



**The Financial Conduct Authority's response to  
the European Commission Green Paper: *Retail  
Financial Services***

## **Introduction**

The Financial Conduct Authority (FCA) is pleased to respond to the Commission's Green Paper on Retail Financial Services, and we welcome the opportunity to put forward our views. The Green Paper's aim to work towards improving choice, transparency and competition in retail financial services for the benefit of European consumers is one we recognise as valuable. The focus on the opportunities that the digitalisation of services may bring is also timely.

We regulate firms and individuals that advise on, sell and arrange retail financial products and services including bank accounts, investment products, mortgages, insurance and some pension schemes. As such, we are also mindful of the very diverse products and services, consumer needs, and levels of access across and within Member States at the present time.

This response is therefore intended to support the Commission in taking proportionate, well-advised and effective next steps which will genuinely benefit consumers. In it, we set out overarching issues which we believe require greater understanding and research in order to determine whether, and where, further Commission action is required to achieve the goal of greater cross-border trade in retail financial services. We also give more detailed responses to the specific questions listed in the Green Paper.

We look forward to further opportunities to work with the Commission as it considers responses to the Green Paper and develops future plans.

## **Overarching issues**

### **Already agreed measures**

Many of the questions and issues raised in the course of the Green Paper may well be addressed (either wholly or in part) through the implementation and 'bedding down' of various already agreed EU measures. We therefore think it is important for the Commission to monitor and assess how far this implementation addresses issues raised, and what potential gaps and challenges then remain. The agreed measures we have in mind are primarily: Markets in Financial Instruments Directive (MiFID II)/ Markets in Financial Instruments Regulation (MiFIR), the Mortgage Credit Directive (MCD), the revised Payment Services Directive (PSD II), the Insurance Distribution Directive (IDD), the Payment Accounts Directive (PAD), and the Regulation on Packaged Retail and Insurance-based Investment Products (PRIIPs). All of this legislation is highly relevant.

### **Disclosure**

Recent FCA research has shown that poorly designed disclosure can be counter-productive as well as being an expensive intervention for firms and consumers.<sup>1</sup> We would strongly support disclosure measures being developed on the basis of a deeper understanding of consumer behaviour, and how consumers access, assess and act on information, which will vary depending on the product or service under consideration.

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<sup>1</sup> FCA DP15/5: *Smarter Consumer Communications* <http://www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms-index.html>

### **Lack of certainty over application of the rules**

Inconsistent application and enforcement of standards persists across the EU, with detrimental effects on firm and consumer confidence. Ongoing work within the European Supervisory Authorities (ESAs) to achieve convergence of supervisory outcomes should help to tackle this uncertainty.

### **Collaboration for innovation**

It is important to consider the opportunities offered by the increasing digitalisation of services. We have found within our own experience (through 'Project Innovate') that collaborative working between the regulator with new and incumbent firms at the early stages of their development of innovative services has helped to ensure that consumer protections are factored into their product design.<sup>2</sup>

### **Risks to the consumer**

Whilst reducing barriers to cross-border trade in retail financial services can bring benefits to the consumer, it is important to recognise the risks. Careful impact assessment of any new actions in line with the Better Regulation agenda, which takes a view on the consumer perspective and journey, will be required in order to better understand such risks. The assessment should focus attention on the impacts for different consumer groups, for example vulnerable consumers and the digitally excluded, take into account diversity across Member States, and recognise where an existing system is working well.

### **Lack of familiarity**

Many existing barriers to cross-border trade in retail financial services reflect a lack of familiarity with products or providers from another Member State. This is also a concern within domestic markets, and is by nature a social and cultural matter. In addition, there is also the known behavioural issue of home bias (for example UK consumers prefer to invest in FTSE rather than DAX). Should the Commission seek to support consumers in overcoming such complex demand-side barriers, it will initially require a detailed understanding of consumer behaviour and needs.

### **Diversity of consumers**

Consumers are a very heterogeneous constituency within Member State borders and almost certainly across them. Their needs, preferences and their access to products and services vary widely across the EU. It is therefore difficult to make a case for new 'one size fits all' solutions, as in some Member States consumers already benefit from access to and provision of a significant range of products and services. Therefore, as the Commission takes forward next steps these must be founded on an understanding of the existing landscape and the diversity of the consumer population.

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<sup>2</sup> <https://innovate.fca.org.uk/>

## Summary of response

The remainder of this cover note provides a summary of our response to specific questions in the Green Paper using the headings listed therein.

### **Better products, more choice and greater opportunities for consumers and businesses**

Engaged and informed consumers play an essential role in competitive markets. Whilst access to products and services varies across the EU, consumers already benefit from significant choice within the UK and many other Member States. However, evidence suggests that UK consumers lack trust and confidence in buying cross-border products or services.<sup>3</sup> For competition to thrive in financial services, consumers need to trust the firms they buy from and be confident that there are appropriate safeguards if things go wrong. Armed with this confidence, and with the right information at the right time, consumers have a platform to exercise meaningful choice, driving competition and value. The drivers of trust and confidence are by their very nature social and cultural, and require further research and analysis through a behavioural economics lens in order to better understand consumer needs and decision-making.<sup>4</sup> In particular, collaborative, cross-national research would provide useful insights. This might lead to solutions that challenge the status-quo, for example reducing the amount of information consumers receive, but the aim should be to help put consumers in a position to stimulate effective competition between firms.

Deeper understanding of these factors could also help to develop a view on which products may be good candidates for cross-border supply, thus driving up competition through sustainable entry of new firms and innovative new products and services. Similarly, this kind of analysis could support the Commission in harnessing and understanding the possibilities of digitalisation, which has the potential to be of significant benefit to consumers.

Additionally, the consistent application of existing rules (including those currently being implemented) should help improve firm and consumer confidence to buy and sell products and services cross-border, potentially increasing choice and competition. More consistent supervision within the current framework would help dispel any uncertainty over different standards or quality of enforcement as well as prevent firms exploiting differences in standards to the detriment of consumers. We support the role of the ESAs in promoting such consistency.

### **Helping consumers to buy financial products cross-border**

In a competitive market consumers are able to select financial products with confidence and trust. Disclosure and transparency rules are clearly a critical factor in this. There has been considerable action already from the Commission in relation to standardised disclosure for products which should support comparability. However, it is important that consumers are effectively informed and therefore disclosure should also focus on how consumers access, assess and act on information. The FCA has recently conducted

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<sup>3</sup> [http://www.fsa.gov.uk/pubs/international/yougov\\_report.pdf](http://www.fsa.gov.uk/pubs/international/yougov_report.pdf)

<sup>4</sup> Behavioural economics being a field of study which seeks to examine the effects of social, emotional, psychological and cognitive factors on the economic decisions of individuals and institutions.

research on smarter disclosure,<sup>5</sup> and with any future action in this area we would strongly support disclosure measures being developed with a genuine understanding of consumer behaviour. Furthermore, as we have explained in some detail in our response to the Commission's recent Call for Evidence on the EU Regulatory Framework for Financial Services,<sup>6</sup> we believe that there is scope to review the coherence and cumulative effectiveness of existing EU disclosure obligations. Any such exercise should take into account the need to future-proof legislation.

Similarly, that consumers understand their redress rights is key in ensuring that they can feel confident and make informed decisions. In the UK we have a long-standing alternative dispute resolution (ADR) mechanism in place for complaints about most financial services, the Financial Ombudsman Service (FOS), and a statutory fund of last resort, the Financial Services Compensation Scheme (FSCS)<sup>7</sup>. The FSCS can provide compensation to customers of authorised financial services firms when a firm is unable or likely to be unable to meet the costs itself and specifically can protect deposits, investment business, home finance mediation, insurance policies, and insurance broking. We believe that greater consistency across Europe for ombudsman schemes and compensation schemes, building on what has already been done, would be a positive step for consumer protection and will help to support the Commission's agenda of creating a fairer single market. This could be achieved by, for example, considering the need for action on insurance guarantee schemes.

With regard to increasing access to information, whilst we would suggest that it is not the function of the regulator to identify the products or services that are available in other Member States (unless problems are identified), digital technology as a channel will potentially reach the highest number of consumers in the UK. However, 'non users' of the internet in the UK currently number approximately 8.6 million (16% of the population).<sup>8</sup> This is a simple reflection of the diversity of the consumer population in one Member State, and would indicate in turn that a single channel to raise awareness across the EU is an unlikely solution.

In addition, there may be some more specific barriers in particular sectors which discourage consumers from buying cross-border, for example a foreign currency barrier for consumers who take on extra risk when investing or receiving payments in a foreign currency. Fees for cross-border sales (including those related to currency conversions) may also dissuade consumers from buying products from a provider in a Member State with a different currency. Consumers should be made aware of any additional charges and also risks from this kind of purchase in a way that allows them to effectively assess and act on the information. Encouraging meaningful and engaging information on costs

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<sup>5</sup> FCA DP15/5: Smarter Consumer Communications <http://www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms-index.html>; FCA Occasional Paper No. 10: Message received? The impact of annual summaries, text alerts and mobile apps on consumer banking behaviour <http://www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-10>; Occasional Paper 9: Two plus two makes five? Survey evidence that investors overvalue structured deposits <http://www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-9>

<sup>6</sup> FCA, FCA response to the European Commission's call for evidence on the EU regulatory framework for financial services <https://www.fca.org.uk/your-fca/documents/eu-regulatory-framework-call-for-evidence>  
<sup>7</sup> <http://www.fscs.org.uk/what-we-cover/about-us/>

<sup>8</sup> Office for National Statistics, Internet users: 2015 – Adults who have not used the internet in the last 3 months, including adults who have never used the internet <http://www.ons.gov.uk/ons/rel/rdit2/internet-users/2015/stb-ia-2015.html>

for remittance may help to increase transparency of costs and drive consumer choice and competition.

With regard to buying insurance products cross-border, further EU-wide analysis of the consumer risks attached to 'add-on'/ ancillary products would provide insights of use to consumers in supporting informed decision making and comparability. The FCA has conducted some work in this area focused on UK consumers.<sup>9</sup>

### **Creating new market opportunities for suppliers**

Innovation is a key driver for competitive financial markets that work well for consumers. Digitalisation is at the core of many innovative solutions currently in financial services and presents significant opportunities, as well as some challenges. We know that firms are keen to utilise digital technology to simplify transactions and reduce the burden that physical identification/ verification presents. However, for new technology such as e-ID and e-signatures to become more widely accepted and used there needs to be greater collaboration across government, regulators and industry. Recent FCA experience has shown the benefit of working with new firms or those wishing to use innovative technology to build an understanding of consumer protection issues from the start. Additionally, the Commission may wish to consider reviewing the implementation and uptake of the Electronic Identification and Trust Services (eIDAS) Regulation before considering further action in this area.

As far as legislation is concerned, a key point is that it should not stifle innovation, be technology neutral as far as possible, and accommodate legitimate current and future technological developments. For example, the FCA has recently committed to working with HM Treasury and industry representatives on the UK's Joint Money Laundering Steering Group (JMLSG) to ensure that the Fourth Money Laundering Directive (4MLD) is implemented in a way that does not inhibit the use of innovative customer due diligence solutions.<sup>10</sup>

In an increasingly digital world, personal data may be easier for firms to capture and use. The most important issue here is to secure a balance between the standards needed to protect consumers and firms (including within applicable data protection frameworks), and the flexibility needed to encourage future innovation which may offer improved and more secure solutions to current concerns, challenges and consumer needs. We support the various pieces of work being led by the ESAs to explore these issues in more depth; work in which we are involved.

With regard to the benefits of opt-in regimes (that is to say the concept of '29th regimes'), these may be effective if they focus on markets where consumers do not have a diverse choice of retail financial products. These regimes could work because they bypass the need to overcome differences in already existing regimes, instead focusing on offering a standardised alternative product for consumers and an accompanying regulatory regime.

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<sup>9</sup> FCA, MS14/: *General Insurance Add-Ons: Final Report – Confirmed Findings of the Market Study*  
<https://www.fca.org.uk/news/general-insurance-add-ons-market-study>

<sup>10</sup> FCA, FS16/2: *Feedback Statement on Call for Input: Regulatory barriers to innovation in digital and mobile solutions* <https://www.fca.org.uk/news/fs16-02-regulatory-barriers-to-innovation-in-digital-and-mobile-solutions>

## Priorities for action

Taking into account the points raised above, we set out a number of actions below which we believe are early priorities as the Commission takes forward work in this area.

### **Further research into consumer diversity and behaviour**

Cross-national comparative research on the heterogeneity of consumers is currently lacking. Filling this gap would provide a valuable foundation on which to build the Commission's retail financial services agenda. Insights from behavioural economics would be of particular use, and they can help us to understand why consumers make the choices they do, and better appreciate their needs, views and biases.<sup>11</sup> Recent FCA research has developed a consumer segmentation model which identifies 10 types of consumer. This helps us to identify the risks that different kinds of consumer face when dealing with financial services. By breaking the UK population down this way, we can provide more focused and relevant communications rather than taking a 'one size fits all' approach.<sup>12</sup>

### **Strategy to address large price differences**

This could be developed in relation to the high price dispersion of similar services in different Member States which imply a combination of economic rents, structural rigidities and legal impediments to markets. We would recommend the Commission could learn from action in other sectors such as air-fares, with the aim of lowering costs for end consumers. A strategy could be formulated based on: identifying those markets with the largest price differences, prioritising two or three of these and undertaking analytical work to identify the core barriers, and working to develop measures which might remove the barriers. In following this approach it is important to recognise detailed harmonising law may not address the reasons for high price dispersion, is likely to generate costs, and may act as an obstacle to new entrants.

### **Review of existing disclosure requirements**

A review of this kind could help to understand whether and how they might be better aligned across multiple pieces of legislation. As a result of the way in which EU legislation has developed, in some areas the same or similar information may be required to be disclosed more than once, or requirements may result in information being reported in a way which does not provide effective oversight or added value for consumers. A review to understand the scope for rationalisation or simplification of certain requirements would be beneficial, for example the Distance Marketing Directive cites 'floppy disks' as a durable medium. The FCA covered this point in more detail in our response to the Commission's recent Call for Evidence on the EU Regulatory Framework for Financial Services.<sup>13</sup>

### **Consumer awareness of charges for transactions in a foreign currency**

Consumers should be made aware of any additional charges and also risks arising from buying products from a provider in a country with a different currency. Encouraging

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<sup>11</sup> FCA, *Occasional Paper 1: Applying Behavioural Economics at the Financial Conduct Authority* <http://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-1.pdf>

<sup>12</sup> <http://www.fca.org.uk/news/consumer-spotlight>

<sup>13</sup> FCA, *The Financial Conduct Authority's Response to the European Commission's call for evidence on the EU regulatory framework for financial services* <https://www.fca.org.uk/static/fca/documents/eu-regulatory-framework-call-for-evidence-response.pdf>

meaningful and engaging information on remittance costs could help to drive consumer choice and competition.

### **Opt-in regimes**

To ensure maximum effectiveness future work on opt-in regimes should focus on markets where consumers do not already have a diverse choice of retail financial products.

### **Conclusion**

We hope that this response will prove useful, and are keen to discuss the points raised within and others in more detail with the Commission as this initiative progresses.



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

We would not single out any particular products here. Healthy competition which is in the interests of consumers is a vital part of a functioning market. In our role as regulator the FCA has a statutory obligation to promote competition, and in all our work in this area we focus on the benefits to consumers of competition, including better value, genuine choice, quality products and services, and useful innovation in financial services.

In principle, improved cross-border supply can contribute to enhanced competition, and hence better choice and price, but the extent to which this is feasible is likely to depend upon the individual financial products and customer base.

Whilst fundamental issues like tax regimes may make some products more difficult to launch cross-border, for any and all cross-border financial products, driving up competition rests upon supply and demand side issues. On the demand side, having informed consumers who trust suppliers and feel confident that appropriate safeguards are in place in case things go wrong.

Attention to supply side barriers is likely also to have a significant impact in encouraging cross-border supply (though this may differ for small countries or border areas). Therefore, it is important to address supply-side barriers such as the high price dispersion for similar services in different Member States. A strategy to address large price differences as suggested above would be more effective than new, detailed harmonising regulation, which may itself act as an obstacle to new entrants, and may not address the reasons for high price dispersion. More regulation may simply entrench these obstacles behind higher regulatory barriers.

**Q2. What are the barriers which prevent firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border?**

For competition to thrive in financial services you need active and empowered consumers, healthy rivalry between firms (incumbents and challengers) and market features (including the regulatory framework) that do not hinder, prevent or distort competition. Consumers need to trust the firms they buy from and be confident that there are appropriate safeguards if things go wrong. Armed with this confidence, and with appropriate information, consumers can exercise meaningful choice, driving competition and value. There are a number of barriers which we believe hinder cross border financial services and which could prevent markets from working well. Several of these fall into the category of demand-side barriers, largely relating to consumer knowledge of and trust in unfamiliar providers, but we would also point to some significant supply-side barriers.

With regard to demand, research carried out by YouGov on behalf of the FSA in 2010<sup>14</sup> indicated that concerns about different consumer protection regimes and compensation

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<sup>14</sup> [http://www.fsa.gov.uk/pubs/international/yougov\\_report.pdf](http://www.fsa.gov.uk/pubs/international/yougov_report.pdf)

arrangements, in addition to differences in language and currency were all barriers to consumer choosing cross-border products and services. Equally, brand recognition and loyalty were a factor against switching to another provider, regardless of whether that other provider was based in the consumer's home country or in another Member State.

The research found that many consumers would be willing to purchase a product in another Member State if it were recommended to them by a financial services professional such as an Independent Financial Adviser (IFA). However the findings suggested that many IFAs are reluctant to recommend such products due to their own concerns about different consumer protection regimes and their own preferences.

In light of this, we believe that the Commission should further investigate the reasons why consumers may choose not to buy cross-border (where products are available), in addition to conducting further behavioural economics-focused research into what might lead them to do so more, their needs, views and biases.

Importantly, encouraging cross-border activity should not result in any detrimental outcomes for consumers. With any further action to stimulate cross-border activity the Commission and the ESAs must guard against regulatory arbitrage, ensuring that supervision and enforcement of the rules across the EU is consistent.

In some sectors barriers on the supply-side are potentially fewer, particularly with regard to cross-border investment products, where constraints on their supply are minimal. Those that exist relate mostly to a provider's willingness to apply for a passport, currency risks for firms passporting into/ out of the euro area, and differences in legal structures and language barriers. For example, for consumer credit and mortgages specific constraints are differing structures and processes for debt recovery (including legal processes and enforcement tools).

Whilst providers can already passport under MiFID, the Capital Requirements Directive IV (CRD IV), Solvency II, Undertakings for Collective Investments in Transferable Securities Directive (UCITS) and the Insurance Mediation Directive (IMD); the PRIIPs Regulation should also help to make cross-border sales easier. Rules on the provision of a Key Information Document (KID) in official languages and its standardised format should help consumers compare a range of products. Additionally, the requirement for effective redress procedures should help consumer confidence by reinforcing existing protections.

Furthermore, if consumers are to purchase more financial products in other Member States steps need to be taken to ensure that consumer protection frameworks in each include access to dispute resolution via their home Member State.

With regard to retail banking, there is some evidence to suggest that the process of opening a bank account in another Member State can be cumbersome or slow. There is also little information provided to help consumers through the process. Identification/ verification practices, especially where the customer is trying to establish this relationship without being physically present in that Member State, can also be an issue for many retail products and services, particularly banking. Yet, in other sectors this kind of technology is already being adopted. For example, in the UK, the Government has launched the 'Gov.verify' scheme, which enables the use of a digital ID for the use of government services.

Recent research conducted by Open Identity Exchange in partnership with the FCA has shown that in the UK, where the digital economy is rapidly growing, overseas consumers would like to be able to use their domestic digital identity scheme to open a bank account before arriving here.<sup>15</sup> As a regulator we expect banks to maintain high standards for identity verification of new customers, and any adoption by banks of digital identity services must meet high governance standards in order to present a possible solution to these challenges. We recommend more end-to-end testing and further analysis of the practicalities and potential benefits of using digital ID compared to current practices, in terms of improved ID verification and reduced fraud. We believe this approach to testing and analysis could be useful across the EU. As stated above, with a view to ensuring that the implementation of the 4MLD maximises the potential for digital solutions the FCA will work jointly with HM Treasury and industry representatives in the UK JMLSG.<sup>16</sup>

In the mortgage market, the availability of cross-border mortgages is determined by the provider's willingness to lend. There may be legitimate, objective criteria for why providers geographically constrain product availability. We do not believe there are any obvious information gaps for most consumers in terms of firms willingness to lend on UK property, but this is (and seems likely to remain) lending carried on from UK establishments.

Engaged and informed consumers play a central role in competitive markets. As previously cited, the FCA has done research on smarter disclosure, showing how poorly designed disclosure can be counter-productive (for example resulting in information overload) as well as being an expensive intervention for firms and consumers.<sup>17</sup> Reflecting the changing way consumers engage with financial services, we have seen innovative communication practices develop, such as the use of graphics to explain complex financial concepts to consumers, the use of interactive apps to help consumers manager their money effectively, communications tailored for the needs of a product's target market (for example young people), or videos and infographics to present complex information, such as terms and conditions. In this market and others we would strongly support disclosure measures being developed with an understanding of consumer behaviour.

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

Innovation is a key driver for competitive financial markets that work well for consumers. Technology certainly provides an opportunity to overcome barriers of access, for example in using the internet to buy goods and services, though its ability to do so may vary by product. However, where the root cause of a barrier is supplier behaviour,

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<sup>15</sup> Open Identity Exchange, *Digital identity across borders: opening a bank account in another EU country* <http://oixuk.org/wp-content/uploads/2016/02/Digital-Identity-Across-Borders-FINAL-Feb2016-2.pdf>

<sup>16</sup> FCA, *FS16/2: Feedback Statement on Call for Input: Regulatory barriers to innovation in digital and mobile solutions* <https://www.fca.org.uk/news/fs16-02-regulatory-barriers-to-innovation-in-digital-and-mobile-solutions>

<sup>17</sup> FCA, *DP15/5: Smarter Consumer Communications* <http://www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms-index.html>; FCA, Occasional Paper No. 10: Message received? The impact of annual summaries, text alerts and mobile apps on consumer banking behaviour, <http://www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-10>

as with 'geo-blocking' where suppliers impose restrictions on purchase, technology alone cannot provide an answer. Regulation should not stifle innovation, instead supporting innovation that is beneficial for consumers.

Another example of where new technology could help overcome barriers is in the area of identity verification. The ability to securely verify identity using technology (rather than physical documentation) would reduce much of the difficulty involved in cross-border account opening. Digital verification systems already exist and many firms are eager to utilise these solutions. Suggestions from industry also extend to the development of a 'digital passport', an electronic tool to allow customers to manage all their finances in one place online. However, we understand that firms are taking a conservative approach to meeting their domestic anti-money laundering (AML) obligations and are reluctant to use digital technology in the area of verification without domestic law or guidance explicitly allowing for their use.

The FCA expects banks (and other financial institutions) to maintain high standards for identity verification of new customers, and any adoption by banks of digital identity services must meet high governance standards in order to present a possible solution to these challenges. We support further end-to-end testing and analysis to better understand the practicalities and possible benefits of using digital ID compared to current practices.

We agree there is increasing interest in the development of Blockchain technology, which has the potential to introduce more secure and efficient processes in functions such as know-your-customer (KYC), AML, settlement, clearing, compliance, risk management and reporting. Within the right framework, the encryption and security measures used by Blockchain technology should make it highly resistant to malicious tampering, and ensure authenticity, unlike the current large centralised systems which are vulnerable to hacking or errors.

These types of technology also have the ability to improve regulatory control and change the role of intermediaries, thereby potentially reducing the costs associated with these activities. Again within the right framework, they may also improve consumers' lack of confidence/ trust, or concerns in dealing with less well known organisations, and reduce operational costs for firms. Importantly, the Commission must seek to ensure new and existing measures do not stifle technological development whilst striking a balance with the safety and security of consumers. As far as legislation is concerned, a key point is that it should be as far as possible technology neutral, and able to accommodate legitimate current and future technological developments.

We need also to be mindful that that increased digitalisation alone may not assist in overcoming the reluctance of consumers to move away from recognised brands when shopping around and considering switching. This includes when using price comparison websites (PCWs). Financial services websites recommending a non-UK product were found by FSA research to be the least likely to persuade a consumer to switch to that product (in such areas as insurance, mortgages and banking).<sup>18</sup>

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<sup>18</sup> YouGov, *Consumer Appetite for Crossborder Shopping in Financial Services*  
[http://www.fsa.gov.uk/pubs/international/yougov\\_report.pdf](http://www.fsa.gov.uk/pubs/international/yougov_report.pdf)

There is some evidence that the presence of a trusted third party in the transaction could encourage consumers to consider products that they might not buy directly.<sup>19</sup> The growth of direct-to-consumer platforms in the investments market in the UK (which offer access to non-UK as well as UK-based investment products) suggests that consumers may well consider cross-border options if there is an intermediary who is perceived to reduce the risk (and cost) of a cross-border transaction.

Digitalisation is certainly an important development in distribution, but as a regulator we expect firms to uphold product governance standards and ensure, where appropriate, that more traditional methods of distribution and delivery of advice preferred by consumers, for example face-to-face or via telephone, remain available. Any future interventions arising from the Green Paper should aim to be channel-neutral, accommodating multiple channels and allowing customers to select according to their needs.

#### **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?**

It is important to recognise that whilst it is possible for digitalisation to lead to increased financial exclusion for certain groups, it also provides an opportunity to improve engagement between consumers and suppliers, increase financial awareness, and give consumers greater control. It may also led to financial inclusion for many groups including people with disabilities or those living in remote areas.

Firms who offer their primary services through digital solutions may well want to ensure that they maintain a more traditional (non-digital) route for consumers or an adapted digital function that has accessibility features. Consumers are an extremely heterogeneous group, with differing needs and circumstances. Questions of affordability, demography and geography amongst others require careful attention by all retail financial services providers, the Commission, and regulators in order to ensure specific consumer groups are not disadvantaged.

In order to treat customers fairly we expect firms to offer suitable alternative channels or choices, allowing and facilitating non-digital access where possible which does not incur undue costs. They may also seek to provide simple instructions for access/ use of digital services.

The FCA is currently carrying out work on access to financial services and financial inclusion, exploring the proposition that consumers expect to be able to have reasonable access to the products and services they require. The programme aims to fully scope the issues that contribute to access barriers and financial exclusion, culminating in a range of regulatory options available for the FCA to consider. The programme of work will involve qualitative research to better understand the impact of access issues on consumers, and will cover issues relating to digitalisation including digital transformation, crime prevention (KYC and AML) and automated processes (especially around lending decisions).

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<sup>19</sup> YouGov, *Consumer Appetite for Crossborder Shopping in Financial Services*  
[http://www.fsa.gov.uk/pubs/international/yougov\\_report.pdf](http://www.fsa.gov.uk/pubs/international/yougov_report.pdf)

**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?**

To promote competitive financial markets, it is important to strike the right balance between fostering innovative solutions and ensuring that appropriate consumer protection exists. Innovation is an iterative process; therefore the development of a digital solution is unlikely to be perfect first time round. During this phase, it is crucial that innovators are allowed the space to develop their solutions, and regulators will therefore need to take a proportionate approach to how they deal with new technologies that present new consumer protection risks. This could, for example, involve working with the firm during development to help mitigate or reduce any potential risk, as the FCA does through 'Project Innovate'. The current development of Blockchain/ Distributed Ledger Technology (DLT) is a good example of such a situation. This technology has the potential to revolutionise financial services, but it is clear that consumer protection risks remain. The FCA, like other regulators, continues to monitor its development but is yet to take a stance until its application is clearer. In the interim, we continue to work with firms developing DLT solutions to ensure potential consumer protections are being factored in.

Identifying ways to support the adoption of 'RegTech' i.e. the use of technology to improve regulatory effectiveness, efficiency and compliance will also be a key focus for the FCA in 2016. As an important part of this work we will be assessing the impact of any new consumer protection risks, including those around cyber security, data protection and the location of the stored data. Particular questions may arise where technology models store consumer data outside of the UK, or the EU.

We will continue our collaborative work with new firms or firms exploring the use of new technology to ensure consumer protection concerns are built in. We recommend this as a fruitful approach to allow technology to develop whilst at the same time keeping consumer protection issues in focus.

We commend the work of the all of the ESAs in monitoring and evaluating innovations, including digital ones. Again this is activity in which we are fully engaged.

In terms of the legislative process, it would be beneficial to allow early review/ amendment of Directives to ensure that they keep up to date with market and technological developments, and to take into account any significant consumer protection issues where they arise. Where there is no formal review process embedded in a Directive the Commission may wish to consider adding one, or expanding existing comitology processes. There may be a role for non-binding Commission guidelines pending legislative changes. In addition, the necessary flexibility within directives for Member States to take additional measures in response to new issues should be ensured. New legislation should aim to accommodate developments and 'future proof' where possible, and should be subject to rigorous cost benefit analysis, taking into account evidence on consumer needs and behavioural research.

**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?**

This is broadly speaking a question about communication. Consumers require access to the requisite product information, communicated in a transparent, effective and engaging manner in order to determine if a financial product can be considered safe, simple and understandable. At times this may require solutions that look and feel different from the status quo, for example reducing the amount of information consumers receive. That said, specifically with regard to the safety of products for retail consumers, it is important to note that irrespective of the information provided, some products may be deemed too high risk to be considered safe. For example, the FCA used its product intervention powers to restrict the distribution of highly complex contingent convertible securities (CoCos) to the mass retail market from 1 October 2014.

As the FCA's work on smarter consumer communications has shown, a lack of financial understanding amongst consumers can inhibit awareness and make it difficult for consumers to make informed decisions, in turn preventing them from driving effective competition between firms.<sup>20</sup> For example, as part of this work we have looked at disclosure-related challenges in the general insurance (GI) market. These included concerns that information provided to consumers often does not help them make an informed decision. A number of shortcomings were identified in our study, whereby information could be insufficient, incomplete, provided at the wrong time or presented in a potentially misleading way. In addition, other thematic work and market studies in the same area have shown that consumers find it difficult to compare products and the different elements of cover, and that they found language confusing.<sup>21</sup>

Another example of this dynamic comes in the pensions and retirement savings sector. Research conducted for the FCA by Ignition House has shown that, in the UK, lack of consumer engagement is particularly prevalent when it comes to retirement planning and saving and that many consumers fail to think about important retirement decisions until it is almost time to retire. A key factor influencing consumer behaviour was found to be the communications received by consumers which used 'jargon' and standard industry terms that were rarely understood.<sup>22</sup>

In order to better support consumers in their decision-making through effective communication, we see significant benefit in considering more holistically the customer decision-making process and the information consumers receive throughout this process.

**Q7. Is the quality of enforcement of EU retail financial services legislation across the EU a problem for consumer trust and market integration?**

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<sup>20</sup> [http://www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms.html?utm\\_source=smarter-comms&utm\\_medium=smarter-comms&utm\\_campaign=smarter-comms#sc9](http://www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms.html?utm_source=smarter-comms&utm_medium=smarter-comms&utm_campaign=smarter-comms#sc9)

<sup>21</sup>FCA, MS14/: *General Insurance Add-Ons: Final Report – Confirmed Findings on the Market Study* <https://www.fca.org.uk/news/general-insurance-add-ons-market-study>

<sup>22</sup> Ignition House, *Exploring Consumer decision making and behaviour in the At-Retirement Landscape* <https://www.fca.org.uk/static/fca/documents/rims-ignition-house.pdf>

Where the quality of enforcement is lower in some Member States there is a risk that confidence and market integrity will be undermined, with knock-on consequences for consumer protection and for consumer trust.

We are aware that concerns persist around whether firms that have had their permissions cancelled or have been disciplined in one Member State could sell in another Member State without detection of their disciplinary history or even their lack of authorisation. We support efforts by regulators to work together to address such concerns and through the ESAs.

How effectively Member States deal with unauthorised business is important in ensuring that consumers are protected from firms professing to offer a regulated service where the firm is not, in fact, authorised to do so by any regulator.

In the consumer credit area, the Commission has rightly identified inconsistent enforcement as a key problem, which needs tackling ahead of any changes to the Consumer Credit Directive (CCD). There could also be a role for (non-binding) Commission guidelines (such as those on APRs), to promote more consistent approaches across the EU where the standards are not already contained in the Directive.

We believe the increased detail in EU legislative provisions covering enforcement and sanctions will promote consistently high standards across all Member States, will support consumer trust and help to mitigate any concerns consumers may have about transacting cross-border.

**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?**

Further to our response to Q7, a specific issue that can arise from the current Single Market legal framework is the potential for abuse, if firms migrate to a Member State where the standards there and/ or their enforcement fail to provide adequate protection for consumers. This has been identified as a particular risk in the consumer credit area. While the impact to date has been marginal, it is likely to increase. There are two tools to address this risk. The first is working to increase effective co-operation between Member States, for example via the Consumer Protection Cooperation (CPC) network; the second is to keep derogations from the single market provisions of the Electronic Commerce Directive (ECD) under review, in particular the case by case derogation.

Informed and engaged consumers play a vital role in healthy and competitive financial markets, and, as mentioned above, understanding consumer choices, needs and behaviour is essential for enhancing cross-border competition and choice in retail financial services. We believe that these issues are best understood through research and analysis applying a behavioural economics lens to ensure that any measures taken are targeted where most needed.



**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?**

Raising awareness of products and services available in other Member States is not a matter for regulators, except where there are problems with such products and services which need to be flagged.

However, consumers are more likely to trust sites or organisations that are independent of the financial services industry, rather than from firms. This is especially so if they are from sources consumers already trust (for example the UK consumer watchdog, Which?). It is quite possible for national PCWs to display EU wide products, and in insurance this already happens to an extent, especially in the motor market where we have a number of EEA passporting firms operating in the UK.

Standardised comparable information such as will exist in the PRIIPs KID may also help raise awareness of available retail products throughout the Union, particularly if the market develops ways of promoting access to published KIDs.

As we have already mentioned, though, for UK consumers, there is the added currency risk inherent in buying products on a cross-border basis denominated in currencies other than sterling and it is important that consumers are made aware of this.

In any case, it is again important to note here that consumers are a heterogeneous group, and therefore the most appropriate channel to raise awareness will depend on the type of consumer that the institution is seeking to reach. In the UK, the FCA has developed a consumer segmentation model which identifies 10 types of consumer in order to help us detect the risks that they face when dealing with financial services. By breaking the UK population down in this way, we are able to provide more focused and relevant communications rather than taking a 'one size fits all' approach and to encourage firms to consider doing something similar.

As we have mentioned above, digital technology as a channel will potentially reach the highest number of consumers in the UK. However the 'non users' of the internet in the UK currently number approximately 8.6 million (16% of the population)<sup>23</sup>, so caution must be exercised to ensure a balanced approach is undertaken when raising consumer awareness.

We would encourage the Commission to recognise the plurality of consumers across the EU and the proper function of various bodies in raising awareness of different retail financial services. Each Member State may have a different consumer segmentation model, making a single channel to raise awareness across the Union unlikely.

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

Intermediation can certainly provide a route to market for new entrants, but equally introduces new risks and features.

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<sup>23</sup> Ipsos Mori, 2014. Media Literacy: Understanding Digital Capabilities. London: BBC

In terms of EU action, we are not sure what more can usefully be done. MiFID and the IMD in particular (to be superseded by MiFID II and the IDD) provide a legal framework for such intermediaries to operate cross-border.

For example, in the UK general insurance market (as in some other Member States) the distribution network is dominated by intermediaries and PCWs and therefore it is easier for incoming insurers to access this network in order to distribute their products (although this is not without associated risks). In some other Member States the networks are dominated by a number of big players who operate through branches or tied agents and therefore dominate the market in those countries, potentially making it difficult for incoming firms to penetrate. If there were more independent intermediaries in Member States, it could make it easier for incoming insurers to access the market and distribute their products.

The FCA and other UK regulators have been undertaking work looking at the role of PCWs in financial services, to help ensure they function well for consumers and providers, and to mitigate risks (for example in terms of transparency and independence). Consumers need to be confident that using a PCW will help them to make good decisions.

As we have suggested earlier, the PRIIPs Regulation should also help intermediaries as well as consumers to compare products, and the Commission may wish to assess the impact of PRIIPs before considering further action.

**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?**

Consumers' ability to switch between products and providers is an important contributor to consumer behaviour, driving effective competition between firms. The FCA's work has focused more on prompting greater engagement and making it easier to shop around. The FCA's work on renewals (CP15/41)<sup>24</sup> aims to increase engagement with the renewal decision and to encourage consumer to shop around. In addition, our value measures work (DP15/4)<sup>25</sup> is aimed more at the market than at consumers, and is designed to encourage firms to compete on the value of their products, rather than focus solely on price. It is possible that consumers may use the information for switching purposes but that is not its primary objective. We have tried where possible to include incoming EEA firms within the scope of our proposals as we believe it is important for consumers to also have information about these firms in order for them to make a decision about whether to stay with a particular provider (UK or EEA) or switch to another (UK or EEA).

In the case of retail banking, we have also undertaken behavioural economics research to explore further what kind of prompts might help to encourage switching for savings accounts.<sup>26</sup> In a large field study on UK consumers the FCA found evidence of

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<sup>24</sup> FCA, CP15/4: *Increasing transparency and engagement at renewal in general insurance markets* <https://www.fca.org.uk/news/cp15-41-increasing-insurance-renewal-transparency-and-engagement>

<sup>25</sup> FCA, DP15/4: *Developing General Insurance Add-Ons Market Study – Remedies: Value Measures* <https://www.fca.org.uk/news/dp15-04-general-insurance-add-ons>

<sup>26</sup> FCA, *Occasional Paper No. 7: Stimulating interest: Reminding savers to act when rates decrease* <http://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-7.pdf>

behavioural biases which discourage consumers from taking action to switch, despite a financial incentive to do so. Our results showed that supplementary reminders made a notable difference to switching behaviour in savings accounts around the time of interest rate decreases.

Before taking further action, we would encourage the Commission and others to consider cross-national comparative research of this nature to better inform an understanding of consumer behaviour and biases with regard to switching cross-border.

**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?**

We agree that it is important for consumers to have clear and reliable information on the conversion rates and costs for transactions in different currencies, and once again would suggest the format and effectiveness of this kind of information is crucial to ensure consumers understand what fees will be charged. Consumer evidence suggests that just under half of UK adults have a numeracy attainment age of 11 or below, and as such they are unlikely to understand the meaning of currency spreads and commission.<sup>27</sup> Recent FCA research suggests instead that the provision of information in absolute rather than percentage terms can help consumers to better understand fees charged for cross-border payments.<sup>28</sup>

With this in mind, any further measures aimed at making fees transparent would need to be well designed and tested with consumers to be effective in addressing this important issue.

**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 transactions?**

Consumers should be made aware of any additional charges and also risks arising from buying products from a provider in a country with a different currency. A number of EU initiatives have addressed, or are seeking to address, cost transparency (for example MiFID II). However we remain concerned that financial services consumers may pay more than they expect because of the opaque nature of some costs, be unable to identify how costs described as 'fees' and 'charges' differ from each other in terms of operation and effect, if at all, and find it difficult to compare total costs. Again many of these issues may be tackled through a focus on appropriate and effective disclosure, focusing on the ways in which consumers access, assess and act on information. One aspect of this may be encouraging information to the consumer that can be accessed, assessed and acted upon the point at which it becomes apparent that an additional charge may be incurred, and not exclusively at the point of sale.

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<sup>27</sup> BIS, 2012

<sup>28</sup> FCA, *Review of literature on product disclosure* <http://www.fca.org.uk/your-fca/documents/research/review-of-literature-on-product-disclosure>

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

Insurance (as well as other types of financial services) is based on risk rating, therefore there will be elements of 'differentiation' when setting premiums or deciding who to offer cover to and on what terms. We do not see risk rating in this way to necessarily constitute 'discrimination'. This type of risk rating can be objectively justified. Some differentiation based on residence may be justified if local conditions affect the risk you pose i.e. life expectancy, medical care availability, crime rates etc. Such variations also exist *within* individual Member States.

Different legal systems in different Member States can lead to different treatment of consumers. Another reason for different prices or reduction in insurance cover (or willingness to lend) based on residence could be due to insurers/ lenders being unable to effectively risk rate consumers based in other countries because of a lack of relevant claims or credit history. This could be as a result of not having the necessary information; more readily available or accessible data could assist with this.

Higher insurance premiums could also exist as a result of insurers not having the necessary infrastructure in place to deliver good claims/ after claims services, for example repairers, loss adjusters etc. in the relevant country. This can also be seen in the area of private medical insurance (PMI) where insurers do not have access to GPs/ consultants or hospitals in other Member States.

Any further EU action must be proportionate, and any need for action be carefully weighed unless there is evidence of large scale detriment. Regulation should work with the grain of the market, however, it should not entrench existing practices that are not beneficial for consumers or inhibit new practices emerging that could generate better consumer outcomes. Furthermore, it is also important to realise that action may result in unintended problems arising for consumers.

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

These issues centre upon varying local jurisdictions and tax regimes and the difficulty of underwriting for the new risk elements introduced by broader geographic coverage.

A good example of the difficulties that consumers currently face in finding portable products comes in the pensions space, where it is problematic for workers to carry their pension rights with them. There has been an attempt to solve this with the Portability Directive, which requires Member States to implement minimum requirements for the acquisition and preservation of pension rights for people who go to work in another Member State. However, the Directive was moderate in its aims, and as a consequence it may be beneficial for the Commission to review whether it has achieved the outcomes intended. If the evidence does not point to increased mobility, then increased rights under a revised Portability Directive may be one way to improve the situation.

Alternatively, if a pan-European Personal Pensions (PEPP) model were to go ahead, workers could supplement their occupational pensions in this way. Helping companies create pan European Pensions is the basis of the '29<sup>th</sup>' (or opt-in) pensions regime,

where a single authorisation would cover the distribution of a PEPP across all EU Member States. Pensions are built around the tax incentives offered at national level, where tax is a national competency. This means that each Member State will have to give tax exempt status to opt-in regime products for them to be competitive against national products, providing Member States with an effective veto on the opt-in regime in their jurisdiction. The upside of this is that the opt-in will likely only develop where it is needed. Those Member States without a well-developed personal pension system would benefit from a ready-made EU regime and product. Member States that do have a well-developed personal pensions system, with plenty of consumer choice, would likely see lower uptake.

From the perspective of the employer, very few companies have set up cross border occupational pension schemes. This is in part because the current Institutions for Occupational Retirement Provision Directive (IORP) stipulates that cross-border schemes have to be fully funded, whereas domestic schemes do not have to be fully funded. As a consequence, companies setting up pensions to also cover overseas branches have to set aside extra assets to fund these, which requires negotiating administrative hurdles as they must ring fence parts of their pensions pots. As the IORP II draft is still under negotiation it is worth considering how to ease burdens on companies who wish to offer cross-border occupational pensions schemes.

Further to this, and in relation to all retail financial services products, we believe that point of sale disclosures will not go far enough to facilitate portability. Customers may not be aware of their plans in respect of residence when they purchase longer-term products, such as life insurance. Rather, firms giving advice should currently be able to inform customers of the consequences of moving abroad at the point that the customer requests this information.

**Q16. What can be done at the EU level to facilitate access for service providers to mandatory professional indemnity insurance and its cross-border recognition?**

At this stage, it is not clear to us what more might be necessary or feasible. We have the EU legislative framework for Professional Indemnity Insurance (PII) under such measures as CRD IV, Solvency II, the IMD/ IDD, the MCD and PSD II. But some of these regimes are new (or even not yet in force), so it is premature to judge whether more needs to be done to make the legal framework effective and to ensure the availability of required PII cover.

But the Commission should certainly keep this under review and be prepared to act if necessary. It may prove to be the case that insurers are reluctant to enter into contracts to insure business in countries for which they are unfamiliar with business practices and the regulatory framework or to ensure new firms who may need PII cover to get authorised in the first place. Insurers may want to restrict the limit of their potential liability. Therefore, providing more assistance to insurers to help them understand the legal requirements could assist with encouraging firms to offer cover that is recognised cross-border.

**Q17. 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?**

As we have already indicated, we would strongly support disclosure being developed with a genuine understanding of consumer behaviour. The FCA has recently carried out work in this area, and more information can be found on our smarter communications pages.<sup>29</sup> Recent changes across the EU support comparability of products, but disclosure is about more than that and should focus on what the consumer needs to know, how much they need to know, and when the information is most useful. Timely and effective communication gives consumers the ability to access and assess information, putting them in the position to drive effective competition between firms. The regulatory framework needs to support different or innovative ways of disclosing information, and be mindful of the risk of information overload as disclosures are continually supplemented over the years through development of new legislation.

Additionally, information should be media-neutral, and firms must be able to be flexible in terms of the medium through which they disclose, including through digital channels.

**Q18. 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?**

There appears to be some degree of overlap between the role of FIN-NET in signposting consumers to appropriate ADR schemes in Member States, and the Online Dispute Resolution (ODR) platform which went live in February 2016. To avoid consumer confusion it might be helpful if the two could be combined so consumers are appropriately signposted to certified ADR entities (or non-certified ADR entities if no certified ADR entities exist for a particular sector in a particular Member State).

The ADR Directive and ODR Regulation contain various information requirements for traders. For example the ODR Regulation requires traders to include a link to the ODR platform on their websites. The ADR Directive requires firms to inform consumers about the availability of the ombudsman service and to tell consumers whether the firm is obliged to use the ombudsman service to resolve disputes. Article 13 also outlines requirements on firms to provide details of the ombudsman service's website through various channels.

The ODR Regulation contains various information requirements for traders. For example it requires traders to include a link to the ODR platform on their websites. The Commission could also consider evaluating at a later date how effective the information requirements in the ODR Regulation have been in improving consumer awareness of ADR schemes. Taking steps to increase consumer awareness of FIN-NET now could cause confusion for consumers who might contact FIN-NET rather than the ODR platform.

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<sup>29</sup> [http://www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms.html?utm\\_source=smarter-comms&utm\\_medium=smarter-comms&utm\\_campaign=smarter-comms#sc9](http://www.fca.org.uk/static/channel-page/dp-smarter-comms/dp-smarter-comms.html?utm_source=smarter-comms&utm_medium=smarter-comms&utm_campaign=smarter-comms#sc9)

**Q19. 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?**

In our response to the Commission's Capital Markets Union (CMU) Green Paper, earlier in the year, we suggested that to support confident investing, the Commission should consider progressing its earlier ideas to create an EU Insurance Guarantee Scheme framework. We believe that the absence of a pan-EU insurance guarantee scheme framework is a gap in the EU single market consumer protection architecture, given the existence of both the Investor Compensation Schemes Directive (ICSD) and the Deposit Guarantee Schemes Directive (DGSD).<sup>30</sup>

We are supportive of the rationale behind the ADR Directive, in promoting the establishment of out-of-court redress mechanisms for consumers throughout the EU. In the UK we have a long-standing ADR mechanism in place for complaints about most financial services. Consumers can complain to a firm, and then complain to the Financial Ombudsman Service (FOS) if they are unhappy with the response that they receive from that firm. Firms are required to use the ombudsman service to resolve disputes.

Whilst the ADR Directive helps to promote quality standards amongst ADR entities in Member States, it does not make participation in ADR mandatory for traders. It is therefore quite possible that traders in other Member States could elect not to use a certified ADR entity, which could prevent EU consumers from being able to adequately access compensation for mis-selling. Ombudsman decisions in the UK are binding on firms if the consumer accepts the decision. But if a firm does not accept a decision from a non-binding certified ADR scheme in another Member State, consumers may have to go to court to obtain redress.

Additionally, in the UK the FSCS is the statutory fund of last resort which can provide compensation to customers of authorised financial services firms when a firm is unable or likely to be unable to meet the costs itself. A well-funded, sustainable and effective compensation scheme is vital for consumer confidence from which all financial services firms benefit. The FSCS is different to a number of other European schemes in that it can provide compensation for mis-selling. In the past the UK was the only country in Europe that did this, and as far as we are aware this remains the case.

**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 the UK we have a scheme for innocent victims of identified but uninsured drivers; this is headed by the Motor Insurance Bureau (MIB). The MIB acts as the insurer and settles the claim for the innocent victim, ensuring that they do not lose out. This agreement is funded by levies charged upon insurers. In addition, if the insurer involved in meeting a claim has become or becomes insolvent, with the result that it cannot meet any

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<sup>30</sup>FCA, *The Financial Conduct Authority's response to the European Commission Green Paper: Building a Capital Markets Union* <https://www.fca.org.uk/static/documents/fca-response-european-commission-building-capital-markets-union.pdf>

judgement arising, within the UK the FSCS should meet the claim rather than the MIB. This scheme works well in ensuring protection in the event that a consumer is the victim of a motor incident, but has no recourse to an insurer.

With regard to insurance other than motor, the main issue would appear to be whether or not the consumer has to have the insurance to carry out the activity in another Member State and therefore should have recourse to seek compensation.

**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 products?**

Consumers play an essential role in competitive markets, but in order to do so they must be engaged, sensibly informed and able to act on the information that they have acquired. In practice, people do not always make optimal choices when choosing and using financial products, and can suffer considerable losses as a result. This may sometimes be due to low financial capability but even more sophisticated individuals may also demonstrate patterns of behaviour that do not work in their interests. Behavioural economics can be instrumental in detecting and understanding these problems, as well as becoming aware of and remedying firm behaviour that exploit behavioural biases.

The FCA has conducted extensive work on ancillary general insurance products, including what we call 'add-on' products.<sup>31</sup> Ancillary products are often sold to consumers by exploiting behavioural biases as their focus is on the purchase of the primary product, or they just want to complete the transaction rather than shop around further. Our assessment is that ancillary sales of insurance products do not pose less of a consumer protection risk, in fact the risk of consumers making poor buying decisions and buying poor value products may be increased. They also adversely affect competition as sellers enjoy a strong point of sale advantage. We have taken a range of steps to ensure that consumers are able to make well-informed purchasing decisions, such as banning opt-out selling (pre-ticked boxes), and encouraging firms to provide consumers with more information about these products early in the sales journey.

We recognised a significant risk with the sale of add-on insurance products sold alongside motor vehicles. Prices for Guaranteed Asset Protection (GAP) insurance were particularly high and consumers were often unaware that they were being sold the product. As such we prescribed specific information to encourage shopping around for GAP insurance and prevented the product being sold at the same time as conclusion of the vehicle sale.

Ancillary products can also be very poor value, as shown by our behavioural research into the structure of transactions where insurance is offered as an add-on to another (primary) product, whether it has an effect on consumer behaviour and whether such effects impede effective competition. The research found that those for whom the add-on was only revealed at the point of sale were more likely to purchase the first insurance

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<sup>31</sup>FCA, *MS14/: General Insurance Add-Ons: Final Report – Confirmed Findings of the Market Study*  
<http://www.fca.org.uk/news/general-insurance-add-ons-market-study>



offer they saw. In addition, they were more likely not to identify the best combination of primary product and add-on compared to those who saw the insurance alone, and those who saw the add-on upfront alongside the primary product.<sup>32</sup>

Article 24 of the IDD sets out specific requirements for cross-selling. There are different requirements depending on whether the insurance is the primary product, or whether it is the ancillary product to another good or service. We are currently looking at how those provisions map across to our existing framework and will also want to input to any supporting Level 2 work carried out by EIOPA. Our ancillary work overlaps with the cross-selling provisions, though there are some caveats in the IDD (for example cross-selling provisions do not apply where insurance is ancillary to an investment service/activity, credit agreement or payment account) that we have not applied in our add-ons work (the market study and more widely). We would want to maintain the flexibility in Article 24(7), which allows for stricter requirements if there is consumer detriment as we have found with certain products in the UK.

The issues with the sale of add-ons are not restricted to the car rental sector. Therefore the concerns with add-on insurance sales should be addressed across the board.

**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?**

Innovation and competition are interdependent: competition stimulates innovation and innovation in turn drives competition. In competitive markets, firms strive to produce new and better products at lower prices in order to win (or retain) more customers. Competition is thus essential for financial services that meet consumers' needs. Regulation should foster innovation and not entrench existing practices that are not beneficial for consumers.

We have already suggested that as far as legislation is concerned, a key point is that it should be as far as possible technology neutral, and able to accommodate legitimate current and future technological developments.

Innovative firms are, by their very nature, often testing the parameters of regulation. In many cases it is therefore unclear to the firm, large or small, how the regulatory regime will apply to their new product or solution. In this scenario, navigating regulation, particularly for a start-up, can be extremely challenging. This in itself can present a structural barrier to innovation.

To help tackle this, the FCA established its 'Project Innovate' initiative. It aims to foster more pro-consumer innovation by supporting innovative firms in getting the appropriate regulatory approval. As part of this, we are also in the process of establishing a 'regulatory sandbox', a safe space for authorised and un-authorised firms to test innovative products in a controlled way that limits risks to consumer protection. This will also give the FCA early sight of potential issues and risks presented by some new products or services.

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<sup>32</sup>FCA, *Occasional Paper No. 3: How does selling insurance as an add-on affect consumer decisions*, <http://www.fca.org.uk/news/occasional-paper-no-3>

This Project Innovate model might be considered by other Member States, and information sharing across National Competent Authorities (NCAs) could be beneficial. The FCA's Innovation Hub is very willing to explore entering into Co-operation Agreements with overseas regulators interested in supporting innovation. This would be mutually beneficial in facilitating a smooth process for the referral of innovative firms from one regulator to the other, when firms seek to enter another market. Co-operation Agreements could also feature information-sharing on emerging market trends and developments, and regulatory issues.

**Q23. 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?**

It is quite possible that meeting requirements to verify the identity of customers is an issue for many retail products and services, particularly banking. The process of opening a bank account in another Member State is perceived to be cumbersome and slow. There is no standard approach to cross-border account opening between Member States and little information is provided to help consumers in doing this. We also understand that firms are reluctant to widely adopt digital technologies without explicit certainty in domestic AML legislation or guidance that interprets that legislation.

**Q24. 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?**

Through the FCA's 'Project Innovate', we see that firms are keen to utilise digital technology to simplify transactions and reduce the burden physical identification/verification presents. However, for e-ID and e-signatures to become more widely accepted and used there needs to be greater government/ regulator and industry collaboration. Industry also needs the assurance that these means of identification will meet regulatory requirements. National governments becoming the first adopters of these solutions will also go a long way to encourage greater private sector use. As cited above, in the UK the Government is currently testing its 'Gov.verify' initiative, which would allow secure online ID verification for government services. There also needs to be adequate and effective consumer education to encourage appropriate and safe uptake.

Additionally, the Commission may wish to consider reviewing the implementation and uptake of the eIDAS Regulation before considering further action in this area.

Further action is probably not as relevant in the area of insurance, although they could be used to facilitate more cross-border sales where the alternative is to send paperwork back and forth, which could dissuade some people from the purchase.

Please also see our answer to Q3, covering electronic consumer ID tools.

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

In the mortgage market, the MCD already specifies standards for the assessment of creditworthiness. While the availability and richness of this data varies across markets, these differences are understood by creditors and do not appear to be a major barrier in practice for firms minded to enter new markets. Harmonising the availability of information so that there is a standard data set to be used when assessing affordability would be incredibly disruptive to all markets as well as involving major expense for creditors and credit reference agencies. A constrained data set would also make it more challenging for lenders to understand risks, and have the potential to cause firms to withdraw products or access for some consumers.

The data collected and used in national markets for the assessment of affordability etc. is influenced by a range of factors including attitudes to privacy, the availability of third party information sources (both public and private), and commercial decisions such as risk appetite and use of manual versus automatic loan underwriting. Consequently, there is unlikely to be a standard set of information to assess creditworthiness, and a certain amount of flexibility across markets seems advisable.

In the area of consumer credit the UK is currently reviewing its existing rules and guidance on assessing creditworthiness (including affordability). As part of this, the FCA is undertaking a survey of how UK lenders currently assess creditworthiness, what tools they use, what data is involved, how useful this is, what are the impacts on consumers, and how the processes might be enhanced. We aim to publish a report in Q3 2016.

**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?**

Opening up access to consumers' financial data to support innovation and financial services providers may have direct benefits on consumer engagement, switching and general competition. Wider access to data of this nature offers benefits to be supported and risks requiring consideration and mitigation. It is essential for regulators to strike the right balance between fostering competition and innovative solutions and ensuring that those solutions are also built solidly on the basis of consumer protection and market integrity.

However, these are broad issues which touch on areas that are not always exclusively in the remit of financial regulators, including data protection. When considering how access to consumer's information can be facilitated it is important to consider further action in light of the legislative landscape within individual Member States, specifically in relation to existing laws on the storage, access, use and processing of data, as well rules to protect firms and consumers from malicious computer based activities (for example hacking). The issue is one of balance between standards needed to protect consumers and firms, and the flexibility needs to encourage future innovation which may offer improved and more secure solutions to current concerns and challenges.

The ESAs are doing considerable work on issues around consumer data and 'Big Data', which we think will provide valuable inputs on this question. In addition, the FCA has recently run a call for inputs on the use of 'Big Data' in retail general insurance. The call for inputs looked in particular at whether the use of 'Big Data' affects consumer outcomes, may foster or constrain competition, and whether our regulatory framework

affects developments in its use in retail general insurance. In looking at consumer outcomes, the FCA is also interested in how 'Big Data' might affect consumers who may not be able to access standard insurance products, including those with disabilities or in vulnerable situations. We aim to publish a feedback statement in mid-2016.<sup>33</sup>

The FCA's 'Project Innovate' has seen evidence that many firms are keen to use the wide variety of personal data available to assess credit-worthiness or tailor product offerings. This can offer consumer benefit in many regards. Consumers that may not have been seen as credit worthy (i.e. non-British nationals without a credit history, or longstanding permanent address), could be assessed against additional data points, including but not limited to their social media footprint, to help enhance the assessment of their creditworthiness.

However, for many years, in the interests of their protection, consumers have been rightly warned about the dangers of sharing sensitive financial information with others. Now, the adoption of technological solutions, such as aggregation services, is likely to change consumer interaction with financial services and result in financial data being shared more broadly with a greater range of firms. Consumer awareness of these risks will remain relevant but the way in which they are communicated may need to shift to reflect the changing landscape.

Assurances will be needed that personal data is stored, managed and used appropriately, and consumers may wish to have transparency on where geographically firms are operating from and where data are stored. Consumers may have concerns about data sharing across firms and Member States which could be used to penalise individuals.

**Q27. Should requirements about the form, content or accessibility of insurance claims histories be strengthened (for instance in relation to period covered or content) to ensure that firms are able to provide services cross-border?**

In the UK we have CUE (claims and underwriting exchange) where insurers can access and share information on claims/ enquiries policyholders have made, therefore they are able to more accurately risk assess potential policyholders by assessing this information. This information is electronic and therefore easy to access (for those insurers that have signed up to it).

In a similar vein, the UK also has initiatives or databases, such as MyLicence, the Motor Insurance Fraud and Theft Database (MIAFTR) and the MIB No Claims Discount (NCD) database. Again, these are examples of pooling information and sharing access to that information to enable insurers to more accurately risk assess, as well as obtain vital information such as whether the policyholder has convictions etc. If an obstacle for cross-border activity is that insurers are not able to accurately risk assess, and therefore do not want to enter markets they know little about, sharing information in this way, cross-border, could limit some of those obstacles.

It is also important to ensure that the EU data protection regime does not unintentionally inhibit access to, and maintenance of, claims histories.

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<sup>33</sup> <https://www.fca.org.uk/news/big-data-call-for-inputs-published>

**Q28. Is further action required to support firms in providing post-contractual services in another Member State without a subsidiary or branch office?**

Firms need to be able to provide services in the Member State in which the policyholder is resident/ the state in which the property is located to provide good claims service. The Green Paper recognises that increased digitalisation can remove barriers for firms providing services to customers at a distance. However, it is a business decision for a firm as to whether they choose to establish a physical presence in another Member State. The FSA research mentioned previously has indicated that consumers would be more willing to interact with firms that have a physical presence in their home state, so this is more of an issue around consumer needs, rather than an issue in which Commission intervention is necessary.<sup>34</sup>

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

The MCD will not enter into force until 21 March 2016. Before considering further action to facilitate lenders to provide mortgage loans cross-border, the Commission may wish to allow the MCD reforms to 'bed in' and then to assess results with respect to the availability of cross-border mortgage loans.

With regard to consumer credit loans, we do not consider that further action is needed at an EU level. We would, however, encourage the Commission to keep under consideration whether aspects of the CCD should be reviewed or updated. In the short term, though, we are of the view that emphasis should be on more consistent enforcement.

**Q30. 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?**

Action at the EU level may require an element of opinion from Member States on the regulatory regime of another Member State. Although the FCA currently provides support in terms of completion of relevant passporting forms for UK firms wishing to offer their services in other Member States, we do not offer opinions on how firms are expected to comply with the regulatory regimes of those Member States. Assessing how to comply is the responsibility of firms and should remain so. Furthermore, a 'one-stop-shop' could create a conflict of interests if a regulator was involved in a 'one-stop-shop' for selling financial services.

**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**

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<sup>34</sup> [http://www.fsa.gov.uk/pubs/international/yougov\\_report.pdf](http://www.fsa.gov.uk/pubs/international/yougov_report.pdf)

**services for innovative products (such as streamlined cooperation between home and host supervisors)?**

Cooperation between home and host supervisors is important to facilitate cross-border business, and we believe that the EU framework to enable this cooperation is in place, or will be once the recently agreed measures are adopted. Moreover, regulators should be able to cooperate more effectively on consistent approaches to innovative products. Many innovative or Fintech companies are start-ups and complying with various national laws and regulatory requirements can be expensive. This is a barrier that could be eased for example through initiatives similar to the FCA's 'regulatory sandbox'.

**Q32. For which retail financial services products might standardisation or opt-in regimes be most effective in overcoming differences in the legislation of Member States?**

As we have stated above, opt-in or '29<sup>th</sup>' regimes can be effective if they focus on markets where consumers do not have a diverse choice of retail financial products. For example, in the pensions space automatic enrolment means that most consumers have access to an occupational pension, and there is also a significant existing market for personal pensions with many products available that cater to a variety of consumer needs. There is little evidence therefore that there would be consumer demand for a pan-European product. However, in other Member States with less mature markets this demand may exist. As such firms could still achieve economies of scale by distributing retail financial services products through a '29<sup>th</sup>' regime to a segment of EU Member States, with consumers in these Member States then benefiting from access to these products.

With regard to personal pensions, EIOPA recently concluded that pan-European standardisation through a '29<sup>th</sup>' regime offers a preferable option to harmonisation for creating a single market. We agree with this conclusion, as personal pension products are interlinked with the wider social security environment of Member States, making EU-wide harmonisation very difficult. We would note, however, that national differences in taxation of pensions also pose a significant challenge. Personal pension products often benefit from tax incentives set at a national level, whereby pensions are taxed very differently across the EU and tax treatment is often linked to specific characteristics of eligible products.

Taxation is competence of individual Member States, not the EU, so this would have to be agreed with Member States either collectively or individually. Collective agreement may be a quite a high hurdle to overcome, but individual agreement presents a lower hurdle. The Commission could focus on discussing with each Member State the demand for PEPPs and if there is demand agreeing that PEPPs will be offered equivalent tax treatment to national products. If enough of these bilateral agreements were achieved a viable market for the PEPP could be created.

Like pensions, mortgages are difficult to divorce from local arrangements, whether for the securing and registering of charges or for enforcing the loan contract. As with the pension's example there may also be considerable variation in the tax regime that applies. Similarly an opt-in '29<sup>th</sup>' regime could provide scope for broadening the range of

products available on national markets for less well-developed regimes, for example by meeting investor appetite for a deeper pool of mortgages (on standard terms) than achievable in a single Member State.

For Life insurance, as with pensions and mortgages there may be considerable variation in the tax regimes applicable and the limited territorial application of policies. We can envisage the benefit of standardisation via an opt-in 2<sup>nd</sup> regime for less well-developed regimes seeking to develop in this market. However this may work less well for regimes (such as the UK) where this market is already well-developed and subject to sophisticated fiscal controls. This work could perhaps build on existing research on the PEPP product and perhaps factor in the extent to which additional death in service benefit (DIS) life may be built in to that, as it is with some occupational pension schemes in the UK.

**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?**

We are content with the existing 'general good' provisions provided for under EU insurance legislation. In particular they enable member states to balance such considerations as competition and consumer protection. Therefore, we would not wish to see any changes that may restrict the scope of the provisions as this could be to the detriment of consumers.

The 'location of risk' principle is a more complex issue as there are many different applications worldwide and it can be used for tax or regulatory purposes (it would help if the two were always aligned). 'Location of risk' has a major impact on conduct of business regulation, and is very important given differences in national approach, especially for corporate business. Given the international implications, we think that any standardised 'location of risk' principle should be agreed globally.