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Position of the European Financial Congress[1] in relation to the European Commission's consultation document "Green paper on retail financial services - Better products, more choice, and greater opportunities for consumers and businesses"[2]

Methodology for preparing the answers

The answers were prepared in three stages:

Stage 1

A group of experts including more than 60 specialists were invited to participate in the survey. They received the text of the Green Paper as well as selected consultation questions. The experts were guaranteed anonymity.

Stage 2

The Gdańsk Institute for Market Economics[3] received 28 opinions (from individual experts, expert groups and institutions). All the responses were collected, anonymised and presented to the experts who took an active part in the consultations. The experts were asked to mark in the other consultation participants' opinions the passages that should be included in the final position as well as the passages they did not agree with. Experts could also adjust their positions under the influence of arguments by other experts that they had not known previously.

Responses were obtained from experts representing:

- universal and mortgage banks,
- insurance companies,
- sector associations,
- regulatory bodies,
- consulting firms and law firms,
- the academia.

Stage 3

On the basis of the responses received, the survey project coordinators from the European Financial Congress prepared the final version of the European Financial Congress's answers.

[1] European Financial Congress (EFC – www.efcongress.com). The purpose of the regular debates held within the EFC is to ensure the financial security of the European Union and Poland.
[2] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0630&from=EN
[3] Instytut Badań nad Gospodarką Rynkową (IBnGR) – the first independent think tank in Central and Eastern Europe, founded in 1989 by a group of economists associated with the democratic opposition and the "Solidarity" movement.

Answers of the European Financial Congress to the consultation questions

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

Despite increasing integration of markets, cross-border supply of financial products is limited to a narrow range of segments of the Community market. As a consequence, it can be expected that improved cross-border supply of financial products should significantly enhance the competitiveness of the offer available to consumers on domestic markets.

As regards products, the only rational barrier to increased competition on domestic markets seems to be the undesirable situations when, as a result of enhanced cross-border supply, domestic markets would open up for products and actors with respect to which domestic market participants would not be able to assess properly their market attractiveness and/or price. This could apply both to products themselves – defective products which mislead buyers, and to market participants – new market actors supplying products cross-border and not deserving consumer trust.

As it seems, the products for which cross-border supply may effectively increase competition on domestic markets, in terms of better choice and price, include: bank accounts, payment cards, consumer credits, mortgage loans, and motor insurance.

Given the specific conditions related to buying cross-border products (the language barrier, the legal, business and political environment in other EU countries, exchange rates), the products to be offered to customers should:

- be popular products,
- be relatively simple (should not be complex, e.g. like structured products),
- not require frequent contact with the financial institution,
- be subject to simple, easy-to-understand contractual provisions,
- involve an easy way of contract termination.

2a. ***What are the barriers which prevent firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border?***
(financial firms' perspective)

The key barrier for financial institutions seems to be their lack of compatible, cross-border solutions in such areas as:

- market infrastructure used for offering some products (e.g. unavailability of standardised API for systems supporting specific products and lack of credit information standards for risk assessment),

- inexpensive and easy access to reliable, comprehensive information about the customer, allowing institutions to verify the customer's reliability, payment morality, solvency and creditworthiness,
- requirements for consumer information to be provided when offering specific products,
- consumer bankruptcy,
- effectiveness of debt recovery processes,
- procedures for switching the financial product supplier – optimally standardised across the Community market – so that the new supplier can carry out, on behalf of the customer, all the actions required for switching.

The other barriers on the part of financial institutions include:

- legal/regulatory constraints and differences between individual EU countries,
- lack of possibility for some institutions to provide services to non-residents,
- the need for transactions/contracts to be made in a specific currency,
- lack of knowledge about the credit agreement clauses acceptable on a given market – abusive clauses,
- non-familiarity with the local conditions likely to have a significant effect on the level of credit risk – lack of rating systems validated on the basis of data from the market concerned.
- adjusting the prices (margins) to the local market and not to the actual capacity of the firm,
- inflexible customers and their inadequate scale.

2b. ***What are the barriers which prevent firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border?***
(consumers' perspective)

The key barriers to cross-border buying of products by consumers include:

- the language barrier,
- consumers being accustomed to purchasing financial services close to their place of residence,
- being unfamiliar with the law of another EU Member State,
- mistrust in financial institutions – especially unknown ones – operating on other markets and in other jurisdictions.
- asymmetry of information about the possible offer on the part of consumers,
- lack of expertise and competence needed to compare the attractiveness of individual offers in the case of products involving credit risk,
- concerns about the effectiveness of consumer protection in problem situations,

- need to become familiar with the current situation in the financial sector and the determinants of the financial market stability in the country concerned (this follows from the growing concerns, raised by the last financial crisis, that sudden developments in this respect may re-occur in the future).

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

Basically, overcoming the barriers to direct provision (by financial institutions) and buying (by consumers) of cross-border financial services depends on two factors. Firstly, competition guarantees protection of consumer rights on the market. Therefore the European Commission should aim to promote/ enhance activities making it easier for new, more competitive entities to enter national markets. Over a longer time horizon, this should increase, in a natural way, the competitiveness and efficiency of the individual product markets, both domestically and internationally. Secondly, barriers to access to cross-border financial services can only be overcome by developing appropriate market standards in the individual product groups. It is only after specific process standards are put in place that one can expect digitalisation and innovative solutions in the FinTech sector to contribute significantly to improving access to cross-border financial services. In this context, firms from the FinTech sector may contribute to removing the barriers through:

- limiting the asymmetry of information on financial products available cross-border among consumers by providing:
    - independent comparison websites for financial products (creating a single platform for financial services offered by different institutions),
    - solutions allowing consumers to co-design financial products (e.g. peer-to-peer social lending platforms),
    - improving the knowledge and competence needed to compare the attractiveness of individual offers for products involving credit risk – online financial advice,
- establishing multi-language video service centres instead of branches,
- building systems supporting real time operations,
- solving the problem of cross-border identity authentication using digital technologies (building an EU-wide qualified electronic signature system), which should facilitate remote contract signature,
- cross-border exchange of information at the institutional level (e.g. cooperation between credit bureaux) or the supervisory level.

Nowadays, access to information is much easier thanks to the Internet. By all means, the Internet is the most effective tool of raising awareness on cross-border availability of financial products and obtaining information required to analyse the attractiveness of specific products. As a result, financial institutions can make a successful use of the Internet to raise public awareness of cross-border service provision in the UE and to build confidence in online buying of financial products (by providing access to reliable data allowing customers to compare products and information on how to obtain effective consumer protection). Given their prosumer behaviours, customers will seek such information online and will share their knowledge and experience in this area with others.

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?*

Ensuring efficient functioning of the financial markets requires continuous activities in the area of financial education combined with technology and IT education, oriented to increasing the level of digital skills and awareness among the public. Any initiatives targeted at creating a conscious customer who has the necessary knowledge and skills related to the functioning of financial markets and products will protect individuals against financial exclusion, irrational financial decisions, lack of savings, and over-indebtedness. As it seems, younger generations consider digitalisation of financial services to be a desirable and natural phenomenon. Therefore financial education aimed to prevent financial exclusion as a result of the ever higher digitalisation of services should be targeted at those groups of society that have no financial skills. The elderly seem to be such a group.

Apparently, requiring the providers of financial services to supply such services in a way preventing digital exclusion from growing could be one such mechanism to counteract digital exclusion. It is essential to ensure that persons at risk of exclusion for objective reasons, e.g. age or disability, do not bear more costs than the people who can freely use digital channels.

Consideration must also be given to the fact that, in the future, the risk of digital exclusion will be an inherent element of consumer markets, not due to people's digital illiteracy, but because of existence or even expansion of consumer groups with objectively limited possibilities of using specific technology solutions (e.g. limited abilities and speed of performing manual operations by elderly persons), which are necessary these days to operate digital user interfaces.

5. *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?*

Customers consider financial services to be characterised by a high level of complexity. This results from the high diversity of the products available on the market, which diverge in terms of the risk relative to achievable profits. Thus it cannot be clearly concluded that customers have access to secure, simple and understandable financial products throughout the European Union. Disclosure is crucial here as it is information that should be the factor mitigating the risk for customers. In recent years, the actions of the European Commission have focused on reducing the disadvantaged position of customers, which has led to introducing obligatory and standardised information requirements in the different market segments. Any further initiatives in this respect could be counterproductive as they would fail to achieve the ultimate goal, which is to bring more transparency to the market. What seems more important is the degree to which the information supplied by financial institutions is used by consumers. Therefore, the Commission should rather focus on wider popularisation of the use of the information requirements already in place by initiating educational activities. However, consideration should also be given to proposing initiatives towards creating pan-European financial products, characterised by low level of complexity and risk. This will require actions ensuring that:

- financial products are standardised in a way allowing them to be compared in a direct way.
- financial products have a simple structure so that they can be understood in terms of the profits achievable by a consumer having no expertise and the risks the consumer is exposed to when taking advantage of such products,
- comparison websites are popularised,
- supervision is exercised over the market to guarantee that the consumer rights associated with the financial instruments purchased are protected.

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

Nowadays, the quality of enforcement of EU retail financial services legislation across the EU may pose a problem from the perspective of consumer trust and market integration. Despite intensified efforts at the level of European legislation to implement uniform rules across the Member States (e.g. more frequent application of the maximum harmonisation principle when implementing EU regulations), we can still observe a diversity of the ways in which the common rules are enforced. This translates into continued regulatory arbitrage in many areas of the market for financial products.

However, it must be remembered that consumer awareness of the very broad Community legislation on financial services is not high enough for it to influence consumer confidence.

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

A conscious customer, managing his/her personal finance in a conscious way, should have easy access to information allowing him/her to analyse the attractiveness of financial products. Caring to harmonise the information that financial institutions are required to supply to customers before concluding a contract (such as RRSO, total amount of credit) are undoubtedly extremely important initiatives from the perspective of ensuring effective comparability of products between the individual EU countries. It must also be remembered that comparing the attractiveness of products does not only involve looking at their basic cost (interest or account opening or maintenance fee). Customers should be able to perform a full analysis of offers, including an assessment of products in terms of convenience (e.g. for payment cards – the number of ATMs available for free-of-charge withdrawals), security (online banking security features) and flexibility (e.g. amending the terms of contracts and related costs, suspension of credit repayment).

An effective way to inform consumers about various retail financial services and insurance products available across the Union will be to use the Internet and Web 2.0 tools (e.g. vortals, hortals, corporate portals, social media, company websites, blogs and discussion forums.

Independent supranational comparison websites could be another efficient method of informing potential customers about financial services and insurance products. In order to ensure comparability of different products, it would be also desirable to ensure a standardised form of presentation of products/services. Considering the wide range of products and services, such a standardised form should be ensured for the different types / sectors of financial services (e.g. life insurance, property insurance, investment products, retail loans, mortgage loans, etc.).

It is essential that the communication methods should be tailored to the target group, i.e. mobile www-based media should be targeted at younger groups, who are active online, while the traditional media and e.g. financial advisors should target elderly persons.

For example, as regards insurance companies, Web 2.0 tools may be used to:

- create online platforms for informing customers about new products,
- create platforms allowing customers to provide feedback on the products offered,
- create platforms allowing customers to provide feedback about the claim handling stage,
- create online premium calculators,
- allow customers to read the text of the insurance contract and general terms and conditions beforehand,
- allow customers to report a claim online, and then obtain information about the claim handling process and indemnity,
- create comparison websites/ product search tools (after entering key information about the desired insurance, the client will receive information about the most favourable, best-suited product),
- create platforms for submitting proposed changes to existing products,

- create platforms for submitting information about expectations and ideas concerning new products,
- create platforms for submitting information about expected improvements that will increase the quality of the services sold,
- create online spots helping customers to solve possible problems or doubts, by posting frequently asked questions including clear answers and guidance,
- help customers having questions or doubts through a virtual advisor, agent,
- create websites or forums bringing together existing and future customers, to form a community associated with a given firm,
- create platforms or forums for agents,
- inform about corporate social responsibility (CSR) activities undertaken, building company image based on the affect heuristic, targeting the sphere of emotions.

8. ***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?***

The current situation may be solved by ensuring standardised and abridged form of information about products/ services on a supranational scale for the individual types of banking, investment and insurance services.

In any case, firms should be required to provide information about the costs, risks and benefits associated with taking advantage of a given service/ product. Such information should be adequately transparent and abridged so as to make it easy to understand to a retail customer. It is important to ensure a consistent approach across the Union so that a client who receives information about a product in his/her home country knows that he/she can expect analogous information (in the same standardised form) about the products/ services available in other Member States.

The key actions that could be initiated to increase the comparability of retail financial services include:

- aligning the level of regulation of the individual product markets to their specificities (e.g. market participants, expected target model of the market and level of competitiveness),
- developing product comparison rules and methods that are easy to use both for suppliers and end users,
- developing such product supplier switching rules as to support solutions that are cost-effective and inexpensive to operate,
- stimulating the growth of market competitiveness by providing existing market participants (particularly suppliers) with new more efficient ways of operation and ensuring access to individual product markets to new entrants likely to improve their transparency and efficiency.

However, it must be considered that comparing exclusively the key information about financial products does not always need to ensure security for the consumer. At present, many services are too complex to capture the differences between them in a simple table with several details and the interest rate. What is more, it would be rather harmful for long-term interests of consumers to encourage them to focus merely on several key items of information concerning e.g. a mortgage loan or life insurance contract, without paying attention to the more detailed contractual terms, e.g. on early termination or grace period for monthly repayments.

9. ***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 problem of excessive fees for cross-border payments involving different currencies in the EU could be solved by creating a single system for settling such transactions based on SEPA standards and international settlement schemes. Nowadays, such principles are already applied to EUR transactions. Competition in the banking sector and introducing SEPA transfers have driven down cross-border payment costs to a level at which they no longer represent a barrier to customers. By contrast, transactions in other currencies are still supported by SWIFT systems and involve high and diversified costs, since what matters for financial institutions is the scale and development potential of the payment market with respect to credit transfers involving different EU currencies. The low levels of such transactions provide no encouragement to take decisions about expanding the market infrastructure.

An important area to be addressed here is also a single P2P payment standard and instant payments in the EU. It must be stressed that the payment market is an area characterised by intensive competition from non-banking firms, the activities of which may drive charges down, without the need to introduce additional regulations interfering with the market pricing mechanism.

10. ***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?***

At present, the amounts of charges are communicated to bank customers pursuant to the Payment Services Directive (PSD). As it seems, further regulations in this respect are not so essential as driving down the inter-bank costs of such transactions. What matters for customers is information about the course of the transaction, including any currency conversions and the exchange rates applied during the operation, and not just the applicable commission fees.

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

The problem of discrimination on the grounds of residence may be solved by the current Internet revolution, as a result of which more and more banks are offering their customers full online banking services, and some banks – also mobile banking. The expected development of electronic distribution channels may bring a major improvement to the availability of banking services, provided the three following conditions are fulfilled:

- actions are taken to combat digital exclusion among 50+ populations,
- the legislative barriers to electronic customer registration are removed,
- suitable security standards for biometric customer identification are developed.

Limiting discrimination on the basis of residence would be possible provided that the residence requirement is waived and coherent legal requirements on using financial services are developed.

Exploiting the potential of cross-border retail banking services requires a two-track approach. Firstly, there is a need for building consumer knowledge and awareness of such possibilities, while building a sense of security and trust in banks and the internal market, preferably based on EU standards and institutions. The changes should be accompanied by suitable supervisory activities on an international scale. Secondly, from the perspective of service providers, it is necessary to ensure access to information about consumers on EU scale and efficient enforcement mechanisms (e.g. effective cross-border debt recovery arrangements).

However, it must be remembered that eliminating discrimination on the grounds of residence will not be possible for all groups of financial services. For credit products the situation is more complex. While the structure of the products themselves (including credit cards, debt limits) is standard, the process and conditions for obtaining credit largely depend on the requirements of the banking supervisory authorities of the respective Member States. In addition, for credit services to be obtained, often, the customer must appear in person at the financial institution's office. Considering the above, removing barriers to access to financial services will be possible only for simpler products. The higher the complexity of a financial service, the more likely it is that discrimination on the grounds of residence will continue due to the highly diverse laws and supervisory regulations between Member States, and the higher the share of domestic transactions.

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

It must be borne in mind that cross-border insurance processes involve a number of complications and risks, which require highly precise arrangements, e.g. determining who takes the premium, who sets up the reserves, who handles the claim, who pays the benefit, who assumes the insurance risk, decides about reassurance.

For private health insurance, the process for transferring such services cross-border is very complicated given that healthcare is a specific area, falling within the remit of Member States. Each country has a unique healthcare system and there are considerable differences as regards the role and structure of private health insurance. No two countries have the same healthcare system, and each system is built on the basis of different social, political, legal and economic factors prevailing in the country concerned. In addition, domestic health insurance legislation is constantly revised in light of the local political priorities.

However, considering how much the EU labour market has opened up in recent years and how many people are currently employed outside of their countries, efforts to facilitate moving insurance products across borders are definitely justifiable. One way of achieving change in this respect is self-regulation of the insurance sector. This requires arranging a ‘round table’ and inviting representatives of the largest European insurance companies. Without direct involvement of the key players on the European insurance market, the stalemate will not be resolved for years to come. With a ‘green light’ for such an initiative, a working group could be appointed to analyse the cross-border needs of customers and develop a detailed concept which products and on what principles should be moved between countries within the EU so that the product follows the customer, and not the other way round. In addition to practitioners from various insurance companies, also representatives of local financial and insurance supervisors should be engaged from the start. This is necessary to eliminate the risk that local supervisors will block such an initiative, claiming that they are unable to protect effectively the interests of a domestic customer if his/her insurance is transferred abroad.

13. *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?*

Given the specific conditions and barriers to cross-border provision of financial services, a customer’s decision to buy a given product requires the customer to have more knowledge than when the choice is limited to the domestic market, and is associated with new, additional risks. Hence the need to provide consumers with reliable information necessary to take the right decision.

The activities of the European Commission in recent years have contributed to regulating the information requirements in the main segments of the retail banking market, both for traditional and electronic service distribution channels. Thus, currently there is no need for extending the information requirements at EU level, but only to educate consumers in the rights they already have.

Therefore the key to increasing consumer confidence in cross-border financial services is to ensure that the information obligatorily provided by banks is used more efficiently. It would be reasonable to create conditions for developing independent, cross-border financial service comparison websites, and lay down supplementary regulations requiring companies to provide the necessary information for the online tool to be functional, transparent and reliable.

14. *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?*

Measures to raise consumer awareness of the FIN-NET network are definitely reasonable. The concerns of consumers regarding difficulties in resolving disputes with institutions providing cross-border services are among the most serious barriers to cross-border development of financial services. Thus consumers need to be informed about the possibilities of recourse to out-of-court conflict resolution schemes, while ensuring that institutions operating within FIN-NET act according to uniform principles and offer equally effective measures to help consumers across the EU. Perhaps it would be advisable to publish on the websites of the FIN-NET members true stories of consumers, from various Member States, who are satisfied with the support they received and the way their problem was solved. This could help make people aware of the specificities of the operation of FIN-NET.

Importantly, the development of FIN-NET may be also enhanced by promoting participation in alternative dispute resolution schemes and encouraging enterprises to establish such schemes.

15. *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?*

Applicable law provides for adequate access to financial compensation for dissatisfied retail customers of financial institutions. However, the efficiency – in terms of time and costs – of claiming redress through court or out-of-court (ADR) actions remains a problem. The debate on improving access to redress with respect to retail financial services should take place in parallel to analysing and assessing the principles of the functioning of the system of justice in the individual Member States. Narrowing down the discussion to financial markets would highlight irregularities in the operation of financial institutions, and meanwhile disputes with consumers go beyond the financial segment.

It is also necessary to undertake actions to support establishing and having recourse to out-of-court resolution procedures, and make financial institutions aware of the benefits of joining an alternative dispute resolution scheme. However, ADR systems may only develop on condition that joining them is voluntary.

16. ***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 should be clearly informed about any ancillary insurance products and the fees for buying them. A decision to buy the service should be based on reliable and full information comprising:

- all the car rental costs, including insurance, presented in a clear and simple way in advance of the purchase/ placement of an on-line order;
- any additional costs and optional services, presented in a separate terms and conditions document, with an option to accept or decline.

17. ***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?***

Using digitalisation in a better way requires creating such legal framework as to maximise security of digital services and minimise the burden on customers. Creating solutions highly complicating the use of digital financial services, with a high level of security, may discourage customers from using them.

Helping financial institutions to make a better use of digitalisation should involve developing common EU-wide environments to ensure security of the financial cyberspace so as to protect customers against any occurring risks. Security of financial services remains a priority in the course of implementing innovative projects at institutions of the banking sector.

The specific proposals for supporting financial institutions in establishing and providing innovative digital financial services across Europe, while ensuring adequate level of security and consumer protection, should include:

- creating a single EU-wide qualified electronic signature and improving e-identification (authentication of electronic signatures or e-identification online), and advanced identity verification (confirmation face-to-face, retinal scan or other biometric authentication systems),
- supporting innovative payment solutions, especially based on mobile technologies, along with ensuring suitable certification and standardisation requirements for those services,

- building European settlement systems based on new technologies and uniform standards.
- ensuring compatibility between domestic solutions and international systems in order to provide customers with universal payment methods on the EU market, instead of choosing the method based on the customer's location.
- developing a single fiscal policy comprising e.g. a tax relief based on the actual expenditure (capital expenditures on product development or system implementation – CAPEX) incurred to implement innovative solutions, while observing the highest standards of user security,
- promoting solutions involving innovation and use of digital solutions and establishing programmes supporting such initiatives will certainly contribute to a growth of investment projects among the group of enterprises concerned.

18. ***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?***

Yes, consistent implementation of eIDAS is needed. Building a single market for payments requires popularising e-ID and providing an adequate level of security for customers' biometric data. Each Member State has its own standards defining a domestic ID, yet it should be possible to find common points between these standards so as to ensure – at the e-ID distribution level – the possibility of the flow of persons and funds between the Member States. It is also vital to ensure a common approach to securing the identity of customers and their biometric data used for identification – current laws in this respect seem inadequate.

Any measures must also focus, to a larger extent than so far, on customer convenience and making it easier for customers to understand the principles of using an electronic signature – many existing solutions (such as qualified signature on a physical carrier) are too inconvenient and complicated for them to be widely used in practice.

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

The type and scope of data necessary for creditworthiness assessments is always unique and depends on many factors, such as the type of product, product parameters, customer 'quality', etc. Furthermore, the systems, parameters and tools used for creditworthiness assessments are specific for each entity operating on the market for credit products. Developing uniform supranational creditworthiness assessment solutions, which would take into account the relevant regulations of the Member States and the needs of individual institutions, is extremely difficult. As is establishing uniform 'supranational' principles for assessing creditworthiness, parallel to domestic arrangements.

It must be borne in mind that creditworthiness assessments were introduced in response to the need to ensure protection of consumers' deposits and stability of the banking sector, and not to facilitate lending procedures or streamline exchange of customer data between companies. Therefore discussing what data is actually required to assess creditworthiness is of secondary importance since lenders should be entitled to ask any question and require any type of documents in order to be able to complete a reliable creditworthiness assessment.

Today, an optimum solution would be to establish mechanisms allowing databases to be used cross-border according to aligned principles and subject to the same scope of access. This would mean providing direct access to databases to financial institutions from other Member States, as well as direct exchange of data between institutions managing the databases in the different countries. In light of existing differences in the lending process and the scope of data necessary to assign a credit rating, full and accurate assessment of creditworthiness will only be possible on condition that the widest possible access to reliable data about the potential borrower is guaranteed. The complete and independent database that would be set up should contain the credit records of individual customers and legal persons. Importantly, such a database should not only contain data from banks and entities supervised by national regulators, but also data on liabilities towards entities such as financial institutions offering cash loans, since using such additional information in creditworthiness assessments will reduce the costs of credit risk and increase bank lending, thus helping to build growth.

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

This issue should and will be – in the long run – solved by the 'market' itself. After entering into a contract (selling a financial service) in another Member State where a firm has no subsidiary or branch, post-contractual services may be provided on commercial terms. Perhaps this will contribute to creating a market niche for such services. However, this will require attractive remuneration for the vendor on the market concerned. A risk for vendors will be posed e.g. by the issue of post-contractual service quality assessment, which is not always easy, especially in cross-border relations. This could be addressed by making use of existing infolines, which have already become widespread. Insurance market practices have led to the so-called 'fronting', whereby insurance company X negotiates and agrees with insurance company Y the rules under which it will represent the latter on the market of a given country where company Y has no representation of its own (this applies, in particular, to claim handling; the insurance policy can be taken out in any other place).

For instance, corporate insurance includes so-called international plans, i.e. instead of taking out insurance for all risks in each country where it is present, a global company takes out single insurance (usually from a global insurance company) against all risks in all the countries. However, if it operates in countries where the global insurance company has no branch, it commissions such plan to be covered by a selected local insurance undertaking – this is referred to as fronting.

However, not all post-contractual services can be delivered this way, as it requires direct presence and on-the-spot control.

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

The procedures for personal insolvency, property valuation and collateral enforcement in cross-border lending are among the key barriers to such lending. The specificities related to ownership rights, the claim enforcement procedure, and the entire legislative process, as well as lack of knowledge of the local (foreign) property markets, hinder proper assessment of credit and investment risks. The above factors translate significantly on the costs of the lending process and of the possible enforcement. Developing solutions removing such barriers and reducing the costs of lending could change the optics in this area.

Some of the key initiatives aimed at encouraging lenders to extend credits cross-border include actions to balance the interests of the debtor and of the creditor and regulating issues affecting the efficiency of enforcement on property, such as:

- ensuring that creditors holding an enforceable title (i.e. having a legal interest) have access to public information on the debtor's assets – limiting such access, in particular on grounds of personal data protection, protects the debtor and allows concealment of assets and thus avoiding enforcement.
- enforcing the duty to regulate the legal status of property, in particular by disclosing changes of ownership after inheritance proceedings or changes in the matrimonial regime;
- introducing, in Member States, uniform personal insolvency solutions oriented to maintaining a balance between the interests of the creditor and of the debtor, in particular by compiling:
    - a list of grounds for insolvency, which is important for assessing the transaction financing risk and will be conducive to preventing cases of 'insolvency migration'.
    - a list of actions that may be taken both by the insolvent debtor and the creditor, and system solutions allowing them to be implemented efficiently;

  One issue to be solved is the possibility of enforcing the rights of creditors who finance the housing needs of individuals while safeguarding the minimum social rights of the debtor and his/her family, without transferring the costs of such a solution to creditors. This can be done, in particular, by using the solutions already tested in some EU countries, which includes regulating:

    - the possibility of exempting the debtor in full from repayment of outstanding debt in return for his/her waiver of the rights to the property, with no negative tax effects either for the debtor or the creditor.
    - he provision of housing to the debtor who waives the rights to the property and to his/her family, jointly with the local government or relevant institutions, which – upon taking over such property – would guarantee rental of the property to the debtor, under terms defined by law, and, at the same time, would assume responsibility towards the lender for repaying the loan by which the purchase of the property was financed, also under terms defined by law;
- the introduction to property valuation standards such solutions as to eliminate the disparity between the value of property estimated for the needs of extending the loan and that established for the needs of enforcement proceedings (taking due account of such aspects as passage of time and property status changes) as a result of which the creditor's claims cannot be satisfied by the financed real estate, requiring resort to the debtor's other assets, which increases the debt recovery costs and burdens on the debtor.

22. *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?*

EU-wide actions in this respect are desirable. Even though financial service passporting has been introduced in individual sectors (banking, insurance, investments), which allows services to be provided cross-border in regulatory terms, the model is not commonly used due to certain barriers. The barriers result, in particular, from the lack of uniform interpretation of (European) provisions in the different Member States and the still high number of national options, which allow individual Member States to regulate a given issue individually. In our opinion, things would be made easier by introducing a 'single rule book' – the kind of consistent legal framework already known in some areas of the financial market.

There are several possible solutions that could help innovative companies or products to enter the cross-border market:

- national financial market supervisors could help financial institutions which plan operating on their market to comply with the key legal requirements. An example is FCA's Project Innovate, where FCA advises companies what rules they must be aware of and how to follow them. This approach is reserved for new FINTECH entities, but there is no reason why the model could not be extended to cover larger financial service providers who want to enter foreign markets,
- financial sector companies have a technology potential to expand beyond their home country, and the main obstacles to pursuing this are chiefly related to legal

issues. Innovative solutions brought onto the market may be tested and implemented beyond the home country using simplified procedures. National domestic financial market supervisors could then support companies on the regulated market. Instead of being required to observe all the rules on the first day, initially companies would need to comply with the key ones, and then they would have one or two years to fully comply with the regulatory requirements. In the meantime, companies could be subject to stricter control than normally.

23. *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)?*

In order to make it easier for businesses to take advantage of the freedom of providing financial services cross-border, a coherent interpretation and enforcement of laws by the individual supervisors needs to be insured so as to counteract regulatory arbitrage. This follows from the fact that the question how many companies will take advantage of the freedom of establishment will depend on the way the legal discrepancies are addressed. The higher the costs of obtaining know-how and adaptation on the individual markets, the lower the number of interested entities. Only the largest market players will be able to benefit from such solutions and make such investments. Analysing the differences and finding universal solutions within the EU markets would facilitate implementing the model of offering financial services in all the EU countries.

The detailed approaches to assisting businesses to take advantage of the freedom of establishment or the freedom of provision of services for innovative products should comprise, among other solutions, making available by the designated authority, in collaboration with local institutions (e.g. the central bank, financial supervision, ministry/institutions overseeing financial transactions), a choice of clear legal requirements and recommendations allowing cross-border players to learn easily what legal requirements they should fulfil and how. The requirements should include, among other things, relevant information, documents, declarations and actions to be taken or delivered for e.g. a UK payment institution to open a bank account in a Polish bank for cross-border activity purposes. The requirements should be aligned to the recommendations of the local financial supervisor and of the central bank to be followed by any Polish bank for it to be allowed to open such an account.
As a minimum, the applicable Polish regulations (e.g. the Polish act on payment services) translated into several most common languages of the EU should be made available.

Furthermore, consideration should be given to providing additional incentives for financial institutions wishing to operate cross-border (e.g. by adding another aspect to the supervisory assessment processes). However, any possible incentives must not be discriminatory for the institutions which – in line with their business strategy – have decided to focus on their home market.

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

'Standardisation' and harmonisation of the EU market in this area should head towards even greater openness, flexibility and providing more investment opportunities to customers, and not towards even stricter limitation of cross-border transaction opportunities. Standardised products would restrict the freedom of product design. Thus there is a risk that standardised products would not meet the requirements and needs of customers. As a consequence, the benefits and added value of such products for consumers would be doubtful. Because standardisation may hinder product diversity, it is not very likely to bring the benefits expected by the European Commission.

The most pressing issue today is private old age insurance and other insurance – investment & savings plans. Increasingly, life insurance companies, acting on their own or in close cooperation with investment funds (often belonging to the same group or the same owner) manage their customers' assets/savings by investing the funds they receive on foreign markets, i.e. outside their own countries. Strictly speaking, our money has already been abroad for quite a while, although the insurance policy itself (the paper) is still treated (e.g. by the financial and insurance supervisors, legislation, tax authorities, etc.) as local insurance. Thus, clearly this area requires more flexibility and more customer freedom. The overarching objective should be to ensure that by saving regularly customers/ individuals can accumulate as much wealth as possible so that in the future they can secure themselves and their relatives additionally in case of retirement, loss of work, illness, etc. When they start using their savings and spending the money on consumption, this will be also beneficial for the economy of their country.