

Answers by the Danish government to the specific questions raised by the Commission.

1. Better products, more choice and greater opportunities for consumers and businesses

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

We recognise and concur with the fact that retail financial services continue to be primarily based on national markets with variations subject to the service and products in question and that consumers currently tend to remain with their providers of financial services. The main reason for this is the lack of engagement by consumers in financial matters despite such matters having (large) impact on their personal economy and the increasing complexity of financial products.

Therefore fairly simple and comparable financial products and services would be those most likely to be further marketed and understood on a cross-border basis. Possible examples are payment accounts and payment services. However, it must be noted that both products are covered by newly adopted financial legislation – the payment services directive (PSD II) and the payment account directive (PAD) and it would be advisable to await evidence of the impact thereof. The issue of increasing engagement is multifaceted and is further discussed in the answers to questions in section 1.1. Furthermore it needs to be recognized that some financial markets are national in nature, and therefore the products are not suitable for cross-border selling.

With regard to the premises underpinning the extent of cross-border activity in the area of insurance in the Green Paper we would propose that the Commission further assesses the area to include not only the extent of cross-border trade of insurances but also e.g. the activity of insurances through branches in the member states.

While acknowledging the ambition of increased activity and competition cross-border, the challenges in creating increased consumer activity on national and domestic markets, makes it equally important to focus on engaging consumers in financial matters in general.

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

From the consumers point of view there is a range of elements that may influence a decision to engage in cross-border purchase(s). Some are listed below:

- Complexity as addressed above in question 1.
- Language barrier. While certain cross-border providers may present information in English, even if only in excerpts, it carries the underlying assumption that any consumer in another country is sufficiently proficient in English to understand the material. This obstacle could be addressed by making information available in English and/or one or more of the language(s) accepted by that member state.

- Differences in tax regimes as well as other national legislation often also present challenges for consumers as they are not able to assess their rights and obligations when conducting a purchase.
- Unjustified differences in fees or exchange rates can be dissuasive.
- Risk of cyber crime may dissuade certain consumers from making purchases cross-border by use of digital means. The other side of this is cyber security for the provider which contributes to furthering trust and incentive for use.

From the providers point of view cross-border activity whether through establishment of physical or online presence requires (extensive) analysis and the presence of a market for the products and services. Particularly physical establishment requires a certain market of scale to be profitable.

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

It is feasible that certain aspects may be mitigated through means of digitalisation and the creation of new products and services or new (and more secure) ways of acquiring the products, but it should not be seen as the sole means for overcoming all barriers.

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

We recognise that increased (successful) digitalisation of financial services and products will also be dependant on the user's capability to use the technology. Competencies can partially be supported by developing intuitive systems, bearing in mind the general digital knowledge of the average consumer, as well as adequate information conveying how to use the new facilities by the providers even if they are based solely on-line, by way of e.g. help-lines and personal contact. It would be in the interest of the financial services provider to contribute to the customer's ability to access and use the systems.

However, while digital illiteracy could materialise as an increasing risk in this regard it will be equally important to ensure and increase the consumer's understanding of the financial products and services.

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

Regulation is almost inherently reactive while digitalisation continuously evolves and is forward looking and innovative by nature. Given the speed by which digitalisation progresses it will be important to pay due attention to the need for all initiatives to take into account, in full and as necessary, the differences between the physical or traditional paper world and the digital world.

Priority should be and is being given to adapting to these challenges and recognising that financial services based entirely on e.g. online presence may present different risks than the more traditional manner of providing financial services, such risks should be identified and clarified as well as set out more explicitly than the case may be today. Considering the on-going work in relation to the Digital Single Market consideration should be given to recent developments and the effects thereof.

In this respect we would like to stress the importance of EBA defining regulatory technical standards within the provisions of PSDII that will not compromise the built-in confidentiality of the user's security credentials between the user and the IdP or trust service provider, as this built-in confidentiality is a prerequisite for having a single solution for banks and public authorities, as is the case in Denmark. Denmark has provided a position regarding this for the EBA/DP/2015/03 discussion paper.

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

Generally, we believe that consumers do have access to financial products that meets their needs. However, it continues to be a challenge to ensure understandability (and simplicity) given the increased complexity in financial products. Therefore, consideration may be given to the view that not all financial products are suited for retail consumers.

Another element to take account of is the legislative and cultural traditions in a Member State that may influence the manner in which a consumer finds something simple and/or understandable. All financial products may therefore not necessarily easily be transferred from one jurisdiction to another.

Means to ensure these goals can be achieved through regulation and can be identified in several areas of current legislation such as product validation or intervention rules, conduct of business rules, etc. Finally, it is complemented by the actions and reactions of the public. Considering the recent large adaptation and new initiatives in these areas due consideration should be given to the effects thereof, before implementing further initiatives.

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

The quality of enforcement of retail financial services legislation across the EU does not currently pose a problem for consumer trust and market integration, but it is important to underline that the proper functioning and further success of cross-border activity relies heavily on the ability to enforce financial services legislation across the EU as well as the orderly conduct of financial service providers.

There have been examples of financial products being mis-sold by providers in other member states by the use of the European passport without the home country taking appropriate action. In relation to enforcement it is imperative that the rights and obligations of both consumers and the financial services providers are clear and actors engage on a level playing field. Furthermore, while correct and effective cross-border supervision can enhance consumer confidence in the internal market, lack thereof can do the opposite. The national competent authorities, whether being a host or home

competent authority, should seek cooperation during enforcement procedures, where relevant. Such cooperation can be furthered and developed through the relevant European Supervisory Authority.

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

In recent years a considerable amount of consumer related directives have been adopted at EU level that significantly enhance consumer protection on financial products within the European Union. For the most part the regulation includes provisions aiming to enhancing transparency and comparability of financial products and constitute important milestones. The Danish Government strongly encourages the Commission to carefully take into account the effects of such legislation as well as other on-going initiatives prior to proposing further legislation. It might be supplemented by national and international information campaigns informing consumers of the benefits and advantages of the internal market, amongst these a common level of consumer protection across the European Union.

1.1 Helping consumers to buy financial products cross-border

1.1.1 Knowing what is available

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

Independent pan-European comparison websites, including information on cross-border products, together with information campaigns by consumer groups, might be considered. However, to have any effect in raising consumer awareness about the different retail financial services and insurance products available it requires that the consumer is active on the market and interested in financial issues.

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

Consumers are often obliged to pay additional amounts to intermediaries for services related to cross-border investments. This can be an obstacle to cross-border distribution of financial products through such intermediaries.

Increased transparency in regard to the actual costs related to the cross-border investment could be a useful way to increase competition between such financial service providers. In this regard we support the recent adoption of MiFID II, which obliges banks and other providers of investment services to present the consumer with a clear picture of the costs incurred when trading using their services. This is likely to increase comparability and competition. Additionally, MiFID II prohibits inducements in certain cases which also works in favour of a price structure that is more conducive to cross-border distribution of financial products.

With regard to the retail payments area the PSD2, which was recently adopted, aims to enhance transparency and ease the process for firms that wish to exercise their right of establishment or the

freedom to provide services ('passporting'). Until the impact of the new rules are assessed it would be premature to consider new rules within the area.

Please also refer to the answer to question 9.

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

Please refers to the answers given to questions 9 and 10.

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

The new PSD2 aims to enable firms to provide innovative and efficient retail payments solutions. Some of these new solutions address the very issue of cross border credit transfers, e.g Transfer-Wise in the UK or Inpay in Denmark. The improved competition stemming from the implementation of PSD2 should be assessed before new rules within the area are considered. Furthermore, the SEPA-regulation sets out requirements for cross border transactions in euro, which make up the majority of cross border transactions in the union.

In addition, the IFR removes a former industry practice of territorial restrictions, which should enable better cross-border competition. As the IFR was just recently adopted the impact of the regulation should be assessed before any new rules within the area are considered.

13 In addition to existing disclosure requirements¹, 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?

Article 59 of the new PSD2 regulates the disclosure requirements for firms offering currency conversion. The article addresses the very question raised. The impact of PSD2 should therefore be awaited before additional or new rules are considered.

1.1.2 Accessing financial services from anywhere in Europe

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

Regarding bank accounts the danish government finds that, there is no need for new actions since the Payments Account Directive (PAD) already prohibits dicrimination on grounds of residence

¹ European Parliament legislative resolution of 8 October 2015 on the proposal for a directive of the European Parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/EU and 2009/110/EC and repealing Directive 2007/64/EC (COM(2013)0547 - C7-0230/2013 - 2013/0264(COD)). See Articles 59 and 60(3)

against consumers applying for or accessing payment accounts. The deadline for transposition of the directive is 18 September 2016. It is therefore too early to speculate as to the effect of the PAD in regard to basic payment accounts but also the services rendered by banks in connection with them as we have yet to see the full effect of the directive.

Regarding insurance and residence requirements, it is not necessarily always unjustified to use residence as part of the risk assessment. Risk assessment is fundamental for the price and terms of the insurance agreement. It is also in the interest of the insured, that the risk is assessed properly as it will be reflected in the price, terms and conditions.

Furthermore, when it comes to mortgage loans the physical location of the collateral is crucial to the terms and conditions of the loan agreement.

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

In regard to pension and life insurance, the national markets for pension products are segmented because national rules (tax law and social and labour law) impose a specific design of pension products in each member state. This makes it very difficult for potential customers to comprehend pension products cross-border.

The green paper touches upon the question of full portability of bank account numbers across borders. However, the existing infrastructure within the area is based upon current bank account formats. The investments needed to introduce such portability would therefore be huge and would not be commensurate with the benefits of doing so. This is underlined by the very low level of demand by consumers for cross-border switching at present.

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

Standardization of insurance products could be an efficient way to facilitate the portability of professional indemnity insurance products. However such product would be limited by necessary individual risk assessments.

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

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

During recent years a vast number of consumer related directives have been adopted at EU level. They include provisions that aim at enhancing transparency and comparability of financial products.

A high level of investor and consumer protection should continue to be sought. At the same time, however, the various information requirements vis-à-vis consumers should be carefully fitted to fulfil their purpose of informing consumers succinctly while avoiding information overload or disproportionate requirements. One way of achieving this for future rules or revisions, would be to

make consumer testing an integral part of the process in order to ensure that all information requirements are fitted to fulfill their purpose - not only the format of the information but also the usefulness of the information requirement itself.

Furthermore, future possible harmonization efforts with a view to increasing comparability of financial products, need to be done in such a way that product diversity is kept, particularly as regards well-functioning national mortgage models. Otherwise consumers would be left with less choice, not more. This would be detrimental for the competition – national and cross-border.

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

It is strongly supported that the Commission investigates the options for enhancing consumers' knowledge of FIN-NET. FIN-NET is a strong tool for ensuring cross-border dispute resolution of consumer complaints and thereby enhancing consumers' confidence in purchasing financial products originating from another Member State. It is therefore important that as many consumers as possible are aware of FIN-NET.

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

According to Danish law, violations of rules on good business practices may cause financial undertakings to incur liability under Danish Compensation law and pay financial compensation.

Access to compensation in case of mis-selling is important in order to ensure consumers trust in the Internal Market. However, it should be for member states to set up the specific criteria for compensation in accordance with their national legal traditions. Union law should only impose on member states the obligation to ensure access to financial compensation for consumers but leave the specific criteria to national law.

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

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

Ancillary insurance products are not within the scope of the Insurance Distribution Directive (IDD) and therefore not covered by the information requirements that follow from that directive. In order to empower the consumers it could be considered to launch information campaigns informing consumers about the risk of either double insurance or buying an insurance for a risk that is already

covered by legislation, e.g. legislation on sales of goods. Alternatively it might be considered to incorporate information requirements on ancillary insurance products in the next IDD-directive.

1.2 Creating new market opportunities for suppliers

1.2.1 Meeting the challenges and opportunities presented by digitalisation

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

Today banks are in many ways front runners within the area of digitization having provided their customers with new digital services. A key element in providing the right opportunities for banks and other providers of financial services is to ensure that there is a level playing field across suppliers and borders.

It is also noteworthy that many consumers expect providers of financial services to use customer data to improve services rendered and for these to be ever more easily accessible across multiple platforms. It is in the interest of the consumer that banks are able to predict consumer needs and offer them the relevant products at the appropriate time accordingly. However, there is a need for protecting the consumer data at the same time as such data is available to be used for legitimate and consumer friendly purposes.

When considering what might be done to support the development of innovative retail solutions in the Union it is very important to keep in mind the reasoning behind the current regulatory framework. Many of the new innovative firms offer services, which have been offered by established market participants for a long time, e.g. crowdfunding offers debt and equity funding which is a services that has existed for a long time. To ensure a level playing field it is necessary to consider if the regulation in place for existing players is adequate, if special regulatory requirements are established for new players. Further, the existing regulatory framework is there to ensure protection of consumers and investors and financial stability. If regulation is eased for new players, that essentially provide the same services as existing players, the protection is de facto lowered.

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

In order to fully benefit from the opportunities that arise from digitalisation, future rules need to recognise the particular challenges stemming from digitization. In this regard banks signal that the customer onboarding and identification process remains challenging due to lacking standards for identification, digital IDs and differing interpretations of Anti Money Laundering (AML) and Know Your Customer (KYC) requirements. The European Parliament and Council recently passed the directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (2015/849/EU). The directive does not exclude the use of digital IDs etc. It actually follows from the directive's annex III that non face-to-face customers may be considered as high risk without certain safeguards, such as electronic signatures. Guidance on KYC from EBA in relation to the directive is therefore important. The impact of the directive and related guidance

should be assessed before any new rules within the area are considered. However, a technology-neutral approach is desirable.

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

The need for trusted e-identity and e-authentication mechanisms is vital to the development of the digital internal market, including within the area of financial services. The recent revision of the Payment Services Directive is a good example hereof. Establishing a single solution for banks and public authorities increases recognition and usage and improves consumer trust. The Danish e-ID solution, Nem-ID, is a single public and private solution with more than 4 million registered users and with the largest share of transactions coming from interactions with the banks.

The impact of the new regulation on electronic identification and trust services for electronic transactions in the internal market (2014/910/EU) should be assessed before any new rules within the area are considered. However, an exchange of best practices between Member States within the area could be a useful way forward to further promote the uptake and use of e-ID solutions, until the impact of the eIDAS regulation is evaluated.

In this respect we would like to stress the importance of EBA defining technical standards for PSD2 that will not compromise the built-in confidentiality of the user's security credentials between the user and the IdP or trust service provider, as this built in confidentiality is a prerequisite for having a single solution for banks and public authorities. Denmark has provided a position regarding this for the EBA/DP/2015/03 discussion paper.

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

In order to make a credit assessment in relation to a mortgage, the credit institution both needs sufficient information on the borrower and on the property in question. As regards the borrower, the relevant information includes monthly salary, other income, debt, assets, credit history (information on previous defaults). As regards the property, it includes information from the land register (e.g. exact identification of the property, liens and registered privileges).

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

When making electronic payments the payment service provider processes information on where the payer has used his payment instrument, what he has bought and the amount of the purchase. While these information may not be sensitive in the sense of the PSD2, as they cannot be used for payments fraud, the data may still be sensitive to the consumer. It would be beneficial to consider how a payment service provider is allowed to use these data. E.g. a payment service provider could sell information on a given consumer's payment habits (e.g. if the consumer makes frequent purchase of alcohol) to an insurance provider, that uses this information in determining the price of an

insurance (e.g. health insurance). As payments are increasingly being digitalised such treatment of data should be carefully considered.

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

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

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

The issues identified by the Commission in regard to question 28 and 29 relates to differences in personal insolvency regimes and methods of valuation of property acting as collateral for the loans. These issues is a potentially important part of possibly cross-border activity in the area of mortgage loans and regular loans.

However, in light of the two nearly finalised studies on business failure and insolvency and on personal over-indebtedness that are due for completion in 2016, it is recommended to await the outcome hereof, and consider whether further analysis is warranted prior to deciding next steps.

Further transparency regarding valuation of properties in other Member States and enforcing of guarantees if necessary could be a way to encourage cross-border loan giving without a need for thorough harmonisation.

1.2.2 Compliance with differing regulatory requirements in host Member States

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

Establishing one-stop-shops where enterprises wanting to take up business in another country can get an overview of existing legislation in the country and get information about the relevant authorities responsible for supervision of the legislation could be a way forward to increase cross-border sales. It is expected that such an initiative could make it easier for enterprises to take up business in another country. One-stop-shops would thereby contribute to ensure that more financial products are put at the disposal of the consumer.

However, it is important to strike the right balance of roles between supervising financial services providers and offering counselling to these providers. Advice and consulting services on how to organise a business model is not primarily within the sphere of national supervisory activities and should be clearly separated from each other.

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

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

Standardization could be a measure to overcome differences in each member state's pension and life insurance products, though this should only be an opt-in option for the providers of pension and life insurance products, and not a mandatory obligation, which can interfere with the existing products.

However, the providers of such a product with transverse features will have to live up to best practise on solvency. Moreover, the legislative framework of such standardization must also meet certain requirements. Fundamentally such a legislative framework should ensure a stable and predictable pension product for the insured and furthermore it should ensure a close connection between the accumulation (savings phase) and the decompilation (pay-out phase) of the pension product.

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

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

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