

Position Paper

EU Green-Paper on Retail Financial Services

14.03.2016

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Bitkom represents more than 2,300 companies in the digital sector, including 1,500 direct members. With more than 700,000 employees, our members generate a domestic turnover of 140 billion Euros a year, exporting high-tech goods and services worth another 50 billion Euros. Comprising 1,000 small and medium-sized businesses as well as 300 start-ups and nearly all global players, Bitkom' members offer a wide range of software technologies, IT-services, and telecommunications or internet services. They produce hardware and consumer electronics or operate in the sectors of digital media and the network industry. 78 percent of the companies' head-quarters are located in Germany with an additional amount of 9 percent in other countries of the EU and 9 percent in the USA as well as 4 percent in other regions. Bitkom supports an innovative economic policy by focusing the modernization of the education sector and a future-oriented network policy.

Introduction / Executive Summary

On December the 10th 2015 the European Union introduced a Green Paper on retail financial services: better products, more choices, and greater opportunities for consumers and businesses.

The objective of the Green Paper is to consult on the next steps toward creating a more integrated European market for retail financial services for both consumers and businesses. Retail finance in the EU should work in the interests of consumers and give them the best deals, better products, more choice, and greater opportunities regardless of their age, skills and country of residence. It should also be easier for financial firms to do business across Europe where unnecessary barriers do not constrain the provision of services, including by digital means, and where physical establishment is not essential.

Bitkom welcomes the opportunity to comment the EU Green Paper on retail financial services and especially address the chances of digitization. We believe that the digital transformation of retail financial services caters the overall goal of the green paper to create better services, more choice and more competition.

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Technology will be an important driver of the integration of capital markets and to increase innovation, transparency, convenience for end users. Trust in new services is key and all financial institutions must cater for security and data protection. Bitkom wish to highlight the following three level of importance for the future of retail financial services:

1. Harmonization

We believe that regulation should avoid increasing complexity in acquisition and in service delivery. We stress therefore that it will important to harmonize legislation in the fields know-your-customer processes, tax legislation, data protection/ privacy standards, peer to peer lending, cyber security and further national oriented regulation, which hinder a standardizes market entry within the EU. Harmonization of regulation in Europe is essential for all players to offer their services across Europe in order to increase competition and increase service & choices.

2. End to End Identification

In order to embrace consumers to use cross border services and increase the internal market it will be important to implement an end to end identification. Easy, transparent and comfortable onboarding processes must enable digital means of identification, legitimization and authentication.

3. Mediabreaks

Bitkom strongly recommends diminishing media breaks in current regulation. Extending the wide scale use of digital technologies in the financial sector will improve transparency and monitoring, which turns to less systematic risk in the financial systems. In order to underline the green papers objectives it is important to open up the digital channel in every angel of financial services. Digital processes must be equally accessible to analog ones, as consumers demand more digital options.

Beyond that we believe that it will be important to promote cultural transformation and that regulation should remain proportionate.

I. Consultation questions

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

It is Bitkom's view that open competition fosters innovation and continuous improvement of financial products and services. Improving cross-border supply will increase choices and reduce cost. It is important though, that in a "cross-border world" suppliers / banks face a level playing field in terms of regulation and restrictions so that fair competition can take place.

We suggest that the following issues ought to be resolved in order to improve the cross border supply of financial products in the EU:

- Transparency: for consumers to compare, understand, trust and buy financial products, these products and their providers must be fully transparent and the relevant information made available in an efficient, standardised, simple and understandable manner.
- Uniform regulation: for fair competition to take place across member states, suppliers of financial products require a level playing field across all markets of the union.

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

Bitkom has identified the following barriers:

- Divergence in national regulation and in interpretations of EU law across member states
- Transparency surrounding products and providers

From a provider's perspective, cross-border provision of some financial products such as funds are clearly regulated in the EEA while other products such as mortgages, deposits or pensions are not.

The latter also holds for new innovative solutions such as those offered by Fintechs. Regulation is often inconsistent across EEA member states and requirements with respect to licensing and local legislation make operating across member states costly and cumbersome.

From a consumer's perspective, the level of customer protection in cross border products is intransparent and poorly understood, and may in some cases be inadequate. The resulting lack of trust leads consumers to favour domestic providers which are perceived to be easier to deal with and more secure.

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

Bitkom believes that digitalisation and innovation can overcome these barriers if appropriate legislation is introduced.

Digitalisation doesn't know borders and customers across all member states stand to benefit if financial products and services can be compared and bought on the Internet.

Many of the new Fintechs operate a business model with the potential to aggressively scale beyond country borders, yet their expansion is obstructed by regulatory barriers.

While market access remains expensive and cumbersome for financial services firms themselves, some new players already specialize in partnering with established incumbents to adapt and distribute their products and interfaces in other jurisdictions.

We suggest that the following concrete initiatives are implemented:

- Form requirements related to opening accounts, proving tax residency, proving identity (e.g. consistent digital KYC), disclosing product specifications and terms and conditions, and information and procedures for dispute resolution are standardised and simplified considerably.
- Licensing rules (e.g., for a license requirement and minimum standards) and cross-border access rules (e.g., analogous to passporting) for digital brokers / intermediates / further financial products are harmonized.
- Second-regime type product regulation (as proposed by EIOPA in its consultation paper CP-15-006 on a Pan European Pension Product) is introduced to supersede national regulation, providing unitary frameworks for common product classes (e.g. mortgages, deposit accounts, credit...) that standardise all aspects of retail financial products and that are valid across all EEA member states.
- Regulation surrounding passive market access versus active market entry (which triggers passporting for banks, compliance with a set of local rules, licensing need for brokers etc.) must define precise thresholds for progression from one regime to the next.

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 will see an expansion of offerings. Digitalization will further accelerate while "offline business models will remain in place and may be even grow as well (e.g. compare the growing trend of online players to open offline stores in other industries). As with all innovation cycles this process will be a continuous process. It can

be determined that there are no customer groups who are fundamentally digitally illiterate, e.g. the older generation tends to easily adapt to digital products and services and digitalization is also accelerate in this customer segment as well (e.g. a recent study of Bitkom shows that the highest percentage of online banking usage in Germany is among the 50-64 year old). However – there is the general challenge across all industries that there are still parts of Europe where the digital infrastructure is not sufficient for all digital offerings.

It should be possible that every customer is able to make his preferred choice, either digital or non-digital. Currently there are certain institutions that try to hinder digitalization as they have an analog branch based business model. Modern regulation should enable digitalization not prevent, while still make non-digital processes accessible for those who prefer them.

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?

Bitkom believes that customer protection and especially data integrity remains top priority for financial institutions in order not to jeopardize trust. Whatever will be digitalized needs to match the requirements of data protection. As in question 1 – a level playing field is necessary in order to have the same customer protection standard in the digital world as it is implemented in the “bricks and mortar” world – being it data laws or requirements in financial consulting.

Address risks uniformly in the EU; the level of protection of the customer with regard to digital risks should not depend on the country of residence. A product offered to European customers should be available with the same conditions and the same level of consumer protection. Neither the customer nor the provider should have to think about the member state. There is the necessity of one clear single regime (29. Regime of digital, cross-border retail financial services) without dissenting national laws. This would enable the customer to choose the provider no matter where it is based.

Protection of digital assets: digital assets are effectively unique pieces of information that serve as stores of value (e.g. Bitcoin and other blockchain related assets). These can be stolen just like physical assets or cash, and thus require institutions for registry and safe storage. Such institutions can be provided by the public or the private sector.

6. 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?

No, Bitkom suggests that the following initiatives should be implemented in order to enhance the current status quo.

- Introduction of uniform fully digital non-face-2-face identification rules
- Simplification of form requirements in opening (e.g. signature/ archiving) and post-closing processes (e.g. taxation)
- Regulation on uniform licensing/ passporting possibility for platform providers and other financial services in the EU
- Introduction of EU wide second regime regulation for each class of retail finance products such that the exact same product can be sold in any country of the EU without the need for adaptation to local laws and regulations.

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

Yes, Bitkom believes that the differences in the national enforcement of the service directives (e.g. AML Directive, Deposit Insurance Directive) lead to diverging requirements.

Although some products that are offered across the EU are similar, potential customers have to provide different forms / answer different AML questions (e.g., on source of wealth, income) and confirm the receipt of the information sheet e.g. on deposit insurance in a different way.

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?

Yes.

- Bitkom believes that there is a trend away from sales- and advisory-driven distribution of financial products towards informed and empowered customers making their own purchasing decisions. These customers require simpler and more transparent products and better product information. These requirements are not currently reflected in the regulation.
- To further simplify the delivery of cross-border financial products and services some after-sales processes (e.g. unification of processes regarding withholding tax, digital process for proving tax residence) should be standardised and made paperless.

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?

Bitkom believes that an adequate mix of channels shall be possible, as long as the consumer demands them. Online being it in all the digital information channels as well as offline. As long as price differences persist, the markets will be incentivized to create transparency and access.

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

Intermediaries play a major role especially in distributing digital products and solutions where the institutions don't have a physical network (online banks). Such affiliates that operate cross border can accelerate sales of financial products outside the home market in a cost efficient way

Financial service providers and intermediaries themselves face very different local regulations in terms of their own licensing situation and local consumer protection requirements. That gives a big advantage to the traditional national players. Digitally provided financial offerings (e.g. provided cross-boarder by fintechs and foreign direct banks / brokers) would create more competition and customer benefits within a single European market.

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?

Yes, Bitkom believes that on an EU level the following processes should be implemented:

- Digitalization of KYC / account opening process
- Simplification of local taxation processes regarding EU-wide capital income, in a long-term perspective one single European Tax-ID / simple tax withholding processes for the relevant financial authority
- Legal obligation to treat all EU residents equal (majority of banks restrict non-national residents)
- Simplification / Harmonization of licensing rules for pan-European comparison websites/ portals
- EU wide standardization of products, ideally by introducing a second regime legislation for each class of products
- EU wide standardization of intermediary regulation and market access
- Introduction of product identifiers analogous to an ISIN, so that consumers can easily search for- and access product specifications and terms and conditions

- Standardized consumer information documents (KIIDs) that are compact, transparent, and written in such a way that the consumer can easily access and understand the information. Ideally these are written in question form.

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?

We definitely believe that fee structures need to be harmonized on EU level in order to guarantee fair competition and a respective transparent customer pricing.

13. 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?

Yes, Cross-border transactions shall be displayed in a transparent way within the transaction protocol. An easy to understand money in - money out calculation at the point of decision making. This could be delivered via voice on demand, or digitally to a mobile phone. Financial institutions and credit card companies tend to have apps in place already, hence installing the additional service should constitute a minute effort at best.

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

Providers should be obliged to treat all EU residents equal who are able to perform KYC according to the bank rules. Therefore an effective digital identification method has to be established which does not make identification fundamentally impossible or prohibitively burdensome for non-residents (e.g., notarization).

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

Bitkom believes that a standardized, common means of identification is desirable.

Taxation on life insurance should be standardised across EU member states.

Health insurance should provide cover across the EU for at least the equivalent of the costs of treatment incurred in the country of domicile.

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?

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

Yes, the European Union and its member states should inform the customers about their fundamentally equal rights in regards to the EU service providers. Some market participants still actively promote skepticism towards non-domestic offers. As a result consumer trust still tend to be higher for national products even if not justified by facts.

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?

Bitkom believes that consumer information needs to be easily understandable and not too overwhelming. While we welcome an open and transparent dialogue with consumers, we recommend cutting consumer information to an understandable and digestible standard. If the customer seeks more profound information such as FIN-NET, it needs to be transparent where he / she can find information (online) rather than "hiding it" in a 100 page consumer contract. There should be a limitation of the maximum amount of information a customer is required to accept.

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?

Please see also question 1 and 18. Banks and financial institutions – both online and offline – need to assure that the consumer has sufficient and understandable information at hand in order to judge for a respective product and prevent him from making an uninformed decision. At no point should there be misleading advice by an institution. However - in addition – if the customer has adequate information at hand in order to pursue an informed (trans-) action, there should be a minimum standard of self-responsibility

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?

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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?

Bitkom believes that establishing a true European market for financial services is the key challenge and that overcoming this challenge will result in a significant increase in market attractiveness and drive innovative digital financial services to create maximum value for consumers.

We suggest the following measures:

- Product regulation: in order to create a common market, financial products should be regulated at EU level on product class basis (mortgages, car insurance, deposit accounts...) by a second regime which supersedes or overrides existing national frameworks. Moreover, for these products be suitable to digital value chains, the regulation must ensure that these products are simple and transparent and that disclosure requirements are such that products can be bought without recourse to specialist advice. EIOPAs consultation paper CP-15-006 on a Pan European Private Pension exemplifies this.
- Dispute resolution: for firms to gain trust in foreign markets, clients must be reassured that disputes are easy to resolve without recourse complex proceeding in foreign languages. We thus suggest that any dispute ought to fall under the buyers' domestic jurisdiction.
- Market Access: Digital providers are building often innovative services and require fast access to the best talent globally. National requirements are often bureaucratic, so a pan-European "Startup Blue Card" could address that problem. Requirements could be lower, but therefore, for example, such a working-permission has to be turned into a national one within two years. After this time startups know better their needs and have enough time to handle the necessary national bureaucracy.

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?

Yes, we need a EU directive on an adequate online identification of customers applicable in all member states. It may involve video/ biometric identification or obligation to the main service provider to provide customer identification materials.

Besides it makes sense to specify low-risk cases which may be applied with "Lean Identification" in low-risk AMI cases (e.g. close circuit money flows with single linked reference account of the same individual account-holder). A homogenous application would simplify cross-border provision of services and competition in a multitude of relevant product categories (e.g., deposits, credit, brokerage).

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?

Yes, we believe that the establishment of single, homogenous standards in the European Union is a legitimate mid-term objective. Current local regimes are not cohesive and at times have opt-in schemes / low acceptance of the citizens

In a digital world – all customer processes need to be digitalized as well. New authentication methods that underwent scrutiny (eg. by BAFIN) should than be allowed as market standard. E-ID and e-signature are very important tools in order to create a safe and seamless customer experience and should be supported on a EU level.

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

Bitkom sees a strong trend in new innovative solutions to access credit worthiness, e.g. by evaluating online behavior or other data provided by the customer. However there is still a need for access additional data, where the customer gives permission about data collection (eg. SCHUFA) in order to evaluate individual risk profiles / scores. On EU level – access to such databases needs to be possible for all financial service providers and technical standards for accessing and processing such data need to be established in order to guarantee a level playing field also in that respect.

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?

Yes - improved data sovereignty and consumer empowerment. Please take our answer from question 5 into account.

27. Should requirements about the form, content or accessibility of insurance claims histories be strengthened (for

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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?

Please see question 25

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?

Yes, we believe that that practical protection against unlawful/ restrictive application of regulation is necessary. Beyond that protection against arbitrarily application of local licensing rules in all member states shall be realized..

There should be a contact point where such issues could be reported so the contact point could check if the national requirements are in line with the intention of the directive.

Additionally different interpretation of passive vs active market access makes compliance with rules/ understanding of threshold very difficult. Also licensing requirements on platforms differ Member State by Member State and are at times antiquated / not possible to execute digitally.

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 standardization or opt-in regimes be most effective in overcoming differences in the legislation of Member States?

Bitkom thinks that all products that can easily be explained and are transparent enough for a customer to understand "at first glance" (without 100 legal pages) are prone to standardization.

Meanwhile, products that are subject to differing tax regimes and/or subsidies (e.g. pensions) will require further homogenization of regulation before they can be offered to consumers across member states.

EIOPA has covered this issue in detail in its consultation paper CP-15-006 on the Pan European Pension Plan.

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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