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DG FISMA
European Commission
Brussels
Belgium

17 March 2016

Dear Sir, Madam,

Green Paper on retail financial services

This is the response of the Financial Services Consumer Panel to the European Commission's Green Paper on retail financial services.

The Consumer Panel is an independent statutory body, which represents the interests of all groups of financial services consumers in the UK. The emphasis of the Panel's work is on activities that are regulated by the Financial Conduct Authority (FCA), although it may also look at the impact on consumers of activities that are not regulated but are related to the FCA's general duties (including the work of the European institutions).

The Panel recognises the tangible benefits that consumers of financial services may derive from greater competition across national borders within the Single Market, widening access and exposing established national providers to increased competitive pressures to increase quality or lower their prices.

We would note the financial services sector is unlike most other consumer markets: its products are complicated and often long-term, and buying an unsuitable product can have devastating consequences for an individual. There are also additional risks to consumers related to currency exchange rates; language barriers when dealing with a foreign provider; and differences in tax or contract law. Another concern arises from passported firms operating across borders, as enforcement standards, and access to compensation and redress, differ markedly between member states. Consumers in countries with well-established compensation and dispute resolution services (ADR) will be averse to buying products from member states with lower standards.

Consumers cannot drive competition as they can in some other markets. There are missing signals about quality in some products (like insurance) or pricing in others (current accounts) that skew the market and create barriers to entry for new players. The large information asymmetries mean that mis-selling is an ever-present risk. Cognitive overload and human bias mean competition within domestic markets

is already a challenge. Initiatives to increase cross-border sales must improve consumer outcomes, rather than complicate them.

The Panel would urge the Commission to look carefully at what constitutes a healthy, competitive market; where domestic markets are already struggling; and what cross-border sales may help, rather than hinder, good consumer outcomes.

Consistent enforcement of EU consumer protection law across member states should be a high priority. Many member states' competent authorities do not even have a consumer protection objective, which is bound to reduce efforts to ensure EU consumer protection legislation is enforced effectively.

The Single Market is one of Europe's most significant achievements, but it cannot be driven by a one-size-fits-all approach. The unique nature of the market for retail financial services requires a cautious, evidence-based approach that can be shown to drive competition that benefits consumers, rather than simply providing the industry with a new source of profit.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Lewis', written in a cursive style.

Sue Lewis
Chair
Financial Services Consumer Panel

Consultation Questions

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

There are several areas within retail financial services that might benefit from a coordinated European response. These include portability of healthcare insurance as a long-term contract. At present many consumers who have health insurance who move from one member state to another find that their existing provider refuses to continue providing cover. Providers in the new member state are likely to restrict the cover for conditions that have arisen since the original policy was taken out. Similarly, people who move between member states would benefit from portable pensions and life assurance. Essentially, any product where the individual rather than their residence is the source of the risk would benefit from portability.

There is also a need for the EU to guarantee effective access to bank accounts, not simply a legal right to request one under the Payment Accounts Directive. People who live in one member state but work in another, or who mainly work in their home state but sometimes work in another, who live in one member state but study in another, or who own property in a member state other than their home state, are all likely to benefit from having the right of access to a bank payment account in another member state.

It is unclear how many consumers across the EU would be likely to choose to purchase products across national borders, unless those products offer additional value. There is a general mistrust of financial services providers, which may be amplified where overseas brands are involved. People may also worry about what will happen if something goes wrong. It may be worth the Commission exploring why there are some brands (for example PayPal) which consumers are willing to engage with across national boundaries, to see whether this can provide lessons for other products.

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

It is more difficult, and expensive, for firms to determine risks for many insurance and credit products across borders. Risks relating to currency exchange, language and differing contract laws across member states are also likely to create barriers.

Additionally, firms' business models may present barriers to cross-border sales. Firms are likely to insist that regulation should change to support the advancement of their chosen business model. For instance, in some countries commission-based sales models are well established. However, removing conflicts of interest, like commission, in financial services would help build the trust necessary for successful cross-border sales. Those firms that espouse commission based sales models are likely to reject this.

Similarly another barrier is where firms have legacy systems and are not agile. However, it may be that given time, competition, innovation, and especially technology, will provide new cross-border business models that serve consumers better than those purported to be essential by incumbents.

From a consumer perspective there are also a number of barriers to doing business with a firm based elsewhere in the EU/EEA. Many consumers find it hard enough to

make the right choices for certain products and services, within their own domestic market. Increased choice, with differing terms and conditions, varying prices and service levels, and potential language barriers, mean that consumers will simply be unable to process the information.

Competition and trust

At the moment, there appears to be little demand from consumers to buy products from other member states. This lack of demand is likely to be a symptom of the lack of trust in the financial services industry.

Trust in providers is already lacking for domestic providers (as shown, for example, by the Commission's own Consumer Markets Scoreboard)¹, and levels of trust are likely to be lower still for unknown brands based outside of a consumer's home Member State. As a starting point, it would be useful for the Commission to consider why competitive forces within domestic markets are not leading consumers to trust the industry, and to consider how introducing new providers may improve that trust.

The Panel also questions the usefulness of the Commission's focus on switching by consumers between providers as a proxy for competition. The nature of financial services makes it unlikely that consumers continuously shop around. Introducing demand side remedies to encourage switching may not improve competition in the market significantly. Moreover, for some financial products (e.g. pet insurance, health insurance) changing provider can lead to consumer detriment. Improving competition in these markets calls for a different approach.

The ability of consumers to exert competitive pressure on the market requires clear and transparent prices and product features: consumers have to be able to choose better value products. This is far from the case in most financial services markets, where prices are opaque within domestic markets, a problem that would be exacerbated by foreign currency exchange rate risk.

Consumer protection

Differences in the scale and scope of consumer protection in different member states also generate barriers. This will be a particular concern for consumers in member states with well-established ADR and compensation schemes. For example, UK consumers lost money depositing cash savings in Icelandic Banks² and buying car insurance sold through Irish providers³, and did not receive the same level of compensation that they would have got if the providers had been based in the UK.

Buying a product from a foreign provider raises the question of after-sales care. In many US states, to be able to transact in one's own language is considered a right. There is consequently a competitive market for providing instant interpreting telephone services. The Commission could consider making it a right to transact in any one of the European official languages to enable equal access, and ensure that consumers are fully informed in their own language.

The Panel believes that the Commission's suggestion for insurance for cross-border creditors would in fact add to costs, which would be passed on to the consumer and thus make offers from providers in another EU country less attractive.

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http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/10_edition/docs/consumer_market_brochure_141027_en.pdf

² <http://www.bbc.co.uk/news/business-21231535>

³ <http://www.rte.ie/news/business/2015/0519/702340-quinn-insurance-pwc/>

However, for consumers the key question is that they need to know where they can obtain redress if things go wrong. Consumer awareness of ADR schemes is limited, as noted in the Commission's Conditions Scoreboard.⁴

In cases of firm failure, harmonised EU-wide protection already exists for all depositors in the EU under the Deposit Guarantee Schemes Directive (DGSD), but the Investor Compensation Schemes Directive needs revision.⁵ Moreover, the Commission shelved proposals for an Insurance Guarantee Schemes Directive⁶ some years ago despite the fact that, in 2009, one third of the entire EEA insurance market was not covered by any compensation scheme in the event of an insurance company going bankrupt.⁷

There are also diverging national practices as regards compensation for mis-selling. The overview of members of FIN-NET shows that most ADR schemes applicable to financial services providers do not have the power to issue a binding decision in favour of the consumer. The UK's Financial Ombudsman Service (FOS) has such a power and is free of charge to consumers, which makes it a cost-effective and efficient alternative to legal proceedings. In many other Member States, binding ADR is not available and compensation can only be awarded with the agreement of the provider. The challenge of having to mount legal action in another member state (and possibly in a foreign language) is likely to deter many consumers across the EU from purchasing financial products cross border.

We believe that cross-border sales of financial products would be significantly improved if there were better ADR and compensation schemes available. In the meantime it would help if product providers were required to clearly state what country's compensation scheme would apply to them.

Proposals for compensation Directives should include the mechanism used in the DGSD that allows consumers to be compensated through their national compensation scheme on behalf of the scheme in the operator's home Member State, rather than having to engage with a foreign compensation scheme directly.

Q3: Can any of these barriers be overcome in the future by digitalisation and innovation in the FinTech sector?

The Panel recognises the potential that digitalisation offers for distributing financial products across the Single Market, but this also poses considerable risks to consumers. Moreover, digitalisation by itself does not address the underlying issues of lack of trust and divergent consumer protection standards.

Digitalisation has already led to more products being available online at the touch of a few buttons. However, the Panel would like to stress that ease of purchase does not always mean consumers have access to a greater range of products, or that these products are necessarily cheaper.

⁴http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/11_edition/docs/ccs2015scoreboard_en.pdf

⁵ https://www.fs-cp.org.uk/sites/default/files/letter_to_ec_on_icsd.pdf

⁶ In the UK, the Financial Services Compensation Scheme has a number of different compensation limits for different types of insurance: <http://www.fscs.org.uk/what-we-cover/eligibility-rules/compensation-limits/insurance-limits>, but the minimum is 90% of the claim with no upper limit.

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Digitalisation carries the risk of reducing consumer protection, as consumers purchasing financial products digitally generally do so without the benefit of advice and must take on sole responsibility for the choice they make.

This does not pose a problem for informed and knowledgeable consumers, or in the case of very straightforward products, but in most cases consumers do not understand the low level of protection afforded to them when they make an execution-only online purchase.

The Panel accepts that digitalisation can offer some customers enhanced access, especially where the products or services involved are straightforward, non-complex and readily understood. In particular, online retail banking has potential for reducing costs and improving competition, although of course these services are, by definition, inaccessible to people who do not have access to the internet. The E-Money Directive already allows for cross-border cash management services.

As regards the online distribution of investment products, we would argue that sales commission undermines trust and increases opportunity for exploitation of the consumer. We urge the Commission to consider whether commission-based services should be phased out altogether, in order to ensure all markets are transparent and consumers can receive unbiased advice.

In the Discussion Paper⁸ on automation in financial advice, the ESAs note that the increasing digitalisation of financial services could potentially change the way consumers and financial institutions interact.

As regards cross-border distribution of investment products via online platforms, there are variations in the compensation available in the event of firm failure. For example, the UK's Financial Services Compensation Scheme (FSCS) can compensate up to a maximum of £50,000 (€70,000), far more than the minimum of €20,000 mandated by the 1997 Investor Compensation Schemes Directive. Other member states also have schemes that can compensate above the minimum. These differences potentially create a disincentive to buy products from a member state with lower levels of investor protection than the consumer's home state.

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

Measures need to be in place to ensure that products and services are still available through offline channels, for example through local branches. The Payment Accounts Directive contains a good example of such a policy; article 16(1), dealing with access to basic bank accounts, states that "Member States shall ensure that payment accounts with basic features are not only offered by credit institutions that provide payment accounts with solely online facilities."

The use of Big Data is a key risk as data collection and manipulation creates the possibility of very detailed risk profiling and targeting which will exclude those consumers perceived as less valuable or inherently risky.

Digitalisation could help to promote inclusion, by allowing those people who care for vulnerable customers easier ways to support them and manage their finances.

⁸ https://www.eba.europa.eu/news-press/calendar?p_p_id=8&_8_struts_action=%2Fcalendar%2Fview_event&_8_eventId=1299860

However, the Commission needs to consider what role firms will need to play to ensure social as well as economic outcomes are achieved through cross-border trade.

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 key consideration is whether the product or service sold is suitable for the consumer, irrespective of the delivery channel. It is important to ensure that the regulatory standards expected of intermediation (whether relating to securities, insurance or banking products) are applied to online business models in the same way they are applied to traditional distribution methods.

Peer-to-Peer lending is a fast growing market and digital business models could mean an increase in cross border purchases. Although they were not offering loans in the UK, Swedish-based P2P lender Trustbuddy advertised on a UK comparison website. This told consumers to “Expect a minimum 12% return per annum”. In October 2015, whilst in the middle of a rights issue, Trustbuddy announced that it had been using lenders’ capital to fund itself and now faced a £3.5 million shortfall. This is an example of cross-border sale that does not build trust, increases risk for consumers and certainly does not offer ‘better choice’.

We believe that consumers are not generally aware that firms use personal data such as that gained from social media activity to make decisions about the price and availability of financial products, and even sell it to third parties. Given the significant adverse impact re-purposing of personal data could have on consumers’ ability to access financial services, the Panel believes that the use of ‘big data’ by providers should be subject to the consumer’s explicit consent. We also believe that this consent should not extend – nor be required to extend - beyond the immediate product sale. That is, the provision of a product or service should not be conditional on the consumer allowing their data to be retained and used by the firm for other purposes.

Q6: Do customers have access to safe, simple and understandable financial products throughout the European Union? If not, what could be done to allow this access?

The Panel strongly supports efforts to increase consumers’ access to financial products that are easy to understand in terms of features, benefits, costs and risks. However, the issue here is not one of widening access: rather, it is a lack of supply-side interest in making such products available in the first place, whether domestically or cross-border.

Much work has already been undertaken in the UK on developing simple financial products. The Sandler Review⁹ in 2001 called for a range of “stakeholder” savings products that were simple, low-cost and risk-controlled, including a medium-term investment product.¹⁰

Simple products will not work without regulatory intervention. The sales of stakeholder pensions transformed the market, widening access and reducing costs. When they were introduced, stakeholder pensions had controlled charges. There was

⁹ Ron Sandler, ‘Medium and Long-Term Retail Savings in the UK’, 2001

¹⁰[http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/Sandler_Consultation\(240Kb\).pdf](http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/Sandler_Consultation(240Kb).pdf)

also a rule, known as RU64, that required advisors to explain to a customer, in writing, why the personal pension they were recommending was at least as suitable as a stakeholder pension. Given that few other personal pensions had any additional value that advisers could explain, the prices of personal pension products dropped in line with stakeholder pensions. This was a clear benefit of introducing the simple stakeholder product and the RU64 rule provided an important consumer protection tool.

The UK has also pursued other schemes to bring more simple financial products to the market. Following the Sergeant Review¹¹ in 2013, the Government launched a “Simple Products” initiative¹², a voluntary certification scheme to tackle the problems consumers face when buying financial products. However, to date only one product (a fixed-term life insurance policy) has received certification.

We believe the Commission would find it helpful to examine these reviews in detail, because the success of simple financial products relies on the willingness of the industry to develop and market them. Experience tells us that firms will only produce and market these products if there is a regulatory requirement to do so: firms will not do this voluntarily.

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

Yes. The Panel has had long-standing concerns about the disparity in the supervisory approaches in different Member States. The authorisation process for firms engaged in activities covered by Single Market Directives – which under passporting rules allows them to market their services across the Single Market – does not appear to be equally stringent in every Member State.

This enables less scrupulous firms to seek authorisation in a Member State where the process is less strict and simply passport into markets in other Member States where authorisation would not have been granted. Similarly, in absence of mandatory exchange of information on enforcement activity against a firm between national regulators, consumers in one Member State are unlikely to be aware of the misconduct of a firm in another country.

The Panel believes that a wholesale review of the passporting regime is needed in order to establish whether, and, if so, to what extent, firms are using passporting to circumvent stricter authorisation procedures. This should include an assessment of the resources available to each national competent authority.

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

Consumers need to be able to access products that meet their individual needs. The Commission should consider how consumers would make sense of a cross-border market. Simply increasing choice in a market does not lead to more competition on

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191721/sergeant_review_simple_products_final_report.pdf

¹² <https://www.gov.uk/government/news/simple-financial-products-a-step-closer>

its own. In order to exercise market power, consumers must be able to assess the market, and to choose better value products and services. Assessing the market is already a challenge in individual member states, one that would be exacerbated by new offerings and cross-border trade.

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

If cross-border sales are to work, it is important that consumers are aware that they are entering into a cross-border sale and that the protection afforded may be higher or lower. In the first instance regulators should be able to show clearly on their public registers of firms those firms that are not based in the home state. They should also be required to state clearly the level of redress and compensation available and the nature of the ADR – whether it is binding or not. Provided in an authoritative and objective way, this information can then be used by comparison sites or media to raise awareness of deals.

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

The Commission should give thought to developing an international qualification for intermediaries to facilitate cross-border advice, which is likely to grow as a complex area in its own right.

Commission should be banned for cross-border sales to avoid conflicts of interest and mis-selling. This would increase trust in intermediaries and products from other member states.

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

Consumers need to be able to access products that meet their individual needs. The Commission should consider how consumers would make sense of a cross-border market. Simply increasing choice in a market does not lead to more competition on its own. In order to exercise market power, consumers must be able to assess the market. Assessing the market is already a challenge in individual member states, one that would be exacerbated by new offerings and cross-border trade.

In future, technology may help consumers assess the market by, in effect, assessing it for them. However, this relies on high quality data input. At present there are swathes of information about product quality that are 'hidden'. For instance, insurance comparison tables focus on price but do not give any information on quality, for example, how well the firm's claims process works for consumers.

In research undertaken by the Panel¹³ consumers noted that they would be interested in knowing the average call waiting time, whether call centres were located in the UK etc. All this information is currently unpublished.

Technology will allow far more variables to be considered in financial decision-making – more than a consumer could possibly do now. However, unless firms are required

¹³ https://www.fs-cp.org.uk/sites/default/files/consumers_as_co-regulators_final_0.pdf

to publish data on value metrics that consumers can understand and use, consumers will not be able to make informed decisions about providers, which will hinder competition. It is not in the interests of a single firm to do this, so the Commission should consider its role in driving this kind of transparency. If cross-border trade is to be effective it simply must address the issue of consumers' ability to assess the market.

Competition relies to a degree on consumers demanding better, cheaper products through switching. However, switching in itself is not proof of a well-functioning market and it should not be seen either as an objective nor a panacea. Demand-side solutions which require consumers to take action, such as switching, have had limited effectiveness on competition in other markets. A market with too much emphasis on switching does not incentivise firms to reward loyalty; instead, as has happened in the past, providers of retail financial services may only offer improved interest rates or services to new customers or exploit inertia by significantly increasing insurance premiums year after year.

Where consumers want to switch it should be easy. The Commission should consider standards to ensure that consumers are not subject to onerous switching processes which expose them to risk or loss. There should be clear time limits for switching appropriate to the product. Firms should take responsibility for ensuring the switch goes smoothly and all aspects of the product are switched. Liability for loss should fall to the firms.

All in all, creating competition in financial markets at a domestic level is challenging; taking the challenge cross-border needs considerable analysis. Digitalisation can bring new opportunities but individual firms will need a push from domestic regulators to direct investment into helping consumers assess and switch providers. And the Commission will need to think about what information consumers really need to make an informed decision about products and providers and how it will ensure this information is made publicly available and used.

More information about service quality would increase trust, which would help firms with the onset of big data and the increasing use of algorithms. Technology like this is impossible for consumers to assess for integrity and as such they will be required to trust firms more – not less. Making public information that is understandable – like complaints data, claims ratios, location of call centres etc. – will help to rebalance trust and power in the market.

Comparison tables can help consumers make decisions but they need to be truly independent with no commercial relationships, and it should be possible to compare products on a single page without advertisements. Consideration must be given to how tables incorporate all signals clearly and are not skewed just by price. In future, when technology is able to help assess the market for the consumer, the Commission will need to consider data input, standards for assessment and the quality of algorithms underpinning such services.

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

The Panel has noted the World Bank target to reduce fees to a global average of 5% by 2020. When the sums of money being transferred are often relatively small, this is still a considerable amount to pay in fees.

Regulatory authorities often regard cross-border payments as being at greater risk of money laundering. Compliance with anti-money laundering requirements adds to costs, and firms may take a very risk-averse interpretation of the rules. We believe it is in the interests of consumers for there to be safe, simple and cheap processes for transmitting small sums (say up to 1,000 Euros).

New services like Transferwise are solving the problem of making transfers at an affordable rate, which shows that this is possible. The Commission should consider monitoring this emerging market, and its impact on consumers.

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

No comment

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

Where location of residence is itself a risk factor (e.g. for floods or avalanches) then such discrimination can be justified, but where the person (or family) is the insured unit, then location anywhere within the EU should be treated the same way as location within a domestic market.

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

Any product where the individual rather than their residence is the source of the risk would benefit from portability. This would be particularly valuable for EU citizens who move between Member States on a temporary or permanent basis.

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

The Panel has no comment on how such access might be facilitated, but cross-border recognition of PII is likely to entail costs that will be passed onto the consumer, making cross-border offerings more expensive and therefore less attractive.

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

Yes, but the appropriate measures for consumer decision making need to be identified. We support the introduction of an open Application Programming Interfaces (API) standard that would allow consumers to access their information simply. Banks should be required to implement this standard as soon as possible.

As we note above, the Commission needs to give consideration to how people 'assess' the market and the role it could play in requiring firms to publish 'hidden' service quality data in a way which would enable consumers to make informed decisions. This will be particularly important as technology allows services to develop which will in effect, assess the market for a consumer. Availability of data to enable good assessments will be necessary and technology will provide the capacity

for all data to be considered in a way which is not currently possible with the limitations of a comparison table or human processing capability.

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

The Panel considers it unlikely that many consumers will actively search for information on the applicable alternative dispute resolution service if they have a dispute with a firm based outside their home Member State. Moreover, the fragmented nature of ADR in some Member States (for example Germany) makes it unlikely that the consumer would know which scheme to contact.

It should be the responsibility of the firm to inform the customer of the applicable scheme and to highlight the existence of the Online Dispute Resolution platform for cross-border consumer-business disputes. Firms should tell consumers prior to sale that the powers of the applicable ADR scheme may not be the same as those of their domestic ADR provider.

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

Diverging national practices as regards compensation for mis-selling is a barrier to increased cross-border transactions for retail financial services. This will notably be a concern for consumers in Member States with well-established and well-known dispute resolution schemes, such as the UK's Financial Ombudsman Service (FOS).

The overview of members of FIN-NET shows that most alternative dispute resolution schemes applicable to financial services providers do not have the power to issue a binding decision in favour of the consumer who lodged a complaint. In contrast, the FOS has such a power and is free of charge to consumers, which makes it a cost-effective and efficient alternative to legal proceedings. In many other Member States, such an alternative is not available and compensation can only be awarded with the agreement of the provider.

The Panel remains of the opinion that cross-border sales of financial products would be significantly improved were there better compensation schemes available. As we say above, harmonised EU-wide protection already exists for all depositors in the EU under the Deposit Guarantee Schemes Directive (DGSD), but the Investor Compensation Schemes Directive needs revision.¹⁴ Moreover, the Commission shelved proposals for an Insurance Guarantee Schemes Directive¹⁵ some years ago despite the fact that, in 2009, one third of the entire EEA insurance market was not covered by any compensation scheme in the event of an insurance company going bankrupt.¹⁶

¹⁴ https://www.fs-cp.org.uk/sites/default/files/letter_to_ec_on_icsd.pdf

¹⁵ In the UK, the Financial Services Compensation Scheme has a number of different compensation limits for different types of insurance: <http://www.fscs.org.uk/what-we-cover/eligibility-rules/compensation-limits/insurance-limits>, but the minimum is 90% of the claim with no upper limit.

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

It is unclear why the Commission is only considering victims of car accidents. Insolvent insurance companies can pose risks to other claimants also. For example, people whose houses burn down would also be at risk.

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

The portability of insurance products can be useful; an annual car rental excess indemnity policy that is portable, for example, can work out far less than individual policies taken out at time of rental.

In the UK, the FCA carried out a general insurance add-ons market study¹⁷ which confirmed that selling a product as an add-on often led to consumers purchasing products of poor value and not what they needed. “Optional extras, such as separate baggage cover on a travel policy, or accidental damage on a home insurance policy are optional additional products. They are insurance products purchased in connection with the primary product and customers can be defaulted into the purchase without their knowledge.

The FCA has proposed banning opt-out selling and improving information provided to customers buying add-ons. It is designed to improve competition in the market around add-on sales and prevent the exploitation of customer biases.

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

No comment

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?

The Panel’s main concern regarding the implementation of AML legislation is the adverse impact on some consumers of financial institutions’ interpretations of their responsibilities under AML rules.

We would like to focus, specifically, on two issues: how firms deal with suspicions of financial crime, and what requirements there are for banks to treat their customers fairly until fraudulent activity can be proven. There are risks with both issues that financial institutions focus on protecting their own positions under AML rules rather than treating their customers fairly. We understand that there are significant challenges to firms in this regard but feel that more could be done to minimise the impacts on customers.

Regulatory authorities often consider cross-border payments as being at greater risk of money laundering. However, AML rules should not lead to unfair treatment of

¹⁷ <http://www.fca.org.uk/news/general-insurance-add-ons-market-study>

consumers who have legitimate needs to make international transfers. For consumers, the reputational damage of being wrongly suspected of criminal activity is very significant and the withdrawal of banking and other financial services is very damaging.

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

No comment

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

The Panel believes that data collected for assessing creditworthiness should be no more than is necessary. In a 2015 paper, the Financial Services User Group found no evidence that increased credit data availability has helped to prevent over-indebtedness, supported prudential regulation or facilitated access to affordable credit. The FSUG did conclude, however, that individual risk-based pricing has led to new forms of discrimination.¹⁸

In light of this, we believe that firms need to explain and justify the information they use. Firms should provide a summary of what information was collected, how it was assessed and what conclusions they drew from it, including how risky they deemed the individual. Firms should then be able to explain how the cost of credit relates to those risks. This will help consumers understand how they can improve their scoring and give them control over their data.

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

The Panel believes that insurers' increased use of personal data to inform risk and pricing strategies requires careful consideration as 'Big Data' may increase access for some groups of consumers while restricting it for others.

Use of personal data offers firms opportunities for increasingly individualised risk assessments, which would have a significant impact on risk pooling and individual premiums. In the longer term, the use of Big Data could, for example, fundamentally alter the current structure of the insurance industry, as the pooling of risk would reduce significantly. This potential demutualisation of risk will affect different segments of the market in different ways.

The use of individualised micro risk assessments means that some people are likely not to be served at all. Others will pay much higher premiums. Conversely of course, some consumers should pay lower premiums because their individual risk, or the average risk in their pool, is lower.

Equally, some individuals in high risk groups – for example young drivers or elderly travellers – may be able to get affordable insurance if their individual risk profile is much lower than the average for the group. Demutualisation is a policy issue, and the Commission should consider current practice across the EU and in third countries

¹⁸ http://ec.europa.eu/finance/finservices-retail/docs/fsug/papers/1512-credit-data_en.pdf

to establish when and under which conditions policymakers have concluded that a degree of mutualisation is socially desirable.

There are further risks to consumers. Big Data could enable firms to use information about (potential) customers that is not risk-related to “optimise” their premium, by estimating more accurately the price increase the consumer will put up with before they switch to a different provider. Similarly, data on individual customers’ propensity to shop around could be used to inflate prices for loyal customers.¹⁹

Last, there is the issue of ownership of personal data. It is not clear that consumers are generally aware that personal data such as that gained from social media activity is being used to make decisions about the price and availability of financial products, and even sold to third parties.

The UK’s Information Commissioner’s Office (ICO) has said that further processing of personal data for new purposes may be permissible under the ‘legitimate interests condition’ if it is “necessary for the legitimate interests of the data controller (or a third party), unless there is unwarranted prejudice to the rights, freedoms and legitimate interest of the data subject”.

However, according to the ICO, such re-purposing is “unlikely to be either fair or compatible” with the 1995 Data Protection Directive if, for example, “information that people have put on social media is going to be used to assess their health risks or their credit worthiness (...) unless they are informed of this and asked to give their consent”.²⁰

Given the significant adverse impact re-purposing of personal data could have on consumers’ ability to access financial products, the Panel believes that the use of personal data to calculate creditworthiness should be subject to the consumer’s explicit consent. In particular, the request for consent should be clear and explicit, and not ‘buried’ within a long list of terms and conditions.

It would be preferable for consumers to own their data and be able to ‘plug’ this into new providers and ‘unplug’ it at will. It would be helpful for the Commission to consider what regulatory barriers there are to this.

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

No comment

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

Providing post-sales support (e.g. managing claims) is an essential part of a product. If a firm can’t provide this to the consumer in a way they can understand, it is not selling the product in a fair way. As we say above, the Commission could help

¹⁹ The issue of price optimisation has already received significant attention in the United States. See for example, Consumer Federation of America & Center for Economic Justice, “Comments on CASTF’s Draft Price Optimization White Paper” (June 2015)

²⁰ Information Commissioner’s Office (July 2014), “Big data and data protection”, page 22.

consumers by making it a right to transact in any one of the European official languages to enable equal access, and ensure that consumers are fully informed in their own language.

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

The Panel is not convinced that there is a strong consumer case for lenders to provide mortgages or loans cross-border where the member states concerned use different currencies. The recent problems surrounding mortgages denominated in Swiss francs sold through banks in Cyprus shows the dangers of cross-border lending where the amount to be repaid is subject to currency exchange risks. Consumers within the Eurozone might welcome greater availability of such loans, but we do not have any direct evidence of this.

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

No comment

31. What steps would be most helpful to make it easy for businesses to take advantage of the freedom of establishment or the freedom of provision of services for innovative products (such as streamlined cooperation between home and host supervisors)?

Given that the Panel has significant concerns about the way the EU's passporting regime works at present, we do not believe there should be any initiatives to facilitate entrance into host Member States' markets further. However, we would welcome more streamlined cooperation between home and host supervisors.

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

Product standardisation, in particular where the Commission envisages a simplification of existing complex products, would be a good step but efforts in the UK show that it is difficult to generate supply for simple products due to lower profit margins.

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

No comment