March 2016

FSUG RESPONSE to the Green Paper on Retail Financial Services

About FSUG

The Financial Services User Group (FSUG) is an expert group set up by the European Commission following the core objective "to secure high quality expert input to the Commission's financial services initiatives from representatives of financial services users and from individual financial services experts". The mandate of the group is to:

- *advise the Commission in the context of the preparation of legislative acts or other policy initiatives affecting users of financial services, including consumers, retail investors and micro-enterprises;*
- *provide insight, opinion and advice concerning the practical implementation of such policies;*
- *proactively seek to identify key financial services issues which affect users of financial services;*
- *where appropriate, and in agreement with the Commission, liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level, as well as to other consultative groups administered by the Commission, such as the European Consumer Consultative Group and the Payment Systems Market Expert Group.*

Introductory comments

The Financial Services User Group welcomes this European Commission's second Green Paper on Retail Financial Services issued last December 2015. Indeed, we share the goal of the signatories of the Treaty of Rome had back in 1957: to create a common market for goods and services.

60 years of European Common market, two green papers, but very little progress

FSUG believes that this is another opportunity to eventually bring about a common European market for retail financial services. We dearly hope it does not fail as all previous attempts in the last 60 years or so:

- in 2007, nine years ago a first "Green Paper on retail financial services" failed in this objective (it would be interesting for the EC to analyse why when issuing a second one).

- These are not the first efforts of the European Union on this topic: The ECC Treaty was signed in Rome almost 60 years ago in 1957 established the Single Market, and so far there has been very limited success: so far only UCITS funds have proven to be a popular cross-border financial product across the EU. That being said, it is mostly sold to institutional investors rather than to citizens as individual savers and investors.

An area under performing other EU consumer markets

Indeed, thanks to the EU Single Market more than 500 million consumers should benefit from cross-border competition, resulting in a better choice of products, better services and lower prices. But not so for retail financial services… even though nearly all EU citizens are financial end-users with savings and bank accounts, insurance and pension scheme subscriptions or loans and mortgages to their name.

However, retail financial services are a consumer segment that requires most improvement in terms of performance and prices as the EC Consumer Scorecard shows: many of these services are among the worst ranked of all consumer markets in the EU.

Today consumers across the EU have indeed very little confidence in retail financial services, as shown by the annual EU Consumer Scoreboard, which ranks "investment products, private pension and securities" as the worst of all 31 consumer markets, listing a lack of trust, the absence of comparability and the difficulty of switching between services and products as the main reasons for this poor score.

Our reply and several recent research reports show that a common market of retail financial services would bring huge benefits to EU citizens in terms of performance and prices. We refer in particular to the following services:

1. Personal pensions
2. Retail investment funds
3. Life insurance
4. Mortgage credit
5. Consumer credit
6. Card purchases and cash withdrawals in foreign currencies
7. Payment services
8. Car insurance
9. Investment life/unit linked insurance
10. Savings accounts

Consumer benefits from common markets in these services certainly amount to tens of billions of euros per year and would have a significant impact on EU growth and jobs as well.

Cross-border barriers must not be understated but can be lowered through the real and consistent enforcement of existing rules.

Whereas technology continues to help the creation of a single market by enabling companies to improve the availability and comparability of information, facilitating cross-border transactions, simplifying disclosure and driving down prices, further integration of payment services and systems remains a necessary precondition for companies to reach customers in other Member States.
The same applies to the widespread and massive tax discriminations against EU citizens who reside in different Member States than the financial providers (see for example the case of with profit life insurance policies). This is totally inconsistent with the very goals of the Treaty of Rome and with any attempt to progress towards a common or "single" market.

Please note that when we refer to 'tax discrimination' we are not arguing that consumers from one member state should have access to more attractive tax privileges that may be available in another Member State (for example, allowing a consumer in one state to benefit from generous tax incentives on savings or pensions available in another state). Allowing better off consumers in one Member State to benefit from generous tax relief available in a second state would have a serious detrimental impact on the public finances of the second Member State. This would harm the interests of more vulnerable citizens. The FSUG has no locus to intervene in Member States tax policy. Our comments refer to avoiding double taxation on products or EU citizens having to pay more taxes on the same product if it is purchased in another Member State instead of in the one he is a resident of.[is this right? Mick]. Furthermore, any initiatives to address tax discrimination should be accompanied by robust cost benefit analysis to allow for a proper understanding of the effects on public finances.

Of course another key barrier to cross-border retail financial services is the language barrier. There also one can hope that technology will further lower the cost of providing multi-lingual information and communication.

As a result financial suppliers do not offer products to consumers in other Member States than their own, weary of excessive operational and compliance costs. Consumers on the other hand do not have enough information or confidence to acquire services from companies based in other member states and if they did, they would have trouble accessing them.

Another key barrier to cross-border retail financial services is the insufficient and inconsistent enforcement of existing EU rules. The FSUG believes that this major obstacle to the procurement of better retail financial services to EU citizens can only be really solved through the setting up of an EU financial user protection Authority. FSUG and other stakeholders have been requesting this priority reform during the review process of the European System of Financial Supervision (ESFS) in 2014. It matches what has been done post-financial crisis for example by the US (creation of the Consumer Financial Protection Bureau) and by the UK (creation of the Financial Conduct Authority). It implies a fundamental reshuffling of responsibilities between the existing European Supervisory Authorities (ESAs).

Set tangible goals and target dates for achievements

Finally, as a general comment, FSUG believes that the Green Paper should be quickly followed by a timetable for concrete and measurable objectives in order to ensure that, unlike the previous initiatives of the European Commission in this area, there will be real progress towards a common market for retail financial services to the benefit of European citizens and of the economy as a whole.

It is important that these objectives be based on clear consumer outcomes not theoretical competition or market based objectives such as ease of market entry, numbers of providers and products on the market.

Q1. For which financial products could improved cross-border supply increase competition on national markets in terms of better choice and price?

We refer to the research and paper from the FSUG on EU retail financial servicers market integration completed last September.

The FSUG used three criteria to select priority areas for further work:

- The scale of the consumer detriment and potential impact on financial users;
- Probability of intervention making a difference; and
- Is the issue already being dealt with effectively by another intervention (for example, by a new directive)?

Then the 20 user side experts of the FSUG scored ten priority financial services.

Based on total scores, the top priorities for further action are:

11. Personal pensions
12. Retail investment funds
13. Life insurance
14. Mortgage credit
15. Consumer credit
16. Card purchases and cash withdrawals in foreign currencies
17. Payment services
18. Car insurance
19. Investment life/unit linked insurance
20. Savings accounts

The ranking is slightly different if based just on the amount of detriment caused:

1. Personal pensions
2. Mortgage credit
3. Retail investment funds
4. Consumer credit
5. Life insurance
6. Card purchases and cash withdrawals in foreign currencies
7. Payment services
8. Car insurance
9. Savings accounts
10. Investment life/unit linked insurance

The FSUG also considered which of these priority areas would be easiest to deal with. The FSUG did not come up with a ranking for this criterion, but identified the following product areas (not ranked):

- Personal pensions (if the EIOPA PEPP project is endorsed by the EC)
- Card purchases in other EU currencies

- Investment funds
- Payment services
- Basic and savings bank accounts
- Basic life insurance (death benefits)

The FSUG has developed more in-depth analysis and recommendations on the following markets issues that are to be found in an appendix:

- personal pensions,
- retail investment funds,
- life insurance,
- consumer credit,
- big data

Q2b. What are the barriers that prevent consumers from directly purchasing products cross-border?

Please tick all relevant boxes

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

Other

Other barriers include:

- Lack of consumer confidence and trust in products from other Member States. It is not enough for consumers to have knowledge of products and redress in other Member States, consumers must have justified confidence and trust in those products and regulatory and redress systems in other Member States.
- Proliferation of products. More choice does not necessarily result in better outcomes for consumers. Indeed, too much choice can be as detrimental as too little choice. The existence of so many products makes it more difficult for consumers to exercise effective choice. Understandably, when faced with a large number of products of unknown quality (due to lack of consistent enforcement), consumers will default to products they are familiar with available in their home state ; and
- Failure of national authorities to enforce regulation and improve the quality of local markets/ products and tackle conflicts of interest which can fetter the freedom of consumers to shop cross-border. Financial products are sold, not bought. Aggressive sales practices and dominant distribution models in a particular Member State limit the ability of and opportunities for consumers to search for better value products elsewhere in another Member State.
- Tax discriminations by Member States against EU citizens not residing in those MS. The widespread and massive tax discriminations against EU citizens who reside in different Member States than the financial providers (see for example the case of with profit life

insurance policies below) or the issuer[1] is a major issue. This discrimination against EU citizens residing in other Member States is totally inconsistent with the very goals of the Treaty of Rome and with any attempt to progress towards a common or "single" market. Member States bear the full responsibility for keeping this major barrier to a common market up.

- It is important to remember that when it comes to tax incentivised savings or investment products there are two things to consider. 1. The savings/ investment product itself and 2. The tax 'wrapper' – that is, the tax incentives that MS provide to encourage savings. Our view is that the product itself should be treated neutrally in tax terms. However, tax incentives to encourage savings are a matter of public policy and are for MS to decide. So, if we want to encourage a single product market, EU citizens (regardless of which MS they live in) should be able to use products from other MS on a tax neutral basis within the specific tax 'wrapper' available in their own MS. However, citizens should not be able to take advantage of tax wrappers which are more generous than those in their own MS. This would simply encourage tax avoidance.

The life insurance with profit policies case (BE/FR)

With profit policies (capital guaranteed life insurance contracts) are called "*contrats en euros*" in France and "Branche 21" insurance contracts in Belgium. The market is huge in France (by far the number one retail investment product there: € 1,250 billion in assets).
The best French with profit contracts delivered returns above 3% in 2015. Almost no Belgian contract got even close, and most of their 2015 returns are closer to 2%[2]. These 2015 results confirm longer-term track records. Belgian residents would be better off buying those French contracts. But it is very difficult for Belgian residents to purchase the better performing French contracts:

- First several French insurers ban the sale of the contracts to non French residents; they do not tell why
- Second and more importantly, non French residents are strongly discriminated tax wise: For instance there is no Belgian income tax on policy profits if policy holders hold them for 8 years or more, but the French Government will anyway tax Belgian holders of French domiciled life insurance contracts held for more than 8 years with a 7.5 % tax.
- Worse, in that case, Belgians holders of a French domiciled insurance policy not only pay a tax when other Belgian policy holders do not, but they are also more taxed then French residents holding the same policy, as French residents are taxed only after a threshold of € 4,600 (for an individual) or € 9,200 (for a couple) of interest earned per year, a threshold that is brought down to zero for non French residents!

In front of this outright discrimination an association of Belgian savers (AFER Europe) worked with a French based insurer (Aviva France) to have this insurer open a Branch in Belgium to enable Belgian savers to subscribe to the performing French insurance contract (+3.05 % return in 2015) without having to pay discriminatory taxes to the French Government on their returns. From then on, those Belgian savers did not pay any tax on

[1] Regarding the factual discriminiation of shareholders regarding withholding taxes on dividends we refer to our response to the consultation "Taxation problems that arise when dividends are distributed across borders to portfolio and individual investors and possible solutions" from 2011. Unfortunately, the problems described in our response still persist. Source: http://ec.europa.eu/finance/finservices-retail/docs/fsug/opinions/dividend_taxation-2011_05_02_en.pdf

[2] Source: http://www.guide-epargne.be/epargner/branche-21-meilleur-interet.html

their returns if they held their contracts for 8 years or more like all the Belgian holders of Belgian domiciled contracts.
But in 2015, the French based insurer closed the contract to new subscribers for unclear reasons. So Belgian savers again have no possibility of avoiding the discriminatory taxes if they want to subscribe to more performing French-based insurance contracts. The detriment could well amount to hundreds of millions of euros per year for Belgian savers.

Q3. Can any of these barriers (see question 2) be overcome in the future by digitalisation and innovation in the FinTech sector? (Martin, revised since FSUG meeting)

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 for cross-selling 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.

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 established banks have already acquired new players or invested in them - traditional players could be facing more competitive pressure than ever, spurring better outcomes for consumers both at EU and domestic level (see for instance in France the success of the 'Nickel account', a payment account that is available in tobacco shops since 2014; 500 000 customers are expected by the end of 2016)[3].

While advances in the FinTech sector bring great innovations, such as e-banking and mobile banking, enabling a facilitated way to make payments and finance management, many of the barriers listed above cannot be resolved by innovations in the FinTech sector and even if they could, this would not necessarily mean a positive development for consumers.
For every "positive" development in the online environment, there are examples of how such innovations have been abused. Consumer reviews proved a very useful tool for other customers in order to help them in making a purchasing decision, and now, a number of companies sell reviews for whatever product you are offering online. Comparison websites enable consumers to find the best deal, however, dynamic pricing seeks to optimize the price displayed to the consumer based on his/her online behavior (a less "picky" consumer will be showed a higher price). Even the availability of information online, which in theory should help consumers who are trying to find the best deal, is subject to being manipulated via search engine algorithms which can be tweaked based on the consumers' surfing habits.

[3] https://compte-nickel.fr/

Enormous growth can be seen in the area of "robo" advice, which provide automated financial advice based on "emotion-free" algorithms. However, it should be noted that promoting such automated advice should be confronted with the methodology, how the algorithms works. In many (in fact most of the analyzed) cases, the predictions of "robo" advisory models are based on trivial assumptions of linear future and push the consumer in a "right" direction that suites the provider of a robo advice. Secondly, many "robo" advice services use "shortcuts" for solving dynamical problems, which could be very detrimental for consumers as the transparency of underlying assumptions (variables) is still very low. Often, the methodology of calculations used for final "advice" is described as "state-of-the-art" or "proprietary" and clients are not able to understand the methodology and calculations. These "shortcuts" might cause misunderstanding on how the service should be used for financial decisions. Therefore, any future action on the innovation and promotion of FinTech solutions in the area of financial services should be based on the scrutiny and transparency of underlying methodology the service is built upon.

While some financial products such as basic bank accounts have successfully transitioned to the digital/online world via e-banking and mobile banking, other financial products will prove more difficult to "adapt". Products such as insurance policies, investment products or credit will be confronted with challenges such as :

- Consumer consent – does "ticking a box" or clicking on a button carry the same weight as signing a physical paper?
- Consumer information – if a consumer visits a bank, the salesperson responsible for selling a product can make sure that the consumer has received, read and, to a certain extent, understood key information about the product. In the online world, checking whether a consumer has been properly informed is very difficult.
- Accuracy of the information provided/fraud – it is easier to fake an identity or provide false/inaccurate information about yourself online than in the real world.
- Privacy and data protection – many "new" FinTech innovations also carry huge potential for abuse of privacy and data protection rights. PayPal, for instance, is updating its terms of service, and for users, it is a "take it or leave it" update. PayPal shares a massive amount of information about users for a number of reasons including money laundering, but also marketing and advertising. Collecting and sharing data has become very easy in the online world, but it does not always serve the interests of the consumer. https://www.paypal.com/be/webapps/mpp/ua/upcoming-policies-full?locale.x=en_BE

Therefore, any innovation in the FinTech sector must be carefully assessed to ensure that it provides real benefits to the consumer.

For some Fintech services such as payment solutions, there is a danger of either market segmentation/fragmentation, lack of interoperability, or monopoly. Online vendors will not be able to provide an unlimited means of payment options if the cost of integrating them are high. This could lead to a monopolistic situation in online payment systems, where one actor would dominate the market. Alternatively, online payment systems could also be very fragmented where several actors try to impose their payment system. At the moment, for instance, Amazon is pushing for using Amazon's native online payment system and doesn't provide for the option of paying via Paypal. Regulators need to look at ways in which online payment systems are as interoperable as traditional" payment systems (for instance, sending money from one bank to another), and how to lower the cost and burden for vendors to add "new" payment options in order to foster competition and avoid monopoly.

Some obstacles such as risk assessment and pricing or debt recovery procedures, cannot be addressed by the FinTech sector.

Should a consumer from a Member State where financial products are more costly apply for a financial product in a country where the same product costs less, how will the financial institution be able to assess the "risk" of that client and make a decision about selling the financial product and about the pricing of that product. For instance, if the average default rate, the risk of unemployment, or simply the economic fundamentals of a country are much worse than in another Member State, a consumer from that Member State would still end up paying a high "risk" premium on a financial product purchased from a financial institution in another Member State. Taking into account other uncertainties and risks such as the difficulty of debt recovery or the higher potential of fraud, the product may end up being more expensive in the end than equivalent products already available in the consumers' own Member State. This defies the very purpose of a "Single Market" and competition working to the advantage of the consumer.

The Commission will have to look into delicate questions such as how banks assess and price risk, debt recovery procedures, requirements in terms of responsible lending (creditworthiness checks) and other obstacles which cannot be solved by the FinTech sector. As an example, the Commission could encourage public credit registers to provide consumers with an evaluation of their risk in order to give them an idea of the interest rates they can expect given their financial situation.

Finally, for those who are less digitally literate, moving into the digital space and adopting FinTech innovations such as e-banking may be at risk of falling prey to online advertising, scams, fraud or predatory lending. Via online platforms, financial institutions can easily promote and incentivize consumers to purchase certain products or make certain financial decisions like investing on the stock market.

Q4. What can be done to ensure that digitalization of financial services does not result in increased financial exclusion, in particular of those digitally illiterate?

Since financial services are increasingly becoming digitalized, the risk for consumers with no or limited access to ICT to become excluded is increasing. To tackle this risk at least one alternative option should be available to consumers to improve accessibility for all, including persons with disabilities. Fintech companies or other financial service providers who move fully to digital service provision only, especially if they make use of the existing physical infractructure (for instance, via the possibility to withdraw cash at ATMs), should be levied to contribute to covering the cost of maintaining physical infrastructures such as accessible ATMs or financial service providers who sell financial products via physical infrastructures and staff. The "Imagibank" launched by the Spanish CaixaBank is an example of such a push toward digitalization[4].

A number of legal requirements apply to basic financial services and require them to comply with service provision standards. Basic financial services are considered as a Service of General Economic Interest by the European Commission. Art. 9 of the United Nations Convention on the Rights of Persons with Disabilities that the EU and most EU Member States have ratified, requires that all existing and new financial services should be provided in an inclusive way, accessible for all, in accordance with the rights of persons with disabilities.

Other issues include minimum requirements for information given to consumers which, at the moment is limited to written information. This may be ill adapted to new digital financial services via apps or online. Requirements for information given to consumers should therefore also cover website layouts, information available on websites and mobile devices (apps). Advertising should also be regulated on these new platforms as it may greatly affect consumer

[4] https://www.imaginbank.com/home_en.html

choice (Barklays Bank for instance promotes credit rather than savings through their banking app on mobile devices).

Information provided to consumers online, especially on mobile devices via mobile websites or apps, should be adapted to these devices for practical reading with key information in plain language. The full information should always has to be available in case the consumer requests it. There is possibility to layered granularity of information according to needs of customer.

In more complex cases, like on-line loss adjustment process or procedures which are handled rarely a special attention should be paid to clarity of instruction and in any case an assistance should be provided to help and assure customers.

Q5. What should be our approach if the opportunities presented by the growth and spread of digital technologies give rise to new consumer protection risks?

The Commission should support and fund the creation and maintenance of independent expert groups (independent from the industry) to monitor recent and potential future negative developments to inform the Commission in a timely fashion of new consumer detriment or highly likely consumer detriment.

Such bodies should have a strong balance in consumer representation. They should not only be able to provide the EU Commission and Member States with "legal" advice but also technical advice on very specific challenges of new developments in the financial sector.
The FSUG is a good example of such a group. It publishes each year a "risk outlook" with an extensive list of potential and/or new risks to consumer protection.

Involving consumer organisations and civil society organisations in key decision making bodies also contributes to ensuring that policies take into account current and upcoming challenges or risks in the financial sector.

A strong legal framework can prevent the emergence and/or spread of innovations that can be detrimental to consumer protection. For instance, interest rate caps have prevented the emergence of pay day loans. In the future, however, the EU Commission will have to be more proactive and take interest in matters of cybersecurity, online fraud/scams, lending practices online… in order to identify gaps in the legislative framework and ensure they are addressed in policy. Innovation is not something reserved to the business world, on the contrary, policy making needs to be just as innovative as the market it seeks to regulate.
At present, however, there is a clear danger from the lack of understanding of the Fintech sector by regulators and consumer representatives alike. Capacity building of such actors is essential to ensure appropriate recommendations/regulations based on informed decisions.

Concrete examples of challenges posed by recent developments include:

- Security, data theft, online scams and fraud: stolen credit card details are available for purchase from the Dark Web as more and more online service providers and retailers store personal information and are at risk of being hacked (such as the Target hack)[5].
- Responsible lending and usury: new ways to deliver loans (SMS loans, online loans, loans through apps…) can also mean less scrutiny in terms of responsible lending, checking creditworthiness, usury rates, unfair terms and conditions, privacy and security issues.
- Consumer consent/consumer information: the increased availability of online financial services multiply the number of documents a consumer should read and the number of

[5] http://www.theguardian.com/technology/2015/oct/30/stolen-credit-card-details-available-1-pound-each-online

Terms of Service a consumer must agree with/provide consent. Should "take it or leave it" or "checkbox ticks" be sufficient to secure consumer consent? Many new forms of payment such as Paypal, Google Wallet or Apple Pay pose security risks but also risks to privacy, collecting massive amounts of information about purchasing habits[6].

- Liability of automated devices: with the growing development of robot advice and other automated services, who would be liable in case of a problem?
- New ways to "tie" products: new technological developments and features are sometimes used to force users into subscribing to services or features they do not want. For instance, in France, it is no longer possible or very difficult to get a bank card without NFC, even if there have been issues with security and possibly fees linked to the feature.
- Digital/financial exclusion: many new technologies may exclude people less knowledgeable about new technologies such as the elderly or people with disability.

Tentative solutions to some of these challenges are developed in subsequent questions (a minimum universal service, standards for inclusive and accessible financial products and services, security standards based on open source standards…), however, the FSUG wishes to underline the importance of setting up permanent bodies and mechanisms to respond to challenges posed by new developments in financial services rather than resorting to a "one off" patch up solutions based on feedback to consultations such as this one. The combination of highly responsive bodies and strong regulatory frameworks can greatly mitigate if not prevent the emergence of challenges due to innovation in the fintech sector. Some examples of such processes include Pharmacovigilance and the RAPEX system.

Q6 Do customers have access to safe, simple and understandable financial products throughout the European Union?

No

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

Product simplification

If product simplification is a possible solution to allow this access, please specify if it should be by self-regulation or by regulation or both: both

1. by self-regulation
2. by regulation

As FSUG set out in its position paper, *Making financial services work for financial users: New model financial regulation*[7], the usual approach to financial regulation has failed to protect consumers and make financial markets work for EU financial users. We propose a new model for financial regulation based on identifying root causes of market failure and, critically, identifying effective interventions to correct market failure including product intervention. Product intervention is a direct form of intervention and can take many forms including national authorities developing simple financial products with mandated features.

In November 2014, FSUG issued a discussion paper *A simple financial products regime*.[8] This paper focuses on the potential role of a simple financial products regime. We assessed the contribution a simple financial products regime could make to: improving access to suitable products; promoting real competition, innovation and efficient markets; promote fairness and market integrity; and improving the effectiveness of financial regulation. We identified specific policy goals and product areas for which product intervention is most appropriate and assessed the potential for EU level interventions.

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6 http://www.independent.co.uk/life-style/gadgets-and-tech/features/apple-pay-boon-or-security-nightmare-10386653.html

7 http://ec.europa.eu/internal_market/finservices-retail/docs/fsug/papers/new_model_fin_regulation-2012_09_en.pdf

8 http://ec.europa.eu/finance/finservices-retail/docs/fsug/papers/1411-simple-products-project_en.pdf

Simple financial products – if accompanied by the appropriate regulatory and advice regime – in our view could reduce the unit costs of distribution. In theory, a reduction in unit costs should enable financial firms to extend their reach to greater numbers of consumers who were considered to be economically unviable. This in turn could improve access to appropriate financial products and services and promote financial inclusion.

We also conclude that ex ante regulatory interventions such as a simple products regime would be a more effective, efficient form of regulation than intensive, ex post supervision of firms'behaviour.

Considering the available research on consumer needs and detriment in financial services, FSUG feels that consumers would benefit from a simple products regime. We have not yet agreed which product areas are a priority but, think that the following product areas should be considered:

- simple payment product
- short term savings product
- medium term investment product/ personal pension product
- core income protection insurance product
- basic life insurance product
- fair unsecured loan product
- mortgage product
- complementary health insurance product
- simple intra EU travel insurance

A simple products regime should cover the following aspects of the relevant products:

- costs and fees including penalty charges
- access terms
- transparency and disclosure of key benefits and risks
- quality and value – in terms of service standards.

Regulatory interventions: unless there is a commercial imperative for the industry to distribute simple financial products they are likely to continue to recommend existing products to their client base. Therefore, targeted regulatory interventions[9] can be used to ensure industry recommend simple products (or at least products of equivalent value).

In terms of EU wide interventions we propose the following:

1. EU policymakers and regulators (ESAs) should monitor and disclose the level of financial exclusion and underprovision across the EU including consumer impact studies;
2. EU policymakers and regulators should develop a common simple products framework including accreditation framework based on the proposals for charges, access, terms and conditions, quality standards and transparency outlined in this paper; and

Based on the common framework, policymakers and regulators in Member States should develop detailed standards to take account of the specific requirements of consumers. Consideration should be given to a consumer friendly '29th regime' as such regime may help tackle barriers to cross-border movement of workers such as e.g. in the field of complementary health insurance where workers moving to another member state will often be charged higher fees for their complementary health insurance in their new country of residence as a result of higher age when contracting the new complementary health insurance. **More effective rules on product transparency**

Consumers should have access to the necessary information to allow them to make informed decisions and choices. Critical information should be disclosed pre-sale, point-of-sale, and post-sale.

Where required, consumers should have access to the necessary guidance and advice to help them reach appropriate decisions and choices, from appropriately trained and competent market practitioners.

Financial service providers and their authorised agents should provide consumers with key information that informs the consumer/investor of the fundamental benefits, risks, terms of the

9 such as the RU64 rule used in the UK to ensure stakeholder pensions were effective.

product and the remuneration and conflicts associated with the authorised agent through which the product is sold. In particular, information should be provided on material aspects of the financial product/investment.
Standardised pre-contractual disclosure practices should be promoted where applicable and possible to allow comparisons between products and services of the same nature. Specific disclosure mechanisms, including possible warnings, should be developed to provide information commensurate with complex and risky products and services. Critical information should be disclosed pre-sale, at point-of-sale, and post-sale.
However, it is also critical that regulators understand the limitations of information disclosure, partially due to its design defects[10], as a means of making markets work and influencing consumer and provider behaviour. In addition, is important to stress that mandatory information disclosure should not be used to shift responsibility from firms to consumers.
It is important that consumers have the necessary financial capability to use information effectively. Where required, consumers should have access to the necessary guidance and financial advice to help them reach the appropriate decision and choice and the information should be available in various formats to be accessible to all, in line with the UN Convention on the Rights of Persons with Disabilities . The provision of advice should be as objective as possible and should in general be based on the consumer's profile considering the complexity of the product, the risks associated with it as well as the customer's financial objectives, knowledge and experience.

More effective product oversight by regulators

As mentioned above, in terms of EU wide interventions, we propose the following:

1. EU policymakers and regulators (ESAs) should monitor and disclose the level of financial exclusion and underprovision across the EU including consumer impact studies;
2. EU policymakers and regulators should develop a common simple products framework including accreditation framework based on the proposals for charges, access, terms and conditions, quality standards and transparency outlined in this paper; and
3. Based on the common framework, policymakers and regulators in Member States should develop detailed standards to account for specific requirements of consumers. Consideration should be given to a consumer friendly '29th regime'.

Clear categorisation of products according to their riskiness and complexity

FSUG fully supports the development of risk labels for financial products which indicates the risk level of savings and investment products in a highly standardized format. It is intended to enable retail clients to gain an initial insight into the risk associated with such products. FSUG refers to good practices as there are in Belgium.[11]

Pan-European financial products

FSUG believes that Pan-European financial products have a potential if the simplicity of the product will be in place as it will create trust in the product.
Therefore e.g., FSUG strongly supports the European authorities initiative to create a truly EU-wide market for simple, well-defined truly personal long-term saving product for all citizens residing in the EU regardless of national restrictions and preferences.
For instance, FSUG recognizes that the EU-wide long-term savings financial products, whose aim is to secure adequate income of savers for the future, need to be adequately promoted all across the EU and more importantly provided by well-managed, cost-effective and transparent providers. Single market for pension savings products has been emerging but only in an ad-hoc way and very slowly, which is in contrast with the development in certain Member States. However, significant differences in added value of existing PPPs for consumers, transparency and information disclosure and consumer protection measures at national level creates a need for building a unified EU framework for PEPPs, as it is clear that national frameworks and

10 Design defects such as: information overload, flawed finance charge definitions, late timing, and lack of uniform and accessible presentation of key credit information, just to mention some.

11 With the July 30 & 31st 2013 laws, the Belgian regulator is authorized to favor transparency of (some categories of) financial products, risks level, prices, remunerations and linked charges with the mention of compulsory labels. Such labels will be standardised and will allow consumer comparison.

regulations create divergent approaches towards pension savings products and thus creates different levels of outcomes, which can hardly be justified from the EU perspective.[12]

Q7. 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.For instance, Belgian consumers who had invested their savings in an Icelandic Bank 'Kaupthing 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.
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 macroprudential objectives. The quality of enforcement is the lowest in member states where enforcement agencies don't have a 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 deficiencies are quite common across the EU, but they are most prevalent in central, eastern and southern Member states. For example, a recent discussion paper by the FSUG on enforcement on the national level has shown that in 5 out of 14 member states where the FSUG members come from there are market supervisors without an explicit mandate in consumer protection, while, according to FSUG members' assessment, two thirds of national supervisors seem not to have sufficient capacities and resources that are necessary to engage in consumer protection[13].

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 EU's markets the lengthy and expensive way to court is still the only viable option for consumers to assert one's rights. Recent EU wide legislation on ADR does not seem to be leading towards a convergence on a sufficient level in ADR regimes among the member states, as very minimalist solutions are being implemented in several member states (more feedback on private enforcement in questions 18/19).
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 it would be appropriate for them. 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. Commission's Consumer Scoreboards document both lack of trust in financial products, which have been consistently performing as the worst consumer services' category, and in 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). A further factor adding to the lack of trust in supervision and enforcement agencies are frequent revolving door policies when appointing members of management and supervisory boards leading to a disproportionate share of board members with an industry background, and sometimes very poor qualification prerequisites for board members. For example, in November 2015 , the

12 FSUG response to EIOPA consultation on the creation of a standardized Pan-European Personal Pension Product, October 2015.
13 http://ec.europa.eu/finance/finservices-retail/fsug/papers/index_en.htm

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 or about the Supervisory Authority, was not aware of what her role might be and that she goes there to learn, had not 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.[14]

Because the uncertainties linked to the purchase of financial products are even greater when crossborder transactions are in question, trustworthiness of the enforcement agencies, including access to efficient complaint mechanisms, is even more paramount than for national transactions.

Diverging levels of quality of enforcement across the EU are also a barrier for market integration. Although identical or ever more harmonized rules are applying for 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 detrimental mis-selling practices of unit-linked life insurance already years ago (p.e. the Dutch financial supervisor's report on unit-linked savings products in 2006) 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 years ago. Similarly, risky foreign currency loans were sold as an investment opportunity to households with an already resolved housing problem in Austria, while in the new member states, depending on the perceived levels of enforcement of consumer rights, banks have offered such loans as a default mortgage credit product, including to financially vulnerable consumers, and have often made these even more risky by reserving themselves the right to unilaterally increase the interest rates.

A more harmonized level of enforcement across the national markets would reduce the incentive for providers to engage in detrimental market segmentation, while encouraging them to adapt more homogenous product development and sales procedures.

Consumer detriment and decrease of trust through diverging levels of enforcement are also possible through passporting. In such a case, a financial services provider establishes a presence in the member state with the lowest level of supervision and carries out its activities cross-border, possibly also exporting its activities to its member states of origin. In this way, a high level of enforcement and consumer protection in a member state can be undermined by shopping around by providers to find the most suitable jurisdiction. This is demonstrated by frequent problems with forex providers from member states with a low level of consumer protection in member states where such providers would not be able to retain their license.

A further factor contributing to market segmentation are predominant inefficient distribution models. These act as a barrier to new providers interested in entering the market with alternative business models, as these are forced to adapt to the prevailing inefficient regimes, thus reinforcing the existing market failure. Similarly, predominating detrimental product structures and features that enable high costs in case of switching reduce the attractiveness of new products entering the market. Such supply side barriers could be tackled through robust regulatory interventions, but also competition inquiries, producing real benefits for financial users within member states and across the single market.

More consistency and coordination is needed in enforcement on the national level, but only by bringing the lowest performing regimes to a more sufficient enforcement level. Levelling of playing field to a lower level would lead to more detriment and further loss of trust in the market. EU institutions should play a central role in steering of this catching-up process. In

[14] An excerpt from the parliamentary hearing can be seen on this link: https://www.youtube.com/watch?v=IPw9AfxJ7x4

order to achieve the objective of restoring consumer trust and allow for market integration that will ensure more efficient outcomes for consumers, it is in our view necessary to:

- strengthen and widen the scope of cooperation of national authorities within the existing CPCN, thus increasing consumer confidence in crossborder transactions;
- provide a clear mandate to the ESAs to lead the work on the convergence of conduct-of-business supervision practices across Member States;
- 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, while reducing conflicts of interest with other supervisory goals;
- ensure a minimal level of market supervision and enforcement across the national markets; 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;
- replace the European passport regime by a European 'driving licence': 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;
- standardised coverage of insurance guarantee scheme at least for particular products (now it is not the case even for the most standardized insurance product – motor insurance).

Q8. Is there other evidence to be considered or are there other developments that need to be taken into account in relation to cross-border competition and choice in retail financial services?

Consumers do not need more choice, they need safer, better quality and better value choices. Financial markets are supply side driven not demand led. Failure to enforce regulations and drive up quality of markets in local markets is perhaps the single biggest barrier to the development of a functioning EU wide single market.
Failure to enforce effectively has four effects:

- It undermines consumer confidence and trust without which we cannot have an effective Single Market;
- Tolerating poor value products and services by definition reduces the potential pool of good values products available to consumers at an EU wide level;
- It allows dominant business models and aggressive distribution in local markets capture consumers within those local markets and limit their opportunity to seek better value choices elsewhere; and
- It allows dominant business models to erect barriers to more efficient providers selling better value products into underperforming markets.

The question is: how do we address those barriers? Attempts to improve the quality of products and services across the EU using demand led interventions are unlikely to work. We see little evidence to support the theory that improving the demand side will in turn influence and improve supply side behaviours. Direct supply side interventions (including regulatory interventions) are more effective.
For a fuller explanation of the demand and supply side barriers that prevent consumers from purchasing products directly cross border see our paper Retail Market Integration[15].

[15] http://ec.europa.eu/finance/finservices-retail/docs/fsug/papers/1510-retail-integration-report_en.pdf

Q9. 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 published annually the "Report on car prices within the European Union". That initiative is a good example of successful tool to inform European consumer and boost competition thanks to transparent information.
When the report on cars 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 PR published by the Commission related to the last report published in 2011[16] Joaquín Almunia, Commission Vice President in charge of competition policy stated that "(…) *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 could be set up by the Commission. It would be in charge of studying best practices and making recommendations, in particular as regards how to make information comparable. 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 of ECCs have already done for other products.

Q10. What more can be done to facilitate cross-border distribution of financial products through intermediaries?

The position of consumer does not depend on information only but also availability to overrun increasing complexity of financial products. Buying products cross-border enlarges this enormous burden. There is a great need for an advisor and a broker who could provide assistance for retail clients in searching for appropriate products within single market, taking into account possible legal and fiscal issues. Similar initiative is held by the Member States to support credit insurance for exporters. The commission could enhance this type of activity (cross-border brokerage for consumers) by standardized price comparison and to get know in details possible legal and fiscal issues. Independence of intermediary should be backed by protected title – for example independent adviser).
The other solution is to strengthen existing ~~web-~~comparison web-sites is creation of EU-rating framework, which could promote high standards of presentation financial services. Rating itself could be given by ECC-NET, that deals very closely with cross-border consumer issues.

[16] http://europa.eu/rapid/press-release_IP-11-921_en.htm?locale=en

Q11. 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?

Facilitating the comparison of products is not sufficient to enable consumers to benefit from the best deals on the market at some point if they are 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 within a certain period time (e.g. 2 months) preceding the renewal date of the policy it was terminated by the insured person.

In France, a law 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 (attestation 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 provide that the consumer must comply with a binding time limit for terminating a contract, observe binding procedures such as compulsory sending a registered letter, should be reconsidered and possibly replaced by les 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 for instance legal provisions strictly determine the regulated savings accounts. The application and calculation of the interest base rate and the fidelity premium are complicated and often incomprehensible to consumers.

Regulated savings accounts must conform to specific standards1 including amongst others:
- Interest consists of a base rate, paid annually on 1 January, and a fidelity rate, paid quarterly on 1 January, 1 April, 1 July and 1 October. The fidelity premium is obtained after 12 consecutive months from the day after the deposit is made or from the start of a new fidelity period;
- Legal provision regarding the interest rate of the fidelity 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 fidelity 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 favorable 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.

The procedure is as follows:
- The borrower checks what is 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;
- He selects a new lender and and informs him about his switching project;
- It's a no cost procedure for the borrower: no switching fees, no inquiry costs, no evaluation 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 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 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 switching3[17], consumers were asked to evaluate a number of tools to see if they could help them to decide about retaining a service provider or

[17] http://ec.europa/public_opinion/flash/fl_243_en.pdf

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 banks4. 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 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 particulary needed in sluggish and inresponsive 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 exercices5.

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 (ie. 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.

Tying practices:

In the mortgage credit area for example, ancillary products (bank account, insurance) are often tied with the mortgage. Ultimately, the consumer gets stuck with the bank for many years preventing him to benefit from 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 regulated.

Q12. 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?

Please tick all relevant boxes

- ☑ Aligning cross-border and domestic fees
- ☑ Before every transaction, consumers should be clearly informed what fee they will be charged and for comparison should be presented the fee for national payment
- ☑ Before every transaction consumers should explicitly accept the fee they will be charged
- ☐ No further action is needed
- ☑ Other

The FSUG is on the opinion that **Regulation 924/2009 should be mandatory extended to all non-euro currencies.** The voluntary approach failed, because just two Member States decided to apply the Regulation to their own currencies – Sweden and Romania. But, unfortunately, Romania didn't apply it – the notification was not followed by other concrete steps at national level.
This would end the practice of banks taking exorbitant fees when e.g. workers are paid in one country for work performed for a company in another one. We are able to provide some concrete examples of very high fees for cross-border money transfers in non-euro currencies that have been charged to consumers.
For instance, a consumer was charged 48 Euros for a 10 Euros transfer to Hungary. A German consumer transferred 2,635 GBP to the UK for language courses. He was informed by his bank that the payment will cost 12 Euros. But he had to pay altogether 60 Euros in fees, which were partly charged by the receiving bank. A Romanian consumer was requested to pay 50 Euros for a 79 Euros credit transfer to the Netherlands. After his rejection, the bank offered him the possibility to pay just 10 Euros for the same transaction.
An important part of those very high fees is represented by the cost of SWIFT messaging services, even if in the Frequent Asked Questions about Regulation 924/2009, the Commission clearly stated that "no additional charges may be levied for SWIFT messaging services if it is

offered as the only way of making a cross-border transfer in euro (and not as an optional service for the consumer)".
An FSUG member discovered that the Regulation 924/2009 was not properly applied by money remittances companies – e.g. Western Union and MoneyGram. Concrete, the cost of a transfer of euros/lei inside Romania was many years different from the cost of a transfer from Romania to other EU Member State.
The mistake was recognised in two responses sent by Western Union in August-September 2013 (4 years after the adoption of the Regulation!), after some very concrete questions asked by the FSUG member:
„Western Union recently discovered that some transactions in Euros but outside of the Eurozone also fall under this regulation. As a result Western Union is committed to bringing these transfer fees in line with the provisions of the Regulation. Western Union is currently reviewing its pricing across the EEA, and should any transaction fees be found not to be SEPA compliant, they will be rectified as soon as possible" (August 2013)
"Western Union is committed to bringing transfer fees in line with the provisions of Regulation 924 and is working hard to have the new fee tables on the market as soon as possible. The impacted corridors were minimal. The fees will be consistent with our retail money transfer business fees in place today across the EU and in line with the requirements laid out by the SEPA regulation. Therefore, for example, sending money from Bucharest to Timişoara in Lei will have the same transfer fee as sending from Bucharest to Vienna. Western Union reviews its fee tables regularly and takes into account customer behavior and market trends so that we can meet our consumer's needs." (September 2013)
Even if in 2014 Western Union adopted new prices, in line with the Regulation 924/2014, for the past transactions consumers were not reimbursed for the additional amounts paid.
Another important issue in relation with the Regulation 924/2009 is about its **interpretation**. Thus, 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 very clear and leaves room for different interpretations.
For example, in Germany there was an issue related to cross-border ATM charges. German consumers were charged very high fees (even more than 5 Euros) by their own 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 1.95, 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[18]. **The FSUG considers that Regulation 924/2009 should be amended so as not to allow any room for different interpretations**.
Another potential risk of the Regulation is that some banks could choose not to align their cross-border prices to the local ones, but to increase the local prices to the cross border ones or between the prices. This was the case for a Romanian bank who unified the costs increasing the local fees for cash withdrawal from 0,5% + 2,5 lei to 0,75% + 4,5 lei. **The FSUG is asking for a clear mention in the Regulation regarding the fact that the objective of the rule is to eliminate excessive costs for cross-border transactions and not to increase the local costs.**

Q13. 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 transaction?

Please tick all relevant boxes

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

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

Regarding the issue of **currency conversion costs, we consider that the most important topic is represented by** DCC – Dynamic Currency Conversion[19].
DCC is a service offered by merchants and ATMs where the transaction involves currency conversion. When the consumer pays with his card at a point of sale or withdraws cash from an ATM in a foreign country which has a different currency, he has the option to have the charges show up on his bill in local currency or the currency of his home country. If the consumer chooses the second option, he is being charged a DCC fee. DCC is explained well in a short video[20] published on Youtube.
The DCC is a rip off on consumers. First, the DCC fee is much higher than the currency exchange fee charged in case the consumer chooses to pay in local currency. Second, even though currency conversion is regulated by the Payment Services Directive Article (art. 49), the information provided to the consumers is often not clear and the consumer is prompted to choose DCC. See an example here[21]. Third, the consumer is not aware of the unfavorable DCC fee compared to the normal currency exchange fee.
The Internet is full on links to articles[22] which try to make consumers aware of this commercial scam[23], but unfortunately the impact of these information is not sufficient. **The FSUG is on the opinion that the EBA should at least publish a warning on this issue, which affects millions of EU citizens every year[24].**
Disclosure requirements will be useful for consumers, but much better will be to implement a system/application on the cards which would inform consumers at the moment of transaction about the conversions costs and all other costs of the transaction. Doing so, consumers will be protected in a very efficient way.
For merchants who are selling cross-border in different currencies, the FSUG recommends opening accounts in the consumer's national currency. Some payment services, such as PayPal, allow to open accounts in a number of European currencies.
This would prevent consumers who wish to return goods to pay for the conversion of their money twice, losing money in transaction fees and potentially the exchange rate. Merchants would only need to keep a minimal amount on such an account, covering for the average number of requests for returns they receive.

Q14. What can be done to limit unjustified discrimination on the grounds of residence in the retail financial sector including insurance?

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[19] https://en.wikipedia.org/wiki/Dynamic_currency_conversion
[20] https://www.youtube.com/watch?v=O8B0HbB3MnQ
[21] http://loyaltylobby.com/2014/05/09/atm-dynamic-currency-conversion-scam-copenhagen-airport/

[22] https://www.washingtonpost.com/lifestyle/travel/the-navigator-the-dangers-of-dynamic-currency-conversion/2013/05/16/cefa275a-bc0a-11e2-97d4-a479289a31f9_story.html
[23] http://www.smh.com.au/business/banking-and-finance/dynamic-currency-conversion--robbery-by-choice-20150329-1ma77q.html
[24] http://www.dailymail.co.uk/news/article-3208024/Holidaymakers-warned-avoid-currency-conversion-scam-costing-British-tourists-300-million-year.html

The FSUG understands that the focus of this question are the measures necessary to tackle unjustified discrimination and not what qualifies for 'justified' or 'unjustified' discrimination. This latter distinction will have to be addressed by the EU as the dividing line between lawful and unlawful activities or practices.

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 le 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 an unjustified discrimination that should be prohibited.

Prohibiting discrimination based on residence is already provided by the European law. 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.

The aim of the Services Directive 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.

At national level, there are also provisions as regards unjustified discrimination: the French Consumer Code provides that it is prohibited to refuse to sell a product, or supply a service, to a consumer without a legitimate reason 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 serves 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 a consumer who is 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. Refusal has to be based on the specific situation of a consumer.

Legislation should provide that residence in any of the EU Member States should be accepted in order to access financial services in any of the EU Member States, 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 exercise 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 that freedoms, even if they apply without regard to the nationality of the persons concerned. Therefore, national law or practices which make the access to good and/or services subject to a condition of residence in that Member State should be held unlawful under EU law.
This requirement would not entail the elimination of the concept of national residence and should not be confused with the concept of 'habitual residence' as a connecting factor in EU law concerning conflict of law or jurisdiction rules or under EU public law legislation (e.g. social security coordination). This would guarantee compatibility with existing EU legislation providing for 'habitual residence' and with the jurisprudence of the Court of Justice of the EU which has underlined that 'habitual residence' has an autonomous meaning under EU law (*Robin Swaddling v Adjudication Officer*, Case C-90/97).

Q15. What can be one at EU level to facilitate the portability of retail financial services products – for example, life insurance and private health insurance?

Many available retail products fit to national markets only. Transferability of the products themselves and data they use could be almost impossible. That is why it would be wise to promote as far as possible opt-in regime that could enhance new European standards, like portability or usage of past underwriting data. However in case of long-term products the possibilities are limited.

Q16.

No response.

Q17. Is further action at the EU level needed to improve the transparency and comparability of financial products (particularly by means of digital solutions) to strengthen consumer trust?

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

Both aspects, transparency and comparability, are closely linked to the ability of consumers to make an informed decision on financial products. However, comparability is determined by the ability to obtain necessary information on financial products and particular features.
Access to the information on products is one of the major issues consumer constantly face. There has been only minor improvement overall, however considerable benefits are seen on the side of comparison web-sites, that try to collect, sort, evaluate and disclose information on product features. This trend is significant and should be supported.
Looking at the issue of transparency of financial products, the first step is to look at the way, how the providers (manufacturers) and distribution channels works to keep the information asymmetry on the side of consumers. When considering the growing usage of web-sites of the manufacturers and financial intermediaries for disclosure of all relevant documents required by EU and national legislation, we see that this trend is growing and is driven primarily by cost-cutting on the side of providers. More transparent providers have adopted very interesting approach that is highly appreciated by consumers, consumer organizations as well as regulators. This approach is based on **building dedicated web-site for each financial product that is sold by a provider to retail investors**. The web-page contains visualization of key features of the product. In case of UCITS fund, visualization of unit value (performance) is a standard. On top of that, some providers present the development of costs over time and even compare to the defined benchmark. (This approach is rather rare on the side of providers or financial intermediaries. Comparison web-sites that are run by non-profit (not-for-profit) consumer organizations do contain these features more often). Product dedicated web-page also contain relevant documentation tied to that product (statute, KIID, prospectus, monthly reports,…) and required by legislation, easily downloadable by consumers. A good example could be the web-site of Slovak asset management company TAM (Tatra Asset Management), where each offered UCITS fund has its own web-page containing all information and documentation on the product (TAM European Equity fund). Potential or existing retail investors can find easily understandable information on the fund, parameters of the fund, historical performance (including ability to download the data) and documentation on one page. On top of that, the page contain links to the documentation tied to the company disclosure requirements (annual reports, order placement and execution strategy, operational standards,…). A consumer has

access to layered information that are easily accessible through the web-page dedicated to the product. Such an approach should be also envisaged by a regulator overseeing the provider.
However, when talking about the transparency, an issue tied to the legal ability to download, analyse and upload the documents and information obtained from the provider web-site to the database of a comparison web-site provider might occur. Any further EU action should look at this particular issue. **Information tied to the financial product sold to retail investors should be deemed public**, so there is no legal dispute on the ownership status of the documents and data tied to the product.

Comparability of financial products is still a lively debated topic. There are many comparison web-sites operated by various players across EU and still growing. On top of it, the innovation of additional services (tracking services, predictions, documentation storage and maintenance, product monitoring, signal services, etc.) is the fastest on the financial market.
Besides conventional "comparison" and analytical tools, comparison web-sites offer remedy for one of the most distracting practice in financial sector – "forgetting the past". Comparison web-site create their own databases of financial products, maintain the data and product features and thus allow to see the market development, trends and practices in merging, closing, innovating and selling of financial products over time.
The key area, where the EU action is needed, is the recognition of the comparison web-site provider. Most of the web-sites are private sector operated services, however it is necessary to recognize, whether the web-site is financial sector provider (supply side) operated or operated by a consumer organization (demand side). Many providers of "robo" advice are in fact financial intermediaries or directly financial products (services) providers who "gently" shifts the consumer in a desirable way to make a decision that fits the expected and in fact predefined way favourable for a financial services provider. Independence of comparison tools from the financial providers should be envisaged. Any further regulatory action should also cover the necessity to make transparent, who is in fact provider (owner) of the comparison web-site and how the revenue stream is generated. This issue is closely linked with the issue of financial providers' recognition. MiFID has effectively eliminated the market for true financial advice and many financial intermediaries do present themselves as financial experts and advisors. To clarify the type of providers, there is a need to adapt an unified approach across all levels and types of regulation defining the financial advisors, investment advisors and "other" financial experts and intermediaries (providers).
The necessity for a distinction between these two sides is obvious. Comparison web-site outside the financial sector providers could be viewed as a solution to this as they maintain their own databases on products and their features. These comparison web-sites could further serve as a very valuable source of information on the development of the market both on the demand side as well as on the side of manufactured products. EC Study on Comparison Tools (2013, http://ec.europa.eu/consumers/consumer_evidence/market_studies/docs/final_report_study_on_comparison_tools.pdf) has brought a lot of insides into this fast growing market segment. Comparison web-sites are built to bring more information to consumers. On the other hand, the transparency of providers behind the comparison tools is unclear. Based on the study findings, less than half (37% - 45%) of comparison tools were willing to disclose details on their supplier relationship, description of business model or the sourcing of their price and product data (e.g. whether from the supplier or gathered independently from web sources). This lack of transparency is further amplified for smartphone apps.
Further action is therefore needed to bring EU recognition for "transparent" comparison web-site providers, where not only ownership, business model and revenue stream should be disclosed, but also other aspects such as market share coverage (amount of products offered on a particular market) and methodology for ranking, screening and recommendations should be clear to users.
EU certification ("good practice" recognition) could be seen as a good start for making the fairly operated comparison-web sites and their providers more visible among and used by consumers.

Q18. Should any measures to be taken increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation?

FIN-NET is of crucial importance for the single market in retail financial services. ADR schemes normally only cover financial service providers operating in and from the country where the schemes exist. This means that if consumers complain about a foreign financial service provider, the complaint would normally be handled by an ADR scheme operating in the Member State where the provider is established. This may prove complicated for the consumer who would have to know of the existence and details of such foreign ADR schemes.

Through FIN-NET, the ADR in the home country of the consumer provides him her with the necessary assistance in pursuing such cross-border complaints.

However, at the moment, as indicated in the Green Paper, there is no full coverage, geographically as well as sectorally. There are no FIN-NET members from Bulgaria, Cyprus, Latvia, Romania, Slovakia and Slovenia. And members from the 22 Member States do not always cover all financial services sectors. There is also a significant number of existing financial ADR schemes in the EU that are not members of FIN-NET, meaning that they are not committed to cooperate with ADR schemes in other Member States in cross-border cases.

FSUG suggests it is indeed necessary to upgrade the network.

In particular, all financial ADRs in the EU (i) should meet the binding quality requirements under the ADR Directive, (ii) should be a member of FIN-NET and (iii) be legally bound by its MoU which outlines the mechanisms according to which to facilitate out-of-court settlement of cross-border disputes.

There has even been some support for making the participation in ADRs mandatory for financial services providers. While ideally consumers should have access to an ADR scheme regardless of the provider whose services they make use of, FSUG believes making participation mandatory may go at the expense of the success of ADR schemes, the strength of which lies in the commitment financial service providers have made to it by signing up to it voluntarily.

FSUG does believe however that once a financial service provider decides to resolve a dispute with a consumer using an ADR scheme, the decision by the ADR should be binding on it (whether or not after a first round of mediation). This is currently not the case for all members of FIN-NET. In Finland, for example, the Finnish Consumer Disputes Board only issues a recommendation that the financial service provider is free to follow or not. A number of ADR schemes do not even make a formal recommendation. Instead, they merely try to help parties to come to an agreement without making any formal proposals for solution.

As stated in the Green Paper, awareness among consumers of the network´s existence is low. FSUG believes there should be an obligation for ADRs as well as the financial service providers that have signed up to them to clearly inform consumers about the network´s existence (and benefits). Also, it is important to note that the FIN-NET website is currently only available in three languages (English, French and German). The website should be made available in all official languages of the EU.

Q19. Do consumers have adequate access to financial compensation in the case of misselling of retail financial products and insurance? If not, what could be done to ensure this is the case?

An adequate collective redress framework in the EU is of crucial importance. While individual actions are the usual tools to address disputes to prevent harm and also to claim for compensation, the possibility of joining claims and pursuing them collectively may constitute a better access to justice, in particular when the costs of individual actions would deter the harmed individuals from going to court.

In 2014 the European Commission adopted a Recommendation on Collective redress containing a number of non-binding principles. Member States should have implemented the Recommendation on 26 July 2015 by the latest.

Anecdotal evidence suggests that the impact of this Recommendation has been limited. Only the UK (in respect of competition damages actions only) and Belgium have introduced new collective redress mechanisms, and not entirely in line with the principles in the Recommendation. This suggests that many of the problems observed in the Evaluation Study of August 2008 are still present, and a significant proportion of consumers who have suffered damage do not obtain redress.

FSUG believes more binding measures at EU level are called for.

Furthermore, FSUG would like to urge the Commission to assess the extent to which redress could be improved in the EU through opt-out collective redress regimes (instead of the opt-in regimes currently promoted by the Commission through its Recommendation).

The main benefit of opt-out actions is that they can be brought on behalf of a class of unnamed, and initially unidentified claimants. This affords representatives the opportunity to ascertain the full class as the proceedings progress, rather than at the outset, making it easier for claimants to commence collective proceedings on behalf of potentially injured parties. With an opt-in action, claimants must affirmatively join the action in order to be considered a member of the class and share in any recovery[25].

In the Netherlands, the Dutch Collective Settlement Act (`WCAM`), an opt-out settlement regime, has allowed the Dutch Investors´ Association VEB to gain large amounts of compensation for a significant number of investors in multiple cases. Under the WCAM, the fairness of the outcome of a collective consensual dispute resolution is checked by a judge and, if considered fair, declared binding on all participating as well as non-participating parties. Non-participating parties have the opportunity to opt-out (for at least three months following the court ruling).

In two cases, Shell and Converium, the settlement was declared internationally binding. Compensation was gained for all investors that did not fall under the US settlement.

Q20. 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?

In case of the EU Motor Insurance Directive all victims should be compensated regardless the solvency issues. There is no place for exclusions. Generally more clarity in required in the

[25]. Under the opt-in system in the UK, only one action has been brought, on behalf of a group of consumers who were overcharged for replica football jerseys. he case eventually settled, and each consumer who joined the action was compensated £20. Some believe this settlement failed to provide consumers with "meaningful" compensation and highlights the ineffectiveness of opt-in litigation, which has since been deemed unworkable and unsuccessful.

directive concerning scope and usage of insurance guarantee schemes. It should be backed by proper implementation.

Q21. 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 insurance products?

In case of car rental and other services there is a need to specify standard coverage, appropriate for consumers. Casco insurance for example should be considered as standard coverage, so the offer ought to cover it. If add-on insurance is propose its price should be given as additional costs.

Q22. What can be done at the EU level to support firms in creating and providing innovative digital financial services across Europe, with appropriate levels of security and consumer protection?

Financial service providers are no different than other firms, they need legal certainty and a level playing field to thrive. Innovative digital financial services can develop only when existing barriers that are common to both "physical" and digital services are successfully dealt with.
These barriers include:

- Administrative barriers such as a proof of residence from the country in which the financial service is sold.
- Availability of data including credit data and differing methodologies for assessing creditworthiness
- Debt recovery procedures across EU countries
- Language barriers
- Risk assessment
- Tied products/conditions
- Taxation

To ensure appropriate levels of security and consumer protection, we need to increase the supervision consistency for ESAs across Member States. A concrete example of issues arising from innovative digital financial services are FOREX contracts provided from Cyprus to other EU Member States. ESAs from other Member States are trying to contact the ESA from Cyprus to ensure that it exerts enough control over such firms.

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 the 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 .

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, the 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 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.

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.

Q24. Is further action necessary to promote the uptake and use of the e-ID and e-signatures in retail financial services, including as regards security standards?

The FSUG does believe that it is necessary to promote the uptake and use of e-ID and e-signatures but also stresses the importance that such services are secure, compatible, accessible with high privacy standards.

The EU should push for not just EU-wide, but worldwide standards in security which are open source and do not serve the commercial interest of a specific security company or financial service operator. Since much of the security standards used today depend on existing security standards such as the SSL protocol (https://www.openssl.org/) for secure online transactions, it only makes sense that any "new" security standard such as using e-ID or e-signatures follows the same logic.

Open source solutions offer more protection than proprietary software precisely because everyone can use them and look over the source code for any vulnerability. Furthermore, ensuring that the security standard is open source prevents any creation of a "back door" serving the interests of governments (following the Snowden revelations, it was made clear that many American companies were asked to provide a back door for the NSA) and avoids the fight between competing standards which serve the financial interest of different companies. Sensitive consumer data should always be encrypted

Furthermore, any discussions about security standards of e-ID or e-signature should involve independent experts such as civil society groups and consumer organisations in order to ensure that the interests of consumers are well protected. Spreading the practice of e-signatures and e-ID will inevitably cause "new" opportunities for online fraud as it will make it easier for scammers to obtain signatures or permissions otherwise more difficult to obtain in the physical world to carry out a fraud.

Strict regulations need to be put in place to protect consumers in case of fraud such as the ability to cancel a money transfer, automatic notification in case of a suspicion of fraud, limiting the use of e-ID and e-signature to relatively safe and protected transactions such as standard money transfers (as opposed to direct money transfers like Western Union) and so forth. The adoption of EBA's Required Technical Standards for consumer authentication for the PSD2 Directive may be an opportunity to tackle e-ID authentication as well, ensuring that it is interoperable, secure, accessible, and respects users' privacy.

To encourage further uptake of e-ID, we need, public administrations should create online services such as filing taxes online or getting access to certain administrative documents via an e-ID and a card reader. Examples of successful use of e-ID include Belgium which implemented an e-ID system compatible with mainstream/standard card readers, ensuring widespread adoption and use.

Q25. In your opinion, what kind of data is necessary for credit-worthiness assessments?

The FSUG abides to the principles of data minimisation and proportionality also contained in data protection legislation. Only data that are 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, the FSUG found no evidence that increased credit data availability has helped prevent over-indebtedness, support prudential regulation or facilitate access to affordable credit. The quality of the arguments and of the evidence used to formulate the objectives of creditworthiness assessment and the use of data should be adequate

and they should not put forward to address putative problems, without providing any evidence that these problems exist and that the type of data used are necessary and proportionate to address them. The use of data for undemonstrated goals or goals beyond clearly set objectives by the law should be prohibited. The FSUG 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, the FSUG 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).

Q26. - 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?
The FSUG urges policymakers to make explicit the objectives of the use of financial and non-financial data (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.

The FSUG invites the Commission to examine the FSUG paper on the potential impact of Big Data on financial services as these recent developments do require specific attention from policy makers.

Q27. Should requirements about the form, content or accessibility of insurance claims histories be strengthen (for instance in relation to period covered or content) to ensure that firms are able to provide services cross-border?
Form and content of data of insurance claims histories available in European countries are different due to diverse approaches and needs. There are more and more central data bases that allow automatic data sharing. These data bases should be available for non-residential companies with non-prohibitive costs. One could think about minimum standardisation of form and content in case of motor insurance, but it should affect only basic information which are required in (almost) all European countries.

Q28

No response.

Q29 Is further action necessary to encourage lenders to provide mortgage or loans cross-border?

- (•) **Yes**
- ( ) **No**
- ( ) **Don't know / no opinion / not relevant**

This issue is very complex, and it is necessary to be approached from various angles.
First of all, there are many subsidiaries in Europe, especially in Central and Eastern Europe, established by big banks from Western Europe. **In this case, for those banks which have a phisical presence in a Member State through a subsidiary or a branch, it is very difficult to accept that they have no information about the value of properties and about enforcement procedures.** It seems to be just a business decision to refuse the request received from consumers, forcing them to access much more expensive loans (consumer loans or mortgages).
Second, there are enough provisions in Directives (CCD and MCD) which allow creditors to have access, in a non-discriminatory way, to databases for the assessment of the creditworthiness of consumers.
Recital 28, CCD - "To assess the credit status of a consumer, the creditor should also consult relevant databases; the legal and actual circumstances may require that such consultations vary in scope. To prevent any distortion of competition among creditors, it should be ensured that creditors have access to private or public databases concerning consumers in a Member State where they are not established under non-discriminatory conditions compared with creditors in that Member State."
Article 9, CCD - Database access: "Each Member State shall in the case of cross-border credit ensure access for creditors from other Member States to databases used in that Member State for assessing the creditworthiness of consumers. The conditions for access shall be non-discriminatory."
Recital 20, MCD: „Non-discriminatory access for creditors to relevant credit databases should be ensured in order to achieve a level playing field with the provisions laid down in Directive 2008/48/EC."
Recital 60, MCD: „To prevent any distortion of competition among creditors, it should be ensured that all creditors, (...) have access to all public and private databases concerning consumers, under non-disriminatory conditions."
Article 21, MCD – Database access: „Each Member State shall insure access from all creditors from all Member States to databses used in that Member State for assessing the creditworthiness of consumers and for the sole purpose of monitoring consumers' compliance with the credit obligations over the life of the credit agreement. The conditions for such access shall be non-discriminatory."
After so many years after the transposition of CCD, there are very few examples of agreements to allow access for cross-border lenders, despite the increasing interest of consumers to access cheaper loans from abroad. Without an openess of the credit market, the discrepancies between prices in different Member States will remain unchanged and the Single Market for credits will be just a dream.
Third, the argument that creditors hesitate to offer more cross-border credits because they don't have sufficient knowledge about the applicable personal insolvency regimes in other Member States is also questionable. There are Member States without any rules in favor of debtors or with very limited measures to protect debtors in place and with high level of the cost of credit, but creditors from abroad were not interested to offer cross-border credits.
In case of mortgages, in fact not the property are the guarantee of the loan, but the whole fortune of the debtor and his family, because if the debtor failed to repay the loan, the property will be sold, but the debtor and his family will remain indebted with the remained difference. In this case, if any other solutions in favor of debtors cannot be put in practice (debt cancellation, debt relief, etc.), the FSUG is asking for a last recourse EU Datio in Solutum for preventing EU citizens to be victims of overindebtedness, which will have dramatic consequences for them and their families.[26]

[26] Please see http://ec.europa.eu/finance/finservices-retail/docs/fsug/papers/debt_solutions_report_en.pdf

The FSUG considers that further action is necessary to encourage lenders to provide mortgage and loans cross-border. First, being sure that all related provisions from CCD and MCD were properly transposed and made to work in practice.

Second, the FSUG is on the opinion that alternatives to mortgage securities should be considered.
For instance, in France[27], banks have created an alternative to a mortgage, through the use of an institutional guarantee distributed by mutual organisations. Institutional guarantees are called 'la société de cautionnement'. They operate on the simple basis of the mutualisation of risks. Such mutual funds could be created by other providers than banks.

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 fees structure it 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 in case of selling the property before the full repayment of the loan, as there are no costs to pay in redeeming a mortgage.

Third, the FSUG considers that the differences between MS regarding LTV (loan to value) are a clear obstacle that could lead to bad practices and nocive effects to consumers (overindebtness) and economy (housing bubbles). For instance, in Spain, the banks granted loans for 100% and even 120% of the value of the property before the crisis, and some of them are beginning now to come back to such levels. There are other Member States, for instance Denmark, where the LTV limits are much more reasonable. For instance, for Residential property the LTV is capped to 80% for loans issued up to 30 years maturity and 10 years interest-only period, to 70% for loans with an unlimited maturity and interest-only period and to 60% for other kind of property (holiday, commercial, agricultural). It would be important to harmonise this by setting limits, at reasonable levels, which would not encourage housing bubbles and overindebtedness.

In addition, the FSUG proposes the following recommendations:

- A proof of residence (official document from a public administration) from any of the EU Member States should be accepted in order to access financial services in any of the EU Member States.

[27] http://www.quechoisir.org/argent-assurance/banque-credit/credit/communique-cautionnement-bancaire-immobilier-des-pratiques-sujettes-a-caution
According to UFC Que Choisir, 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

- Harmonize the governance structure of credit bureaus, reflect on a solution to assess creditworthiness of consumers based on different data sets and ensure procedures for exchanging credit data taking into account proportionality, consumer rights and data protection.
- Initiate work on a European personal insolvency law and debt recovery procedures.
- Reflect on cross-border dispute resolution mechanisms in cases such as cross-border sales of credit, insurance etc.
- Overcome language barriers by:
    - Ensuring that all financial service providers with a turnover superior to a certain level provide an English version for their website and key documentation.
    - Identifying "basic" products which have similar or identical characteristics and could be included in a European Standardized Information Sheet in all languages.
- Carry out further research on market/country segmentation and the consequence of a single market for financial services on prices and risk hedging. (For example, if the price of car insurance is dependent on the quality of cars sold and running inside a country, on the quality of the roads, on driving habits and on average accident statistics inside a country, what would be the consequence of broadening the "risk" calculation to all EU countries instead of keeping the markets "national")
- Investigate whether other "administrative" barriers exist which prevent an EU citizen to shop abroad for financial services/products.
- Forbid the bundling of products or tied conditions in products which may justify an exclusion based on the country of residence. For instance, this may be the case for tied products/conditions: mortgage tied to a life insurance where the life insurance has specific conditions that cannot be met by nationals form other EU Member States.
- Reflect on ways in which products which benefit from tax subsidies or reductions can be "adapted" to consumers living abroad. For instance, by adapting the pricing to compensate for the subsidy and/or tax break.

Q30. Is action necessary at the EU level to make practical assistance available from Member State governments or national competent authorities (e.g. through 'one-stop-shops') in order to facilitate cross-border sales of financial services, particularly for innovative firms or products?

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

If action is necessary at the EU level to make practical assistance available from Member State governments or national competent authorities in order to facilitate cross-border sales of financial services, particularly for innovative firms or products, please state additional comments on possible actions:

We are concerned that the Commission seems to focus too much on choice *per se*. The objective should not be to increase the amount of choice available to consumers. More choice does not necessarily mean better outcomes for consumers – indeed, as we explain above too much choice can be as detrimental as too little choice. The objective should be to ensure that consumers can access appropriate, safe, good quality and good value products.
This requires a number of interventions at EU and national level.

- Initiatives such as one-stop-shop comparative information tables may have some use but there is little evidence to suggest that demand side interventions *per se* will actually create a more efficient Single Market (from the consumer perspective). EU wide demand side interventions will not drag underperforming national markets up to the highest common denominator. The priority is to apply tough regulatory interventions to improve the supply side at EU and member state level – this requires more robust, consistently enforced EU wide regulatory standards not deregulation to 'encourage' more competition and choice. We will not see an effective Single Market without these supply side or structural interventions. An effective Single Market must be built on the sound foundations of effective national markets. As we explain above, 'innovative' providers will not succeed in new markets unless the barriers created by dominant business models in target markets are dealt with by tough supply side regulatory interventions.
- If supply side interventions are adopted to build the Single Market foundations, this then may enable the deployment of potentially effective demand side interventions. For example, establishing EU wide comparative information databases containing information on products which meet minimum standards could allow confident consumers to seek out better value products outside their home market.
- Linked to this, there is potential for EU regulatory authorities to develop a benchmarking regime to allow consumers to identify products that meet minimum standards.

Q31 What steps would be most helpful to make it easy for businesses to take advantage of the freedom of establishment or the freedom of provision of services for innovative products (such as streamlined cooperation between home and host supervisors)?
The most helpful step EU authorities could take is to ensure truly innovative providers are able to compete on a level playing field against dominant providers in local markets. This will not happen by deploying demand side interventions. Tough, consistently enforced supply side interventions are needed.
Assuming these supply side failures can be addressed, there is also an opportunity for regulators at EU level to collaborate to enable innovative providers to negotiate the complexity of regulations in different Member States.

Q32. For which retail financial services products might standardisation or opt-in regimes be most effective in overcoming differences in legislation of Member States?
FSUG considers opt-in regime as a very good way to increase cross-border activity and quality of retail financial services products. Probably one could start with basic products like: basic bank account, basic saving account, basic life assurance, basic investment products and basic pension products. FSUG underlines especially simplicity and efficiency as most desired features of retail financial services products. However one should think about such products as a predecessors of single contract for financial services, for example single insurance contract.

Q33. 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?

Rules on 'general good' in the insurance sector could be only justified if the specific of the market requires them. However there is a need of the European analysis on how 'general good' in the insurance sector are used and to what extent they are necessary. It is truth that potentially it undermine cross-border activity as complexity of internal regulation is very often a burden

even for local companies. The outcome of such study could answer the question on needs of clarification of 'general good' in the insurance sector. Important part of the research could be analysis of consumer protection rules and its effectiveness for end users. The work on 'general good' should be linked to design of opt-in regime and many provisions submitted by new European law (directives, regulations, technical standards and guidance).

APPENDIX Specific analyses and recommendations from FSUG

Appendix I

Integration of the EU retail investment funds markets

FSUG paper – March 2016

- **UCITS funds are the only truly Pan-European savings/ investment product**

Fund management is probably the financial service that is the most integrated in the European Union thanks to the creation and the development of a truly Pan-European product: the UCITS fund, which is now automatically passportable to all Member States. The share of cross-border fund assets in Europe in 2013 stood at 40% of total European investment fund assets, compared to 27% at end 2003.

- **But EU citizens are sold mostly AIFs not UCITS**

But this is mostly thanks to UCITS funds, which are still a minority of the EU domiciled investment funds sold to individuals in such countries as Germany or France. And they are less marketed to EU individuals than AIFs (Alternative Investment Funds, as defined by the AIFM Directive) and AIF wrapper products. AIFs in the EU are all the investment funds that are not UCITS

Indeed, contrary to a common belief:

- AIFs are more numerous than UCITS funds, at least at retail level[28].
- Hedge funds are part of them but only a minority.
- The majority of AIFs are not hedge funds and they are mostly designed for- and sold to retail investors, either directly or commonly via fund wrappers such as unit-linked insurance products. For example, there are 11 500 funds domiciled in France, out of which only 3500 UCITS and most of the 8000 AIFs are retail funds. A similar situation can be found in Germany or in Belgium for wrapped retail products.
- AIFs are mostly purely national products that are not sold cross-borders.
- AIFs are not subject to the disclosure and investor protection rules of UCITS. In particular, AIFs are not required to disclose a KID (Key Information Document) that is comprehensive, short, simple and comparable.

- **And funds are only a very small portion of retail financial savings**

[28] The European trade body counted 35,618 UCITS funds in 2013 and only 19,524 AIFs (EFAMA fact book 2014, page 314). But in France alone AMF reports 8000 AIFs for only 3500 UCITS. Therefore the number of AIFs reported by EFAMA seems low. According to IODS, LIPPER FMI database included about 100,000 active funds in Europe as of March 2014.

Investment funds represent only 7% of their total financial savings. Therefore, current direct ownership of UCITS funds by EU individuals is very modest (probably not more than 3% of their total financial savings).
But, taking into account the investment funds indirectly held by households through insurance and pension plans, the share of investment funds held by euro area households stood at 20% at end 2013. This means that the majority of retail funds are held not directly but through wrappers, which typically add another layer of fees and commissions on top of the fund fees. These wrappers unlike UCITS funds are typically national only products that are not sold cross-borders. They are typically created to minimize local taxes.

- **Past performance and fees of retail funds are very difficult to find in the EU**

Data on retail investment funds in Europe are poor. Neither FSUG or Better Finance could find out the actual number of UCITs funds and of AIF funds sold to EU individuals in each Member States and overall in the EU, nor the corresponding amounts of assets.

More of a concern, aggregate information on performances and prices of retail investment funds does not really exist. In particular, the European industry has not published any aggregate fund fee data since 2010 (see table below), whereas its US counterpart publishes detailed fund fees tables every year. Even EU Public Authorities that are supposed to collect these data, analyse them and report them have failed to provide any of those to date[29].

Even more concerning is the disastrous effect of the elimination of the mandatory and standardised disclosure of the historical performance of UCITS funds and of their chosen benchmarks as currently planned by the European Supervisory Authorities (ESAs) in drafting the regulatory technical standards of the recently adopted Regulation on "PRIIPs" [30]. The current mandatory and standardised disclosure of historical performance of all UCITS funds will be eliminated by 31/12/2019 latest according to the PRIIPs Regulation. However it is the only standardised and publicly regulated and supervised database for historical performance. It is also extremely necessary for savers as explained by FSUG in its reply to the ESAs consultation on PRIIPs and in its recent letter to the EU Authorities on this very serious issue.

This deficient disclosure of real past performance net of fees and of prices (fees and commissions) is certainly one of the main reasons for the very poor ranking of investments in the EU Consumer Scoreboard: the very last position of all consumer markets for the last 4 years in a row. This is why the EC FSUG and the NGO Better Finance have had to launch recent research work themselves on the performance and price of retail savings products.

[29] Article 9,1 of the European Regulations of the European System of Financial Supervision of 201 provide that the three European Supervisory Authorities (Banking - EBA, Securities & Markets – ESMA - and Insurance and Occupational Pensions – EIOPA) shall collect, analyse and report on « consumer trends ». But so far, they have failed to report any performance and price data of consumer savings products in their respective areas.

[30] Packaged Retail Investment and Insurance-based investment Products

Number, size and fees of mutual funds

EU versus US

- **The FSUG study on the EU fund industry**

The FSUG mandated a research report in 2014 on the Performance and Efficiency of the EU Asset Management Industry. The study performed by IODS consulting firm focused on UCITS funds mostly and compared the ten year (2003-2012) performance of UCITS funds to the performance of relevant capital markets as measured by capital market indices minus the average cost of index funds. It also took into account entry and exit fees and the « survivor bias » (the fact that typically the worst performing funds do not last ten years as they are merged into others or closed).

« *Over the ten-year period (2003-2012), the average underperformance of EU equity funds weighted by Total Net Assets was 23.6% (2,1% per year). Applied to the total net assets of equity funds at the end of 2003 (€1,173 bn, source: EFAMA), the theoretical loss suffered by investors is €277 bn.* »

For bond funds, the performance comparison with the corresponding benchmark Barclays Pan-European Aggregate TR shows an average annual underperformance of bond funds of 0.8% net of all fees(minus 8.3% over ten years). Money market funds returned a negative real performance over the last ten years and also under performed their benchmark (by 1,1% per year).

These poor results are certainly not overstated as :

- they are based on UCITS funds (which are not so much sold to individuals), not including AIFs, and also include institutional funds (i.e. funds sold only to institutions that are typically charged with lower fees) :
- the corresponding market index's performance is reduced by the average index fund fee, not by the corresponding ETF's fee which is much lower.

- **The Better Finance research on the performance of long term savings**

Better Finance also published research findings that provide some explanations for this poor performance of European investment funds and also underline that the overall result for EU individual savers and investors is even worse.

	Number of funds	Average Size (€ million)	Average fee (equity funds only, in bps)
EU	**32.750**	**222**	**175** (2010)
US	**7.886**	**1.568**	**74** (2013)
	Q3, 2014	Q3, 2014	

Source : Better Finance (CMU Briefing Paper), CEPS, EFAMA, ICI

The table above identifies two major reasons.

First, the overall number of funds in the EU is four times higher than in the US for a fund market that is half the size of the US one in terms of assets under management. This industry is fixed costs one, so that can only be detrimental to the performance of EU domiciled funds. Besides, UCITS funds - being Pan-European have probably a higher average size than the national – only AIFs that are mostly sold to individuals. Therefore it is likely that the average size of retail funds is even smaller.

Second, the level of fees is two and a half times higher in the EU in the case of equity funds, based on the most recent figures available from the industry.
The pricing of investment funds is even worse actually for individual investors as they mostly hold AIFs, and – as mentioned earlier - mostly via wrapper products which typically add another layer of fees. For example in France about half of retail funds are held via life insurance unit-linked contracts which typically add another contract–level fee of 0,95% on average. Therefore, the average fee charge for investing in retail equity funds for a French saver is more typically 2,75% per year (1.8 + 0.95; not counting the entry fees). It should therefore be no surprise that French unit-linked contracts retuned a strongly negative real performance since the beginning of the century despite the positive real performance of equity markets over the same period.

- **Identified barriers to further integration**

Retail investment funds are more "sold" by financial intermediaries than "bought" by individual considering the lack of standardisation, complexity and over supply of tens of thousands of different funds in Europe.
Conflicts of interests in the industry and in the retail distribution explain largely why local AIFs are still too often sold to individuals instead of UCITS. UCITS themselves have too high fees compared to the US market and more importantly for delivering decent returns to households on average.
Multi-layer packaged products (often packaging funds) are more sold to individuals mainly because they generate higher (and often undisclosed) fees for providers and distributors, also favoured by local tax incentives that funds do not enjoy. These packaged products (life insurance personal pensions, etc.) are purely national (not easily passportable (unlike UCITS) and not sold cross-border) and subject to less transparency and investor protection requirements.

- **Recommendations to the European Commission**

1. **Fact finding**
   Given the poor available data on this issue, the EC should at least gather the following input to further validate the analyses of FSUG:
   - Number of retail (i.e. actively promoted and sold to individuals) UCITS and number of retail AIFs per Member State of domicile and overall
   - Share of UCITS that are retail (i.e. promoted and sold to individual investors, not to "institutional" ones) per Member State and overall; same for AIFs
   - Average annual fees of retail UCITS and of retail AIFs (that would exclude hedge funds as those are not directly sold to retail) compared to UCITS per Member State and overall.
   - Aggregate (weighted average) past performances of retail funds distributed by the big and dominant (in Continental Europe) integrated retail "bank insurance" networks versus the past performance of the funds managed by asset managers who are capitalistically independent from those networks.

2. In line with the EC "CMU Action Plan", enforce article 9.1 of the 2010 Regulations establishing the new European System of Financial Supervision (ESFS): **European Supervisory Authorities to collect, analyse and report on the performance and price of retail financial products**
   The European Commission itself recently fully endorsed this recommendation by making it one of its actions included in its "Capital Markets Union" Action Plan released on 30/09/2015[31].
   In order to fulfil these duties, the ESAs need more resources not less. They also need the implementation of the following recommendation.

3. **Maintain the mandatory and standardised disclosure of past performance of UCITS funds and of their chosen benchmarks** in the Key Information Document (KID) of "PRIIPs": we refer to the FSUG letter to the EU Level I Authorities of 19/01/2016, and to its replies to the ESAs' discussion and consultation papers on PRIIPs issued in 2015.

4. **Ban the use of AIFs in retail packaged products**
   The EU would kill two birds with one stone by banning the use of alternative investment funds in retail packaged products (life insurance contracts, DC plans and personal pension products): it would make room for the expansion of the simpler, more transparent and probably less expensive (see above) and Pan-European UCITS funds. And it would also strongly benefit EU savers for the same reasons of simplicity, transparency, performance and prices.
   Of course, this ban should apply first and foremost to the future Pan-European Personal Pension (see below) as the Pan-European PPP should not be wrapping non Pan-European funds.

[31] "*To further promote transparency in retail products, the Commission will ask the European Supervisory Authorities (ESAs) to work on the transparency of long term retail and pension products and an analysis of the actual net performance and fees, as set out in Article 9 of the ESA Regulations. » (page 18 of the EC CMU Action Plan)*

4. **Create the Pan-European Personal Pension (PEPP) as a simple, portable and low cost individual DC product asap.**

   The EPPP on which the EC and EIOPA are working (EIOPA public consultation of July 2015[32]) would provide a simple, low cost and attractive alternative to the complex, opaque, fee-laden and too numerous offerings of national retail long term and pension products. It would also provide a great opportunity to thoroughly increase the indirect retail ownership of the simpler, cheaper and more transparent UCITS funds instead of AIFs in pension packaged products.
   It would also help the EU fund management industry to streamline its offerings and to concentrate more on its most competitive products: UCITS funds.

Appendix II

Obstacles to cross-border credit

Cross border credit entails many different obstacles ranging from the most obvious (language barriers, proof of residence requirements) to more complex ones (specific tax regimes or regulation, difficulty to assess risk, debt recovery and insolvency). Here below, you will find the FSUG's assessment of obstacles to cross border lending and recommendations on tackling some of these.

Obstacles for a Single Market in credit:

- Proof of residence (official document from the public administration that proves that you reside in the country/city)
- Availability of credit data (lack of a credit history in another member State), or credit data asymmetry.
- Fear of impossible debt recovery procedures for a person residing abroad.
- Concerns about difficult dispute resolution mechanisms in case of problems
- Language barriers.
- Market/ country segmentation: if banks segment markets because they have to adapt to different contexts (more difficult debt recovery procedures, very bad road infrastructure), and factor these changes in their pricing.
- Other administrative reasons (for example, specific information requirements unique to individual countries - similar to "proof of residence" but a bit broader)
- Tied products/conditions: for instance, mortgage credit with a tied life insurance. Find alternative products that can be tied instead of the national ones. For instance, have a mortgage credit insurance from the consumer's home country.

32 https://eiopa.europa.eu/Publications/Consultations/EIOPA9CP91590069Consultation9paper9Standardised9Pan9European9 Personal9Pension9product.pdf

- Taxation, competition and national budget (financial products in one country are tied to special tax benefits/conditions that cannot be applied to other consumers across border).

Recommendations for enabling cross-border credit:

- A proof of residence (official document from a public administration) from any of the EU Member States should be accepted in order to access financial services in any of the EU Member States.
- Harmonize the governance structure of credit bureaus (see recommendations of FSUG on credit data), reflect on a solution to assess creditworthiness of consumers based on different data sets and ensure procedures for exchanging credit data taking into account proportionality, consumer rights and data protection.
- Assess whether a European personal insolvency law and European debt recovery procedures are necessary to overcome banks' fear of unrecoverable debts.
- Reflect on cross-border dispute resolution mechanisms in cases such as cross-border sales of credit, insurance etc.
- Overcome language barriers by:
    - Ensuring that all financial service providers with a turn-over superior to a given figure in € (decided by law) provide an English version for their website and key documentation.
    - Identifying "basic" products which have similar or identical characteristics and could be included in a European Standardized Information Sheet in all languages.
- Carry out further research on market/country segmentation and the consequence of a single market for financial services on prices and risk assessment/risk hedging. The "price" of credit in a specific country is determined by a number of factors including the countries' inherent "risk" which is factored in by the "base" lending rate of the central bank and the rate representing the risk-assessment of a consumer (revenue/employment, overall financial situation, ongoing financial commitments,…) In the event that a consumer from a MS applies for a credit in another MS, what "base rate" will apply? Will the financial institution be able to assess the risk of that consumer and if so, will the risk assessment be "fair" (unfair excess charges, opaque risk assessment...)? For instance, Romanian consumers have paid very high interest rates for credit even comparable with consumers from other Member States for the same type of credit . How can such differences in interest rates be justified?
- Investigate whether other "administrative" barriers exist which prevent an EU citizen to shop abroad for financial services/products.
- Forbid the bundling of products or tied conditions in products which may justify an exclusion based on the country of residence. For instance, this may be the case for tied products/conditions: a mortgage credit tied to a life insurance where the life insurance has specific conditions that cannot be met by nationals form other EU Member States.
- Reflect on ways in which products which benefit from tax subsidies or reductions can be "adapted" to consumers living abroad. For instance, by adapting the pricing to compensate for the subsidy and/or tax break.