keytrade bank on 29 March 2009.

Currency exchange risk requires a special attention. Financial products involving currency exchange may expose consumers to significant currency exchange risk. For example, lots of consumers in Central and Eastern Europe were sold loans in Swiss Francs by western European banks. The currency exchange risk may also discourage consumers from cross-border shopping involving different currencies.

As regards market entry by new financial providers, contingent commissions are a powerful means of limiting competition and access to the market. Due to those practices, for example in Belgium, insurance intermediaries are incentivised to direct clients to only two or three insurance undertakings in order to reach the amount of policies or premiums necessary to obtain their commissions. Intermediaries are not interested in distributing products from new domestic or foreign entrants, unless the commissions are very high.

Fiscal policies and local product regulation are also among barriers to market entry: a lot of savings or investment products are subject to tax incentives. In Belgium, that's the case for regulated saving accounts, life insurances and investment funds. Those are the most popular savings and investments products on the retail market. Due to the intervention of the EU Commission, the tax incentive is no longer reserved for products offered by Belgian firms, but there is still no offer from firms established in other Member States complying with the Belgian law on regulated savings accounts. The reason is simple: in order to give access to the tax incentive, the products have to comply with several strict conditions (product design and low administrative burden). No products from other Member States precisely comply with the specific Belgian conditions and even if they adapt their products, foreign financial institutions do not want to make the effort to ensure their product complies with Belgian legislation and its evolution. **Overall, there is no single market for all consumers and this will not change as long as the conditions for tax incentives remain as they are.**

Some of BEUC's members reported price differences applied by financial institutions for residents and non-residents. For example, in Italy, the cost of a current account for a non-resident of that country is much higher than for a resident:

Cost of a current account (February 2016)

Bank	RESIDENTS		NON-RESIDENTS	
	Online	at branch	online	at branch
Unicredit	€ 92	€ 181,09	€ 186	€ 214
BPM	€ 103,37	€ 149,37	€ 145,82	€ 191,82
Banca Popolare dell'Emilia Romagna	€ 60,5	€ 70,85	-	€ 757,12
Creval	€ 107	€ 122,6	-	€ 391,1

Different languages across Member States are among the natural barriers to cross-border shopping. It is important that information and documents about the financial product is available in the consumer's language. The consumer should also be able to access the after sale assistance in his language.

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

Digitalisation is set to profoundly change the way consumers manage their personal finance, as we will set out in our response to Q5. While increasing online distribution could be a driver for more cross-border action, our fundamental remarks outlined for Q2 remain valid.

This said, we acknowledge that FinTech developments could have a major impact on retail finance.

Today, many aspects of retail finance are still handled by traditional institutions such as age-old banks and insurance companies. They all offer a wide span of different services, ranging from payments services, credit & investment to insurances. While such an approach can be beneficial for consumers as they have a one-stop shop, it also gives leeway for banks to cross-sell products, often against uncompetitive terms to cover their high legacy costs.

These myriad institutions, managing diverging product lines across multiple channels are struggling to adapt to an increasingly digital age.

'Fintech' challengers are keen to disrupt retail finance in a way the likes of Uber and Airbnb have brought change to their respective markets. In short, their commercial success lies in:

- Upgrading the user experience with smart and digital solutions, improving access and convenience for consumers.
- Leaner, digital business models, free from legacy costs such as expensive branches and infrastructure and therefore potentially cheaper for consumers.

Digitalisation can contribute to a better outcome for consumers, for example through direct evaluation of financial products and services. BEUC's Dutch member Consumentenbond co-owns a company which collects consumer reviews regarding the quality of financial advice. Currently they have 49.953 reviews and it is growing rapidly⁵. The way the site functions could also be applied to other financial sectors and products.

Through digitalisation, financial services could increasingly unbundle, as new specialist market players will be progressively taking out bigger chunks of the retail finance market. While the precise impact of 'FinTech' players on the market is hard to predict - some

⁵ <https://www.advieskeuze.nl/>

established banks have already acquired new players or invested in them - traditional players could be facing more competitive pressure than ever⁶, spurring better outcomes for consumers.

*Financial products will increasingly be offered on a stand-alone basis, limiting incumbents' ability to cross-subsidise
(World Economic Forum, the future of financial services, 2015)*

Obviously we will need to look carefully at whether these new emerging business models really put consumer satisfaction at the heart of their operations. In this context, conflicts of interest spurred by third-party commissions or inducements should be avoided by new players.

Let us briefly look at some specific segments and outline the potential opportunities and challenges for consumers and consumer policy.

RETAIL PAYMENTS

WHAT?

Digital technology is giving consumers access to new solutions when e.g. paying a merchant, splitting restaurant bills with friends, buying on-line goods or making international transfers. New intermediaries or products like *Paypal, Venmo, iDEAL, Transferwise, Compte-Nickel, Mooverang*⁷ and *Apple Pay* are offering a wide range of new mobile, internet and instant payment or money transfer options.

WHAT IS IN IT FOR CONSUMERS?

Simplicity: a single tap or swipe allows consumers to make a payment.
Payments can be validated with a mobile number or email account or why not via social media platforms.

WHAT IF...

Consumers' payment data is increasingly used and sold to third parties?
These new payment solutions are lacking security checks?
Consumers can't claim back their money in case of fraud or a failed transaction?
Cash is becoming less and less accepted by merchants and consumers completely lose their privacy?

PEER-TO- PEER LENDING

WHAT?

- ✓ Consumer credit is mediated through on line platforms, matching private borrowers and lenders. The intermediaries only provide the matching service for a fee
- ✓ Platforms don't need to finance expensive branches
- ✓ *Zopa and Funding Circle* are among the industry leaders enjoying substantial growth in this new market place

WHAT IS IN IT FOR CONSUMERS?

- ✓ Faster, easier and cheaper access for consumer to get personal loans
- ✓ New investment opportunity for lending consumers/retail investors

WHAT IF...

- ✓ Platforms increasingly exploit consumer data, also from e.g. social media?
- ✓ Easier access to consumer credit will worsen over-indebtedness?
- ✓ Lending consumers are not aware of the potential risks of defaulting loans?
- ✓ The platforms run into financial difficulties?
- ✓ Retail investors are increasingly crowded out by institutional investors in the market?

⁶ Although, in the longer term, new quasi-monopolies could also arise in financial services because of network effects. Another threat to more competition is the increasing appetite of traditional intermediaries for acquiring fin tech start-ups.

⁷ Mooverang is an application created by our Spanish member OCU in 2014. It helps its users manage their personal finances.

Italian example: BEUC's Italian member Altroconsumo did a survey on P2P lending platforms that match private borrowers with private lenders. In Italy, only two platforms are authorised by bank of Italy to operate in the market (Smartika and Boober). These new operators are useful for consumers who cannot access credit through traditional operators (banks), but this type of loan has a higher interest rate, plus in most cases lenders have problems with debt recovery⁸.

AUTOMATED ADVICE

WHAT
✓ Digital wealth managers or robo-advisers like <i>Betterment and Nutmeg</i> offer low-cost investment advice, using automatic digital interfaces with customers
WHAT IS IN IT FOR CONSUMERS?
✓ "Mass market" retail investors could gain access to low-cost and independent investment advice
✓ Real transparency for retail investors on costs and charges
WHAT IF
✓ Boundaries between advice and guidance become increasingly blurry, undermining investor protection
✓ Automated advice pushes consumers systematically into investments unsuitable for their specific needs
✓ Sensitive personal data goes beyond the user's control

Question 4. What can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate?

The way that digital technology, through increased connectivity and smart software, will be affecting consumers' daily financial life is set to be profound but hard to predict precisely.

Below we discern a few trends affecting retail finance markets, which help to further identify concrete opportunities and challenges for consumers, requiring regulatory attention.

Online distribution: financial products are increasingly bought on line, through banks' websites but also through comparison websites or via specialised platforms/new (niche) players. This could further spur:

- Lower distribution costs (no need for expensive branches) potentially driving down prices for consumers;
- Reduced entry barriers for newcomers on the market, building competitive pressure;
- Better access to relevant information for consumers, leading to improved comparability and potentially increasing switching behaviour.

In 2014, 45% of UK customers who had purchased a banking product in the previous twelve months did so through the internet channel, with a further 6% claiming to have done so via a mobile device (Accenture Customer Survey, 2014)

Overall, the rapid rise of online distribution channels is set to be beneficial for consumers, even though increased on line access may have negative consequences too, such as:

⁸ "Prestito tra priva", Soldi&Diritti, Gennaio 2015.

- Increasing closure of bank branches to the detriment of consumers with limited or no access to digital services;
- Overly risky investment assets or unsuitable loans could be just a few clicks away, though many recent mis-selling scandals were related to face-to-face sale;
- Online distributors do not always provide sufficient advice when distributing their products⁹;
- Consumers are prone to a new type of fraudsters in a digital playground;
- In case of problems, consumers face difficulties seeking redress. This is not only related to digitalisation and online shopping.

Availability: the widespread use of smartphones is increasing consumers' access to their financial tools¹⁰, which will transform their day-to-day usage of financial services:

- Making payments, transferring money, checking savings & investments or budgeting a holiday will always be at a person's fingertips;
- Personal financial management (PFM) apps can consolidate financial information on consumers mobile phone enabling active money management, in a convenient and hassle-free way;
- Inclusion of geolocation in smartphone devices could influence shopping & spending behaviour, for example by 'offering' nearby bargains;
- Digital tools can be used to improve budget management and to help prevent over-indebtedness.

The use of mobile banking services in the UK has more than tripled with monthly usage levels of 8% in 2010 jumping to 27% by 2014 (Accenture Customer Survey, 2014)

While this mobility could empower consumers in their daily lives, it also carries new dangers:

- The same technology that warns someone not to overspend in a nearby store can Also be used to encourage them to spend as much as possible¹¹;
- Consumers can become less conscious of the costs of what they buy;
- Privacy and safety concerns increase;
- What happens if the mobile is lost or stolen?

Big data is having an ever-growing social and commercial impact, and has the potential to transform practices and products across financial services.

The increasing availability of data works in both ways, as financial institutions learn more about consumers and vice versa.

- Consumers can be offered better products which cater for their personal needs, for example taking into account their specific profile.
- Big data could finally shed light on financial products, as comparison and review sites or tools can better aggregate important information, such as user experience, details on costs & charges and terms and conditions.

⁹ [https://eiopa.europa.eu/Publications/Opinions/Opinion_on_sale_%20via_the_internet\(published\).pdf; 3.3.](https://eiopa.europa.eu/Publications/Opinions/Opinion_on_sale_%20via_the_internet(published).pdf;3.3)

¹⁰ According to Forrester Research, by 2018 some 214 000 000 consumers will use mobile banking services in Europe.

¹¹ "Disrupting Fintech law", Fintech law report, p 8:
http://static1.squarespace.com/static/535edb77e4b0cd207fff9e6e/t/554ff231e4b0261b84be36e4/1431302705880/Fintech1802_AA_Barefoot.pdf

However, huge privacy and data protection issues will arise. Also, big data will enable more personalised risk assessments, for example in the credit and insurance area, which could have a major impact on individual product terms for consumers.

- Will the average education of my Facebook friends influence my credit rate? What if I am not willing to disclose social data?
- Will consumers need to disclose their fitness data in order to get favourable health cover?
- What if consumer's personal (financial) data can be traded easily between credit bureaus, financial institutions and digital giants like Google, Apple, Amazon & Facebook?
- Will vulnerable consumers with a high risk profile still have sufficient access to financial products?

Digitalisation holds many promises, even in terms of helping vulnerable consumers, but it can also become a barrier for consumers who do not have a broadband internet connection, for those who lack the access or the knowledge to navigate easily on line, for elderly people, for some people with disabilities (visually impaired), and for those who do not trust managing their financial life online for both privacy and security reasons.

It is worrying that interactions and communications between consumers and public and private bodies in different EU countries are becoming increasingly digital with no offline options. In the Netherlands a recently passed law enables the tax office to only communicate digitally. There is a large opposition to this provision and the ombudsman has started an inquiry. Since then, the tax office started to soften measures. Our member Consumentenbond is active there to defend consumers' right to choose the way they want to communicate in order to prevent people from becoming excluded in society. In France as well, starting from this year, tax payers will be obliged to file their tax declarations online.

We call for measures ensuring that basic financial products remain available offline and at reasonable cost.

In the context of financial and social inclusion, BEUC also supports a project called Pay-Able: a platform that strives for accessible payment terminals for all consumers in Europe, including people with disabilities and elderly people.¹²

Regulatory attention should also be given to making sure that consumer protection measures (e.g. risk warnings) are adapted to increasingly digitalised marketing practices by financial intermediaries, often targeting vulnerable consumers.

A final consideration is the potential of big data for pushing, through more 'advanced' credit scoring, the exclusion of vulnerable consumers from access to insurance or credit products.

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

Indeed, digitalisation and fintech development give rise to new consumer protection risks, as explained in our response to questions 3 and 4. As regards the measures needed to protect consumers against those risks, we make some suggestions throughout this consultation response. BEUC is currently working on detailed proposals on how to address various challenges presented by digitalisation in financial services.

¹² www.pay-able.eu

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

Retail finance products remain unnecessarily complex in many segments. This is reflected in complicated pricing and charging features driving up costs for consumers (for example in the investment area) and overly complex product features (for example in non-life insurance).

For the majority of consumers it is very challenging to successfully navigate an ocean of choice. In addition, the necessary 'advice' that consumers need for certain choices is all too often biased by sales targets or third-party commissions.

BEUC urges the Commission to explore more the possibility of creating - by means of product regulation - safe, simple and understandable financial products which can also be offered as a default for consumers. This could serve the majority of disengaged consumers in the retail finance market, while keeping options for consumers who are willing to look beyond this default product.

We urge the Commission to consider more direct regulatory options, including product intervention. Solely relying on information disclosure and conduct-of-business rules is insufficient in addressing the market failures persisting in retail finance. Product intervention measures can range from using banning powers to remove unsuitable products from the market and product governance tools to the development of more simple and transparent financial products.

In 2011, BEUC's Dutch member Consumentenbond campaigned for standardised/basic/default financial products, but the industry was reluctant to cooperate.¹³

Tying and bundling also largely contribute to the complexity of products, to opaque pricing and to limited competition. In the mortgage credit area for example, ancillary products (bank accounts, insurance products) are often tied with the mortgage. Ultimately, the consumer gets stuck with the bank for many years, preventing him from enjoying better deals for his ancillary products even if their costs have increased a lot. In Belgium for instance, many mortgage contracts stipulate that if the borrower switches to another provider for his insurance products, the loan interest rate will be revised upwards. Tying practices should be banned in any case as they do not bring any benefit for consumers and bundled practices regulated¹⁴.

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

The quality of enforcement of EU law in the field of retail finance is a considerable problem both for consumer trust and market integration. EU Member States differ considerably in the quality of enforcement that will in general depend on factors such as the mandate, tools and capacities of enforcement agencies, as well as on potential conflicts of interest with other mandates, typically with micro and macro-prudential objectives. The quality of enforcement is the lowest in Member States where enforcement agencies don't have a

¹³ <http://www.consumentenbond.nl/actueel/nieuws/nieuwsoverzicht-2012/Afronding-campagne-financiele-basisproducten/>

¹⁴ See also BEUC response to the Commission's call for evidence on EU regulatory framework for financial services, p.16, February 2016:
http://www.beuc.eu/publications/beuc-x-2016-010_call_for_evidence_fs_regulatory_framework_beuc_response.pdf

clear mandate in consumer protection, where they are not pro-actively monitoring provider behaviour in the market and where there aren't sufficient capacities available to the enforcement agency to fulfil its tasks.

All of the listed problems are quite common across the EU, but they are most prevalent in central, eastern and southern Member states. In November 2015¹⁵, the Romanian Financial Supervisory Authority (FSA) appointed a new non-executive member to its board. The applicant acknowledged in her short hearing by the Romanian Parliament that she knew nothing about financial regulation and about the Supervisory Authority, was not aware of what her role might be and that she goes there to learn, had no apparent knowledge regarding capital markets or the insurance industry. She also did not respond to the question of conflicts of interest. The FSA is an authority empowered to license financial companies that can operate throughout the European Union thanks to the passporting regime.

Equally, when talking about private enforcement, consumers in very few Member States can rely on effective mechanisms for filing complaints and starting disputes, while in some of the EU's markets the lengthy and expensive way to court is still the most viable option for consumers to assert one's rights. In addition access to collective redress mechanisms is limited or even inexistent in several EU Member States.

Retail financial products enjoy a low amount of consumer trust due to their complexity and often poor suitability to consumers' needs. Low effectiveness of enforcement mechanisms, both public and private, strengthens this lack of trust. As a consequence, unfair provider behaviour in the market remains unsanctioned and profitable, while consumers suffer considerable financial detriment and/or use financial products less than they could. Additionally, consumer distrust in enforcement agencies' work reinforces these agencies' poor knowledge of business conduct in the markets as consumers refrain from sending them complaints or other input. The Commission's Consumer Scoreboards document both lack of trust in financial products and competent public enforcement agencies. For example, in only 12 Member States do at least 2 out of 3 consumers trust the public authorities to be doing their job, while in 8 Member States this share is less than 50% (6 of these are new Member States).

Because the uncertainties linked to the purchase of financial products are even greater when cross-border transactions are in question, trustworthiness of the enforcement agencies, including access to efficient complaint mechanisms, is even more paramount than for national transactions. A substantial strengthening of the existing Consumer Protection Cooperation Network (CPC-N) will therefore be necessary for ensuring sufficient consumer trust in cross-border transactions.

Diverging levels of law enforcement across the EU are also a barrier for market integration. Although identical or ever more harmonised rules are applying to financial products across the EU, provider practices and market outcomes vary also because the providers adapt to the level of consumer protection in each Member State. For example, whereas responsible agencies in some Member States have started to act against mis-selling practices of unit-linked life insurance years ago, and their action has led to more efficient market outcomes for consumers, the inactivity of enforcement in other Member States still allows for product features and sales conduct that have been banned elsewhere a long time ago. Risky foreign currency loans were sold as an investment opportunity to households in Austria, while in the newer Member States, banks have offered such loans to financially vulnerable consumers and have often made them even more risky by giving themselves the right to unilaterally increase the interest rates.

¹⁵ <http://www.aurisf.ro/romania-2015-audiere-parlamentara-pentru-numirea-unui-membru-neexecutiv-al-consiliului-asf/>
<http://www.quechoisir.org/argent-assurance/epargne-fiscalite/placement-financier/actualite-placement-financier-en-europe-video-gros-rate-en-roumanie>

While in France a solid and in depth enquiry conducted by public authorities has proved that a lender who sold foreign currency loans was fully aware of the risks of such products for households – it is currently sued for unfair commercial practices - public authorities in newer Member States have not really made the necessary enquiries, even though a huge number of borrowers are affected.

A more harmonised level of enforcement across national markets would reduce the incentive for providers to engage in detrimental market segmentation. At the same time it would encourage them to adopt more homogenous product development and sales procedures. More and better cooperation between sectoral regulators is also needed as non-financial companies are marketing financial products in addition to their core business, for example energy suppliers selling insurance products to their customers.

Possible ways forward to enhance the quality of enforcement and consumer confidence¹⁶:

- Merge consumer protection divisions at the European Supervisory Authorities (ESAs - EBA, ESMA, and EIOPA) in order to give more prominence to the conduct-of-business supervision and consumer protection issues. The Joint Committee of the three ESAs could be transformed into a formal institution not subordinated to the ESAs' mandate on financial stability. Setting up a European Financial Consumer Protection Bureau, similar to the American Bureau, has to be considered;
- Provide a clear mandate to the ESAs to lead the work on the convergence of conduct-of-business supervision practices across Member States;
- ESAs to use their power to ban unsuitable/toxic financial products granted by the regulations establishing the ESAs, which has been reinforced by a specific mandate provided by MiFID Regulation;
- All national supervisors need to have product intervention powers and should be granted the necessary financial and human resources to efficiently supervise their national market;
- Increase co-operation between national enforcement authorities, including cooperation between different sectoral authorities, by revising the scope of the Regulation (EC) No 2006/2004 on consumer protection cooperation (the CPC Regulation) which is limited to only 2 directives in the financial services area (the Consumer Credit Directive and the Directive on the protection of consumers concerning distance marketing of consumer financial services);
- Replace the European Passport by a 'European driving license': competent authorities of the host country should be empowered to supervise where a financial service provider is doing business and in case of relevant failure have the ability to revoke the provider's access to the market. Consumer complaints should be resolved by competent bodies of their country of residence.

¹⁶ See also BEUC response to the Commission call for evidence on EU regulatory framework for financial services, where we point to the loopholes in the existing regulatory framework for retail financial services, supervision and enforcement activities, and consumer redress schemes that need to be addressed by policymakers. February 2016:
http://www.beuc.eu/publications/beuc-x-2016-010_call_for_evidence_fs_regulatory_framework_beuc_response.pdf

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

The European Commission should consider creating an information portal for European consumers to enable them to compare retail financial products and stimulate competition between suppliers as a consequence of more transparent information.

Between 1993 and 2011, the Commission has published annually the "*Report on car prices within the European Union*" that could be used as a good practice. When the report was launched, there were major car price differences among Member States, and it was much more difficult for consumers to compare prices across borders. Since then, the situation has improved greatly, in part due to enforcement action by the Commission, and also thanks to the increased availability of price information on the internet.

In the press release published by the Commission related to the last report published in 2011¹⁷, Joaquín Almunia, the Commission Vice President in charge of competition policy stated that "... [the] *car price report shows that car prices fell by 2.5% in real terms in 2010 in the European Union as a whole. List prices for new cars also converged slightly. These long-term price trends support the Commission's decision last year that specific competition rules for the sale of new cars are no longer justified. It is good to see that consumers in Europe are benefitting from competition in the markets for new car sales and continue to enjoy significantly falling prices in real terms. The fact that price differentials between Member States narrowed further is a positive indicator of cross-border competition.... The fall in real car prices across the EU continues a trend observed for more than a decade, which indicates that competition between car manufacturers on the market for new cars is working.*"

As regards retail financial services, an expert group in charge of studying best practices and making recommendations, in particular as regards how to harmonise information, could be set up by the Commission. The information on products should come from reliable national sources.

The European Consumer Centers that are co-financed by the European Commission and national governments could also be a source of information to consumers of financial services. The ECCs role is to assist every citizen in Europe to take advantage of the single market. The ECCs could provide practical and very concrete information to consumers, for example by publishing practical guides by country and by type of financial products, as some ECCs have already done for other products.

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

Having reliable financial intermediaries would help consumers shop around. A reliable intermediary must be professionally competent (high level of qualifications and a broad knowledge of the products available on the market) and be independent (no inducements that prevent the intermediary from acting in the consumer's best interest).

The example of the EU car market may again be useful to consider. When the European Commission started to publish price differences between cars in Europe, some car intermediaries started to buy cars abroad on behalf of domestic clients. These individual

¹⁷ http://europa.eu/rapid/press-release_IP-11-921_en.htm -

The car price report is part of the Commission's monitoring of the motor vehicle sector. It outlines the list prices of 89 best-selling car models representing 26 brands throughout the EU.

customers did not feel capable of making such transactions themselves, because of language barriers and administrative obligations they were not familiar with like customs clearance formalities and VAT payment.

An example on cross-border mortgages: for years, only 3 banks controlled over 70% of the Dutch mortgage market and made very good profits. Gradually foreign banks are entering the Dutch market, in particular with the help of some independent advisors in border areas who sell mortgages of foreign banks. There is also a company seeking foreign investors.

Question 11. Is further action necessary to encourage comparability and / or facilitate switching to retail financial services from providers located either in the same or another Member State? If yes, what action and for which product segments?

Helping the consumer to compare products does not allow consumers to benefit from the best deals on the market in itself. The bigger problem is being prevented from switching because of some legal provisions, lack of appropriate switching mechanisms and tying practices.

Examples of legal provisions preventing or limiting switching

Car and house insurance policies: in many countries, policies are tacitly renewed each year, unless the insured person terminates it within a certain timeframe, for example 2 months, preceding the renewal date of the policy.

In France, a law which entered into force in 2015 has made it easier to terminate car or house insurance contracts and switch to another provider. Amongst the measures is a right for consumers to terminate their car and house insurance policies at will after the expiry of one year of the contract. The right of termination is without charge and with full reimbursement of any unexpired premium, but consumers have to demonstrate to their existing insurer that they have taken out a replacement policy with another insurer (proof from the new insurer). The notice of termination must be in writing by recorded delivery, and the policy itself will come to an end 30 days after receipt of the letter of termination by the insurer. The insurer then has a further 30 days to reimburse any premiums that are outstanding for the unexpired period of the contract. Beyond this time interest is payable.

All laws which require the consumer to comply with a time limit for terminating a contract should be reconsidered and possibly replaced by less restrictive measures. There is a need to establish specific rules on the renewal and termination of contracts in order to allow consumers to switch providers at no cost if they wish to do so, as 'termination fees' can be used to discourage consumers from switching.

Savings accounts: In Belgium there are strict legal provisions on regulated savings accounts. The application and calculation of the interest base rates and loyalty premiums are complicated and often incomprehensible to consumers.

Regulated savings accounts must conform to specific standards¹⁸ including amongst others:

¹⁸ Royal Decree published in September 2013.
BEUC study on savings accounts: http://www.beuc.eu/publications/beuc-x-2015-101_savings_accounts_in_eu-a_dormant_market-study.pdf

- Interest consists of a base rate, paid annually on 1 January, and a loyalty rate, paid quarterly on 1 January, 1 April, 1 July and 1 October. The loyalty premium is obtained after 12 consecutive months from the day after the deposit is made or from the start of a new loyalty period;
- Legal provision regarding the interest rate of the loyalty premium (25% - 50% of the base interest rate allowed) and the base rate;
- Prohibition to offer advantageous conditions to new customers;
- Possibility to transfer money from one regulated savings account to another at the same bank without losing the loyalty premium. Transfers are limited to three times per year and a minimum amount of € 500;
- Reference cash accounts, not necessarily free of charges, have to be opened simultaneously at the same bank.

The result is that the majority of savers keep the same savings account for many years while there are better deals on the market.

In order to facilitate switching, interest should at least be accrued daily and paid monthly and the notice period, if any, should be easy to understand.

Specific case of long term contracts: Some contracts have a long execution time, such as home loans and pension products. Over a period of twenty years or more, offers on the market change a lot, while at the time of conclusion of the contract the offers were not necessarily the most favourable to consumers.

Early repayment is a consumer right in the mortgage credit directive but the required conditions are still too strict to really facilitate switching.

In Italy, where a specific switching mechanism has been adopted for mortgage loans, 32% of the mortgage market in 2015 was generated by borrowers switching to another provider looking for a better interest rate.¹⁹

The procedure is as follows:

- The borrower checks the amount of the residual capital of his mortgage. The new capital borrowed must be the same as the capital still to be repaid; it is prohibited to borrow more than the residual capital;
- When switching, it's possible to change the type of interest rate (fix or variable) and the mortgage term (longer or shorter than the existing residual term of mortgage);
- The borrower gets offers through the ESIS (European Standardised Information Sheet);
- He selects a new lender and informs him about his switching project;
- It's a no cost procedure for the borrower: no switching fees, no inquiry costs, no valuation fees, no insurance fees (the customer can transfer his existing home insurance to the new bank), no tax, no notary cost (paid by the new bank);
- The 2 banks (old and new) exchange information in particular on the residual capital through an interbank procedure;
- The 2 banks and the borrower go to the notary office for the signature of the official switching documents. The new bank pays to the old bank the residual capital and the borrower pays to the new bank the transferred mortgage payments;
- The switching procedure should be performed within 30 working days from the borrower request to the new bank. The borrower is entitled to compensation for delays. The compensation is paid by the old bank and is equal to a 1% of residual

¹⁹ DLGS 385/1993 Consolidated law on banking. Art. 120-quater Loans switching (mortgages and other loans)

capital of mortgage for each delay of one month or part of month of delay. For example for 100.000 euro of residual capital switched into 45 working days, the customer will have a compensation of 1.000 euro.

Switching should be a consumer right for any long term contract under reasonable and justifiable conditions in order for consumers to benefit from the potentialities of the market at any time.

Lack of efficient individual switching tools

Many consumers are deterred from switching for various reasons:

- It is difficult to find out which provider is the cheapest or offers the best deal;
- The amount to be saved by switching is too small;
- They think that their current provider offers the best value for money;
- An amount of effort is necessary to complete the switching task.

Many consumers do not know they can switch.

In a study carried out by the Commission on switching²⁰, consumers were asked to evaluate a number of tools to see if they could help them to decide about retaining a service provider or changing to a new one. The most wanted 'tool' was a switching process that costs nothing; on average, a third (32%) of consumers indicated that this would help them. The other two highly-regarded areas of assistance were both related to information: the ability to have standardised comparable offers and a website where the various offers were compared. For about one in five consumers, a key factor was the ability to have an easier process: on average, 19% mentioned a rapid switchover (e.g. within given working days, specified for each service, see survey questionnaire) and 14% agreed that specialised agencies could help them to switch providers. Additionally, 17% would favour shorter contract periods. The most cited tool - switching that does not involve any costs on the consumer side - was especially favoured by the users of Internet services, and by holders of mortgages and other long-term loans.

The Payment Account Directive provides for a switching mechanism widely inspired from the code of conduct adopted by the European banking industry in 2008 (the EBIC Common Principles on Bank Account Switching) which was actually very little used by banks²¹. It is a pity that the EU policy makers did not adopt a more efficient mechanism as experienced in the Netherlands or more recently in the UK. More needs to be done to raise awareness of the tools which already exist to efficiently enable consumers to move around and help bring their confidence that switching can be simple and error-free.

In addition not enough attention has been paid so far both at EU and national level to the bank account number portability (a similar tool has been successfully used in the mobile phone area). Account number portability would allow consumers to change banks without changing their bank account details. In the UK, the Financial Conduct Authority found that being able to keep bank account details increases consumer confidence in the bank account switching process and that a significant number of individual and small business customers would be more likely to switch if they could retain their account details.

Need for collective switching schemes

In order to overcome consumer inertia and difficulties to change providers, collective switching should be considered in the financial services area. It may help greater numbers of people get better offers and improve the way the market works which is particularly

²⁰ http://ec.europa.eu/public_opinion/flash/fl_243_en.pdf

²¹ "Easy Switching? - A Long Way to Go" - BEUC Monitoring Report of the 'Common Principles for Bank Account Switching'; January 2011 <http://www.beuc.eu/publications/2011-00183-01-e.pdf>

needed in sluggish and unresponsive sectors such as telecoms, energy and financial services. As said by Richard Bates, director of the former UK consumer organisation 'Consumer Focus': "Collective switching has the potential for an intermediary, working on behalf of consumers, to turn inertia from something that works against consumers into a force that works for them."

Collective buying has already been tested and proved successful in the energy area in several EU Member States and has brought substantial benefits to consumers who participated to those exercises²².

The process is led or facilitated by a third party, a consumer organisation or an authority. Usually, the organiser approaches different providers asking them for a better deal for the consumers who have signed up to the campaign. These campaigns are not only providing better price but also better conditions (i.e. in order to participate in the campaign, suppliers had to meet certain requirements, e.g. from price guarantee for one year to more protective contract terms or simplified dispute/complaints resolution.

The support from regulators has played an important role in the energy switching campaigns. For instance, BEUC cooperates with the EU Agency –ACER – and fed into their annual monitoring report. A number of BEUC members contributed to this report which, as a result, includes a chapter on switching and collective switching campaigns organised by consumer organisations at national level. Energy regulators conclude that collective switching campaigns organised by trustworthy consumer or other organisations are to be supported by energy regulators.

Such collective switching campaigns could be replicated in other sectors, including the financial sector. Several retail financial services possess the characteristics required for mass purchases such as bank account, savings account, car loan and personal pension product. New market players may be interested in such campaigns in order to enter the market or increase market shares.

Dutch example: In 2013, Consumentenbond started a collective switching of savings accounts and managed to get 36,000 consumers on board with over €1 billion in savings. But no bank accepted the offer!²³

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

Consumers who make online and offline payments and money transfers, locally and across borders need to have cost efficient, widely accepted, safe, and privacy-friendly means of payment at their disposal. Despite a great number of innovative solutions, several legislative and non-legislative initiatives, national and EU-wide payment markets still remain fragmented from a consumer's viewpoint.

Two key issues that the Commission should address are:

- High fees charged for intra-EU transactions involving currency exchange;
- Limited acceptance of many widely available payment options online and offline, both locally and across-borders.

²² http://www.beuc.eu/publications/beuc-x-2015-087_collective_energy_switch_factsheet.pdf

²³ <http://www.consumentenbond.nl/actueel/nieuws/2014/banken-wijzen-renteaanbod-van-duizenden-consumenten-af/>

Cost of intra-EU cross-border payments, transfers and money withdrawals

Scope of the Regulation on Cross-Border Payments

There are several issues that need to be addressed through the revision of the Regulation on cross-border payments in euro. It is worth stressing that for several years now we have been calling on EU policy makers to finally solve this issue. Regrettably, in 2013, the Commission decided not to revise the regulation.

The objective of Regulation 924/2009 on cross-border payments in the Community was to eliminate differences in charges for cross-border and national payments in euros (the equal charges principle). The basic principle is that the charges for payment transactions (direct debits, credit transfers, card payments and ATM withdrawals) offered by a payment service provider have to be the same, for the payment of the same value, whether the payment is national or cross-border.

All non-euro area Member States have the possibility to extend the application of this regulation and to apply the same charges for payments in euro as for payments in their national currency. Only Sweden has done this so far. Romania also opted for the extension of the law to its currency, but the notification to the Commission was not followed by an implementing legislation²⁴.

On several occasions BEUC informed the policymakers about exorbitant fees that EU consumers pay for cross-border credit transfers involving non-euro currencies²⁵. The current situation is not compatible with the EU objective of achieving an internal market for payments.

The Commission's 2013 study reported a positive consumer experience in Sweden following the application of the equality of charges rule to Swedish krona. Subsequently, the study provided that the application of the equality of charges rule to domestic payments in national currencies of countries outside the euro area and cross-border payments in euros would most likely benefit payment service users from non-euro area countries. A reduction in the cost of cross-border transactions will undoubtedly stimulate and strengthen the internal market²⁶.

BEUC urges the policy-makers to extend the Regulation 924/2009 on the equality of charges to all non-euro currencies in the Community. This would end the practice of banks charging exorbitant fees when workers are paid in one country for work performed for a company in another. These are often a percentage of the sum paid and so can represent a large chunk of someone's earnings. The regulation should be extended to all non-euro currencies in the Community²⁷.

Interpretation of the Regulation on cross-border payments

One of the central issues in Regulation 924/2009 is related to its interpretation. Article 3(1) states that "Charges levied by a payment service provider on a payment service user in respect of cross-border payments of up to EUR 50 000 shall be the same as the charges levied by that payment service provider on payment service users for corresponding national payments of the same value and in the same currency." This provision is not explicit and leaves room for interpretation.

²⁴ See EC report on the impact of the PSD and on the application of Regulation 924/2009, 2013, p.48: http://ec.europa.eu/finance/payments/docs/framework/130724_study-impact-psd_en.pdf

²⁵ See also BEUC response to the Commission consultation on the EU regulatory framework for financial services, February 2016: http://www.beuc.eu/publications/beuc-x-2016-010_call_for_evidence_fs_regulatory_framework_beuc_response.pdf

²⁶ Commission study on the impact of PSD and on the application of Regulation on cross-border payments, February 2013: http://ec.europa.eu/finance/payments/docs/framework/130724_study-impact-psd_en.pdf

²⁷ The equality of charges rule should be extended to national currencies of the following countries: Bulgaria, Croatia, Czech Republic, Denmark, Hungary, Latvia, Lithuania, Poland, Romania and the United Kingdom.

For example, recently in Germany, there was an issue related to cross-border ATM charges. German consumers were charged very high fees (often more than 5 Euros) by their banks for using ATMs outside Germany. If they used an ATM of another bank or a scheme at national level, fees charged by private banks were limited to EUR 1.95²⁸, while the co-operative banks and Sparkassen charged around EUR 3.95-4.95.

In January 2011 the Commission issued an interpretative note, where the 'corresponding national payment' is approached from the point of view of the consumer.²⁹ The picture becomes clearer when comparing the situation across countries. For example, Dutch consumers do not pay fees for national and cross-border ATM withdrawals in Euros. If a German and a Dutch consumer meet at an ATM machine in Germany which is not their bank, the Dutch consumer does not pay any charges, while the German consumer will be charged an extra fee. When they cross the border to the Netherlands and do the same ATM transaction, the Dutch consumer is charged nothing again, while the fee paid by the German consumer is even higher than in his home country. BEUC requests that the text of the regulation is amended so as not to allow any room for different interpretations.

Universal acceptance of basic debit cards everywhere in the EU

Despite a great number of innovative payment solutions emerging in different EU countries, national and EU-wide payment markets still remain fragmented from a consumer's viewpoint.

Let us take cash as a benchmark in terms of its acceptance by merchants. Cash is the legal tender and is accepted virtually by all physical merchants and other payees across Europe. The same cannot be said about electronic means of payment. For example, among the three main SEPA sub-projects (credit transfers, direct debits, cards), only SEPA credit transfers function smoothly across the EU, while there is a lack of acceptance of debit cards, both at local and cross-border level, online and offline.

For several years now the financial service providers have been pushing for a cashless or less cash society, stressing the high costs related to cash transactions, transportation, fraud prevention and security measures. Yet, the real questions to answer are:

- Do consumers have a viable alternative(s) to cash?
- Are there widely available electronic payment instruments/solutions universally accepted everywhere in the EU?

In our view, the basic debit card could perfectly fulfil this mission, as it satisfies several necessary requirements:

- Payments is a two-sided network industry, meaning that for a payment method to be successful it requires users on both sides of the market, i.e. payers and payees. That explains the fact that many innovative solutions have not been successful so far, as they have failed to ensure mass adoption by consumers and merchants. A debit card is a traditional, cost-efficient payment instrument that almost all European consumers have in their wallet. Thus, it is incomprehensible why many online and offline merchants do not accept it, while they do accept credit cards.
- Debit card transactions are much cheaper for merchants than credit card transactions. The Interchange Fees Regulation further reduced the cost of accepting debit and credit cards. The economic rationale suggests that all merchants should have the incentive to accept debit cards. However, this often does not happen in practice.

²⁸ According to the latest information, this limitation has been given up and commercial banks now charge higher fees.

²⁹ http://ec.europa.eu/internal_market/payments/docs/reg-924_2009/application_direct_charging_en.pdf

- In many places like petrol stations by night, with automatic vending machines, cash is no longer accepted. Therefore the only solution is the card payment. In many cases debit cards or non-national debit cards are not accepted. To compensate for the fact that cash is not used, the provider of such machines should have the obligation to accept debit cards, the only payment instrument available for all consumers when cash cannot be used.
- Debit card acceptance is important also from the financial and social inclusion perspective. The European Parliament's 2012 Resolution on Access to basic banking services called on the Commission to take measures to *"improve sellers' acceptance of different types of payment methods in order to allow consumers to reap the benefits offered by e-commerce; with this in mind, sellers should universally offer the possibility of paying by a basic payment card without any payment surcharge."*³⁰
- The recently adopted Payment Accounts Directive provides consumers with the right to a basic payment/bank account, with a payment card attached to it. If debit card acceptance is unsatisfactory, users of basic bank accounts will not be able to reap the full benefits of internet and mobile commerce.
- In countries where debit card acceptance is universal, e.g. in Denmark, both payers and payees are satisfied. This also greatly reduced online shoppers' dependence on credit cards, and contributed to reducing the use of cash by consumers.
- We do not observe any serious technical obstacles to debit card acceptance. Currently most consumers have either debit cards of international card schemes (Visa and MasterCard) branded Vpay, Visa debit, Maestro, MasterCard debit or co-branded cards (e.g. Bancontact co-branded with Maestro in Belgium). Their national and international payment networks make debit card acceptance and processing technically possible.

For the time being the information on the availability of funds on the consumer's account before confirming the authorisation of the payment transaction does not exist in all countries or for all card based payments. This problem has to be solved if it is a barrier to debit card acceptance. Nevertheless it is quite strange that this procedure is not applied when at the same time the industry is putting in place instant payments. Is it possible to have instant payments without checking the availability of funds?

- Universal acceptance of debit cards issued anywhere in the EU would also meet policymakers' objective to steer users towards more cost-efficient payment options.
- The success of the Digital Single Market – one of the flagship projects of the European Commission – is very much dependent on the availability of ubiquitous and widely accepted cost-efficient payment instruments. There is the need to create the equivalent of cash for internet payments, in line with the idea of legal tender. Debit cards should be the legal tender payment instrument for internet, at least for the time being. That does not prevent the existence of less expensive payment instruments such as those based on credit transfers.

BEUC urges EU policy makers to make sure that basic debit cards issued anywhere in the EU are universally accepted both online and offline within the EU. We consider that a legally binding instrument is necessary to achieve this objective. To make a parallel, the migration to SEPA was rendered possible only through a regulation. The present status-quo with regard to debit cards is similar: full acceptance will not be achieved without a binding implementation date.

³⁰ European Parliament resolution of 4 July 2012 with recommendations to the Commission on Access to Basic Banking Services, 2012/2055(INI), para 31: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0293+0+DOC+XML+V0//EN>

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

Dynamic currency conversion (DCC) causes serious detriment to consumers. There appears to be a trend to ask consumers using payment cards abroad whether they want to pay in their home or host currency. This started with hotels and car rentals offering payments at their own conversion rates, and then expanded to ATM withdrawals and merchants' POS terminals.

The main features of DCC are a total lack of transparency and confusing information provided to the consumer, who is prompted to opt for the currency exchange rate of the merchant's bank, instead of the consumer's bank. It is almost impossible for a consumer to assess the cost effect of these options unless the actual amount of money be debited, including conversion rates and further fees by their own payment provider, is disclosed.

Article 49.2 of the Payment Services Directive (Art 59.2 of the revised directive) says "*Where a currency conversion service is offered prior to the initiation of the payment transaction and where that currency conversion service is offered at the point of sale or by the payee, the party offering the currency conversion service to the payer shall disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction.*" However, these disclosure obligations are not applicable and enforceable in practice, and the merchant offering the currency conversion service can easily take advantage of the information asymmetry to the consumer's detriment.

The Green Paper points out that "*the merchant rates are not systematically better for consumers*". One could even argue that DCC rarely or never offers advantageous rates to consumers. For example, British consumers travelling abroad are being charged an additional £300 million every year in DCC fees³¹. Many experts consider DCC to be a scam and strongly advise consumers to always decline this "service"³².

We question whether there is a real service behind DCC, or it is a legal scam that cost EU consumers billions of euros. We urge the Commission to consider a ban on DCC.

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

In Europe, several major banks (ING, Santander, Crédit Agricole, etc.) and insurance companies (Axa, Allianz, Generali, Lloyds, etc.) operate in several European countries (for instance in 17 countries for Crédit Agricole), which means they have a thorough knowledge of national specificities including legislation, judicial procedure and consumer preferences and habits. Refusing to sell a financial service to a consumer on the pretext that he resides in another Member State while the supplier is itself present in the Member State targeted by the consumer should be considered in any case as unjustified discrimination that should be prohibited.

<http://www.dailymail.co.uk/news/article-3208024/Holidaymakers-warned-avoid-currency-conversion-scam-costing-British-tourists-300-million-year.html>

³² <https://transferwise.com/blog/2012-11/choose-local-currency-at-foreign-atm/>

<http://loyaltylobby.com/2013/09/25/whine-wednesdays-dynamic-currency-conversion-dcc-scam/>

European law already prohibits discrimination based on residence. This is the case of the Services Directive which, although it does not apply to financial services, should be considered a source of inspiration for the way forward.³³

At national level, there are also provisions as regards unjustified discrimination: the French Consumer Code says it is impossible to refuse to sell a product, or supply a service, to a consumer without a legitimate reason (based on the specificities of a given consumer) and to make the sale of a product subject to the purchase of a minimum quantity or to the accompanying purchase of another product or another service as well as making the provision of a service subject to provision of another service or to the purchase of a product. In the financial services area, providers have the right to contract only with consumers meeting some criteria. For instance a bank can refuse an overdraft facility to people who are not solvent enough; there is no right to credit. Similarly, insurance companies can refuse to cover people with too great a risk. These grounds for refusal are accepted by the courts.

The EU should prepare legislation that accepts residence in any of the EU Member States as a reason to access financial services in any of the EU Member States on a non-discriminatory basis, thus establishing a novel concept of European residence. National provisions and practices which preclude or deter someone from accessing goods or services in another member state and prevent him/her from exercising his/her right to freedom of movement or the freedom of movement of goods and services (including the right to receive services) should constitute restrictions on those freedoms, even if they apply without regard to the nationality of the persons concerned. Therefore, national law or practices which make the access to goods and/or services subject to a condition of residence in that Member State should be made unlawful under EU law.

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

The portability of pension rights (private pensions) and of private health insurance (already exists for public health insurance in the EU) should be a basic right for anyone.

Question 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?

Disclosure is the usual tool for driving transparency and comparability. Over the last years, EU and national legislators have set out very detailed rules, across different segments, about the pre-contractual information (product features, terms and condition, prices & costs) providers need to give consumers, in order to tackle information asymmetries.

While these disclosure tools are essential, there is an increasing sense they are not fully serving their purpose, i.e. increasing the comparability of financial products and lifting the consumer's ability to make informed choices.

Moreover, as consumers will be buying financial products increasingly on line, detailed rules on 'paper disclosure' will not be sufficient to cover these new distribution trends.

³³ The aim of the Services Directive³³ is to remove the barriers to trade in services, enhance the rights of services recipients and strengthen their confidence in the internal market. Article 20 of the Services Directive obliges all EU countries to ensure that companies do not discriminate against service recipients by denying access to a service or applying higher prices due to the recipient's nationality or country of residence. Differential treatment is only allowed when the differences are directly justified.

Therefore we could look into (new) ways of better designing disclosure tools.

- Digital Disclosure could enhance consumer understanding of financial products via more interactive and engaging platforms such as smart phones and tablets;
- Digital Disclosure could help third parties such as consumer organisations in aggregating useful data about products and financial services providers;
- When designing or upgrading disclosure tools, common behavioural traits³⁴ of consumers (e.g. loss aversion or overconfidence) should be taking into account.

Obviously, new tools should not undermine more traditional forms of disclosure and consumers should always have the right to choose for the type of disclosure adapted to their needs.

Question 18. Should any measures be taken to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation?

First of all, it is important to ensure the efficient functioning of Alternative Dispute Resolution (ADR) bodies in all Member States. The EU sectoral laws on financial services impose an obligation on Member States to set up effective out-of-court complaint and redress procedures for the settlement of disputes between providers and consumers. Yet, just having an appropriate Alternative Dispute Resolution (ADR) scheme is insufficient. If businesses do not subscribe to the procedure, consumers are still left empty-handed. Only 9% of European retailers have used an ADR scheme.³⁵

Many successful ADR schemes across Europe are mandatory for businesses. For instance, in Denmark, which has a very well developed ADR system for 35 years and where private ADR boards have long been in operation and cover most sectors, the case will be handled by the ADR body even if the trader chooses not to reply to the request from the Board. The same applies to the Swedish Dispute Resolution Board. One of the most successful schemes in Europe – the UK Financial Services Ombudsman - is mandatory for financial service providers operating in the UK.

Independence of ADR bodies is another crucial aspect that impacts the efficiency of dispute resolution. For example, banking ADR in Germany is run by the banking associations, plus each association has their own schemes, or even several. An ombudsman at Bundesbank only deals with rare cases that fall outside of the scope of those private schemes. Although in theory banking ombudsmen are independent in their decisions, they are appointed and paid by the banking associations.

In Italy, ABF (arbitro bancario finanziario), the ADR body of Bank of Italy works very well. It is competent for retail banking disputes.³⁶ Yet, there are no ADR mechanisms dealing with disputes related to investments and insurances.

As the quality of dispute resolution within FIN-NET will depend on the effectiveness of its members, we call on EU policymakers to take measures to ensure that all ADR bodies are truly independent and that financial service providers adhere to one or more ADR bodies.

³⁴ See "Applying Behavioural Economics at the Financial Conduct Authority"

<https://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-1.pdf>

³⁵ BEUC position on ADR and ODR, February 2012: <http://www.beuc.eu/publications/2012-00094-01-e.pdf>

³⁶ <https://www.arbitrobancariofinanziario.it/decisioni/categorie/Bonifico/Transfrontaliero>

Question 19. Do consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance? If not, what could be done to ensure this is the case?

See also answer to Q18.

For individual consumers, access to financial compensation remains difficult. In addition, in mass claim cases that affect a large number of consumers, consumers mostly cannot obtain compensation and remain empty-handed. The Commission's work on ADR is insufficient to fill this gap.

For example, in Germany, collective redress procedures are limited to representative actions of consumer organisations for an identifiable (small) group of consumers (Abtretungsklage) and capital investors (Kapitalanlegermusterverfahren). Especially in situations of mass complaints Germany doesn't have a representative action with binding court decisions for all concerned consumers.

The most significant enhancement for adequate access to financial compensation would be to establish an EU-level collective redress mechanism. For many years now BEUC has been calling for such a measure to be adopted³⁷. The experience proves that mass consumer detriment in financial services is solved relatively easily in countries that have a collective redress mechanism in place.

- In 2001, VKI, our member in Austria, filed an action against Austrian banks concerning too high interest rates. The Austrian banks have applied unclear interest adaptation clauses to the consumer's credits and the capital market rapidly rose. Therefore, about 90% of the consumers with the credit have paid too much interest. 906 consumers opted-in in the process to be represented by VKI. In 2003, the Austrian Supreme Court declared in a parallel injunctive proceeding the incriminated contract terms as illegal. VKI reached out of court settlement with the banks for the compensation amounting to €506,019 in total.
- In the Dexia case, Legio Lease, a subsidiary of the former, lent money with high interest rates to consumers to buy shares. Due to misleading information, a huge number of Dutch investors (715,000 contracts in total) were left with large losses (loss of paid interest and, besides that, remaining various debts with an estimated average of €3,000 to €5,000 each). Eventually a settlement (between Dexia, Consumentenbond and others) was reached in April 2005. In January 2007 the court declared this settlement binding on all victims involved. The Court of appeal of Amsterdam approved and declared binding a €1 billion collective settlement.

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

As some member states don't have insurance guarantee schemes, acting as a backstop for insurance firms unable to pay out claims, BEUC is in favour of a harmonised Insurance Guarantee Scheme.

³⁷ BEUC position on collective redress:
<http://www.beuc.eu/publications/2011-00352-01-e.pdf>
<http://www.beuc.eu/publications/2012-00274-01-e.pdf>

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

The Insurance Distribution Directive (IDD) allowed the creation of an adequate regulation of the distribution of ancillary insurance products - under the principle of proportionality. Merely providing consumers with information is insufficient and is unlikely to substantially change the way ancillary insurances are marketed and improve the outcome for consumers.

The intermediaries need to fulfil basic requirements: they have to know their customer (smart risk analysis) and the product (knowledge about the product sold). Of course, liability in case of misleading advice must also be ensured. This is easy to fulfil and does not overburden market participants with bureaucratic requirements. That is how a respectable provider acts. The exception in the scope of IDD regarding the distribution of ancillary insurance products has to be abolished.

In 2014, the Italian Insurance Supervisory Authority (IVASS) conducted an investigation into the insurance market, and more specifically annex insurances sold as a package with non-insurance products. The investigation revealed that linked insurance policies seem to be motivated not only by customers' needs but also by commercial considerations, business purposes and also the need to cover the risks of the producers or suppliers of the principal goods or services. A lack of transparency and consumer detriment were identified relating to the arrangements for entering into and terminating the contract, to the awareness of the insurance covers, and to the indication of costs³⁸.

In 2014, BEUC collected examples of small annex insurances that offer poor value for money, e.g. mobile phone insurance, insurance against a lack of snow, payment protection insurance. Marketing of these types of insurances is usually accompanied with shoddy business models, where premiums paid by consumers are mostly used to remunerate the seller instead of funding compensation for damages.³⁹

Question 23. Is further action needed to improve the application of EU-level AML legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?

We wish to draw policymakers' attention to the impact of divergent interpretation of the anti-money laundering directive (AMLD) across Member States and financial firms. Such divergences act as a barrier to consumers' access to financial services and restrict their mobility within the Single Market.⁴⁰

They also leave the door wide open to a possible burdening of the consumer with request to supply unnecessary supporting documents when opening a bank account and provide personal data which can be misused for commercial purpose – in both instances exceeding what is strictly necessary to comply with the AMLD objective.

In several countries, proof of residence is necessary to open a bank account which creates difficulties for consumers in particular circumstances. Some financial institutions use legislation on money laundering to deny the opening of a bank account even if their

³⁸ <http://www.ivass.it/ivass cms/docs/F9800/sei%20assicurato en.pdf>

³⁹ BEUC factsheet "Small insurance, big nuisance", June 2014:
http://www.beuc.eu/publications/beuc-x-2014-041_gve_small_insurances_factsheet.pdf

⁴⁰ See BEUC position <http://www.beuc.eu/publications/2013-00398-01-e.pdf>

decision is not based on the assessment of a real risk. Immigrants as well as people having irregular incomes or receiving social benefits have more difficulties to provide supporting documents of their revenues. In addition, one can also wonder why a bank should have an overview of incomes, personal properties and assets of its private customers when no suspect transaction has been identified. The bank has to take the necessary measures in compliance with the AMLD provisions only where suspicion of fraudulent/illegal transactions has been detected, for example when it is impossible to pre-empt money laundering before the consumer opens the account and starts making payment transactions on it. When making any financial transaction with a new financial services provider, in order to comply with the KYC requirements, consumers could be required to make credit transfers from their old bank account regardless of the EU country in which that account had been opened; the KYC duties are supposed to have already been done in that country and should be trusted.

AMLD provisions need to be amended in order to achieve a more coherent application of this directive across Member States, reduce the eventuality of arbitrary and unfounded refusals by financial firms, better protect consumer personal data and privacy, and better conform to other EU legislation.

Question 24. Is further action necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards?

Distance authentication and electronic signatures are not necessarily a single market or cross-border issue. Their implementation is also relevant for online shopping for financial services in local national markets.

The recently adopted eIDAS Regulation could be considered as a possible solution for facilitating distance authentication and complying with 'know your customer' obligations required under the anti-money laundering legislation. The European Commission says that, rolling out e-IDAS means higher security and more convenience for any online activity such as remotely opening a bank account or authenticating for internet payments.⁴¹

Currently, only in very few countries like Denmark, do consumers use digital signature for accessing various services online, such as for example doing online banking or viewing their tax file⁴². In Belgium, citizens use their e-ID to access their tax file and get official documents from their local authorities. Consumers rarely use e-ID and e-signatures in most Member States.

Security and liability are certainly a fundamental aspect of the debate. Any concrete actions should ponder security issues and a resulting lack of trust in case of possible security breaches.

Consumers need to know that any circumvention of security standards will not render them liable to actions they have not authorised and that they will not have to prove on their own that they actually got attacked, i.e. the burden of proof should never lie on the consumer.

The implementation and control of eID and e-signatures must be subject to strict oversight by relevant supervisory authorities.

⁴¹ <http://ec.europa.eu/digital-agenda/en/trust-services-and-eid>

⁴² <https://www.nemid.nu/dk-en/>

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

BEUC supports the principles of data minimisation and proportionality also contained in data protection legislation. Only data that is strictly necessary for the purpose should be collected and further processed. The policy objectives of creditworthiness assessment and data usage should be clearly defined. For example, there is no evidence that increased credit data availability has helped prevent over-indebtedness in particular when comparing between countries where credit bureaus collect a lot of data from various sources (UK, Germany for instance) and France where a centralised credit bureau which collects positive credit data does not exist.⁴³

The quality of the arguments and evidence used to formulate the objectives of creditworthiness assessment as well as the use of data should be adequate. They should not be put forward to address putative problems, without providing any evidence that these problems exist. The type of data used should be important for that objective and stay proportionate. The use of data for undemonstrated goals or goals beyond clearly set objectives by the law should be prohibited. BEUC does not support more extensive use of credit data, unless the benefits to consumers can be demonstrated conclusively.

Rather than providing a fixed list of data necessary to carry out a proper creditworthiness assessment, BEUC calls for better governance in the decision making process of selecting relevant data for creditworthiness, involving consumer organisations, data protection authorities, civil society representatives, policy makers and representatives of the private sector (financial services).

In addition, measures are needed to prevent consumer discrimination by automated scoring methods. Methods assessing data by means of statistical evidence may lead to wrong conclusions concerning the individual. Provisions should be set that allow for a compulsory individual cross-check of the assessed creditworthiness to avoid wrong negative impacts and discrimination by the mere coincidence that would usually indicate a problem while there is actually no problem with that consumer.

Question 26. Does the increased use of personal financial and non-financial data by firms (including traditionally non-financial firms) require further action to facilitate provision of services or ensure consumer protection?

BEUC urges policymakers to require firms to disclose what financial and non-financial data are used for (for example, reducing over-indebtedness, financial stability, better access to credit, insurance coverage and assessment of risk), and to examine whether the type of data processed by the industry is done fairly and proportionally to achieve those objectives. Enforcement agencies should also determine whether the way financial and non-financial institutions use personal data is compliant with data protection and anti-discrimination legislation.

In Belgium, BNP Paribas Fortis amended its general terms and conditions in order to possibly make commercial use of its customer data. In the Netherlands, ING planned to market the data of its customers few years ago, but facing the outcry over this initiative, it has had to backtrack.

No financial institution should have the right to market the personal data of its customers; customer confidence in financial institutions would be lost forever.

⁴³ The register set up by the Banque de France collects only default payments.

See also response to Q5 with regard to the use of big data.

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

In order to offer risk coverage for vehicles in another country, detailed knowledge about the risk behaviour in the target market is needed. The example of Ineas – an online insurance provider that operated in four EU countries and went bankrupt in 2010 – shows that aggressive market behaviour does not automatically lead to good quality offers for consumers.

A big consumer problem is cross-border recognition of insurance claims histories when changing the country of residence within the EU. In that context, cross-border recognition of insurance claims histories is important to offer consumers adequate coverage by taking into account previous behaviour as a driver. Therefore, cross border access to individual insurance claims history is needed.

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

In order to give access to cross-border loans, alternatives to mortgage guarantee could be considered.

For instance, in France⁴⁴, banks have created an alternative to a mortgage, through the use of an institutional guarantee distributed by mutual organisations. Institutional guarantees are called sociétés de cautionnement. They operate on the simple basis of the mutualisation of risks. The guarantee is available for new or older properties but, as a general rule, it is mainly available to those with a stable income. Under the system, the mutual funder acts as a guarantor in the event of default by the borrowers on their loan; the borrowers pay the funder a fee that is proportional to the size of the loan. So there is no charge placed on the property by the lender, and no legal mortgage registration costs to pay.

The fee structure is as follows: a fee for the guarantee, which is 75% reimbursable when the loan is repaid, and an arrangement fee that is retained by the guarantor. The fee for the guarantee is about 1.5%-2% of the loan and the arrangement fee varies around 0.5% of the loan. Thus, on a loan of €120,000, the initial fee might be in the order of €2000, made up of an arrangement fee of €750 and a fee for the guarantee of €1250. The former is retained by the guarantor and the latter is reimbursable at the end of the mortgage at the rate of 75%. This would give net fees of around €1000. In some cases the fee is not reimbursable, but in these cases the initial fee payable will be lower, e.g. 1%.

The use of institutional guarantees is a quicker procedure than a mortgage, both in the purchase and sale procedures, as there is no need to go through the mortgage registration process. It is also particularly useful for loans of short duration, in case of early repayment, and selling the property before the full repayment of the loan, as there are no costs to pay in redeeming a mortgage.

⁴⁴ <http://www.quechoisir.org/argent-assurance/banque-credit/credit/communiquer-cautionnement-bancaire-immobilier-des-pratiques-sujettes-a-caution>: according to our French member, the system could be improved because of the lack of competition in this market that is monopolized by banks and the very high level of margins, but UFC does not call into question the system which is very popular.

Concerning insolvency regimes, lenders from abroad have to comply with the rules that apply to local lenders. Foreign lenders need to adapt anyway to the specificities of the target market if they are to offer *suitable* loans to consumers. It should not be forgotten that there is a risk for consumers as well.

Any downgrading of existing protective provisions for consumers in relation to what happens if they get into financial distress in their home country, in order to make the market more attractive for lenders from abroad, would be a disadvantage which cannot easily be compensated by potential advantages. Therefore, lowering of consumer protection standards with respect to existing national insolvency regimes would not be acceptable.

Question 32. For which retail financial services products might standardisation or opt-in regimes be most effective in overcoming differences in the legislation of Member States?

European consumers increasingly struggle to meet their retirement needs. In the context of a weakening economy and state budget restraints, consumers need to rely more and more on personal pension products (PPP). However, this growing reliance on individual pension products is not matched by an adequate supply of value for money pension savings vehicles.

Moreover, weak disclosure practices add to the opacity of often very complex personal pension products. Also, the lack of proper financial advice and the absence of an aggregated overview of different pension pillars are making it difficult for European consumers to make good and informed choices. In short, current market outcomes are not at all satisfactory and regulatory attention to personal pensions is very much welcome. In general, we believe there is a need across Europe for consumers to have an easy access to a low-cost, transparent and standardised personal pension product (PPP).

To this end we invite the Commission to develop more detailed policy options. Possible ways forward range from improving disclosure standards and capping charges to developing an easy to access, publicly supervised and standardised savings vehicle. In the short term, improving disclosure practices of personal pension products is essential for a better functioning market, as this should make comparison easier and drive effective competition. To this end we demand that the PRIIPS for KID principles are extended to all PPPs. Moreover, we believe that consumers should be able to assess their overall pension situation in order to make an informed choice when buying a PPP.

While we regard disclosure as a first essential step, more supply-side regulation, along with improved governance and aligned incentives for providers will be crucial in fundamentally improving consumer outcomes. One way forward in this perspective is the promotion of default products and auto-enrolment options in pension provision, which has a big potential towards achieving a better market outcome for those disengaged consumers unable to make active choices.

Next to this we reiterate our response to Q6 regarding the need for more product intervention across all sectors of retail finance.

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

Regarding the location of risk principle, owing to the particular nature of insurance contracts – involving a weaker party to the contract - a high level of protection is needed for policy holders. Consumers should principally be able to rely on the application of the law that applies in their home country or where the risk is located.

END