



# Green Paper on retail financial services: better products, more choice, and greater opportunities for consumers and businesses

Fields marked with \* are mandatory.

## Introduction

The Green Paper seeks the views on how to improve choice, transparency and competition in retail financial services to the benefit of European consumers. It also inquires on how to facilitate cross-border supply of these services, so that financial firms can make the most of the economies of scale in a truly integrated EU market. Finally, it is discussing the impact of digitalisation on retail financial services with a view to allow for growth of innovative solutions in this area in the EU.

**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-retail-green-paper@ec.europa.eu](mailto:fisma-retail-green-paper@ec.europa.eu).

More information:

- [on this consultation](#)
- [on the Green paper](#)
- [on the protection of personal data regime for this consultation](#) 

## 1. Information about you

\* Are you replying as:

- a private individual
- an organisation or a company
- a public authority or an international organisation

\* Name of your organisation:

Betaalvereniging Nederland (Dutch Payments Association)

Contact email address:

The information you provide here is for administrative purposes only and will not be published

m.vandermaarel@betaalvereniging.nl

\* Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#))

- Yes
- No

\* Type of organisation:

- Academic institution
- Consultancy, law firm
- Industry association
- Non-governmental organisation
- Trade union
- Company, SME, micro-enterprise, sole trader
- Consumer organisation
- Media
- Think tank
- Other

\* Where are you based and/or where do you carry out your activity?

The Netherlands

\* Field of activity or sector (*if applicable*):

at least 1 choice(s)

- Consumer protection
- General civil society representation (non-profit)
- Accounting
- Auditing
- Banking
- Credit rating agencies
- Insurance
- Financial intermediation
- Fintech firms
- Pension provision
- Payment provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)

- Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- Social entrepreneurship
- Other
- Not applicable

\*Please specify your activity field(s) or sector(s):

Betaalvereniging Nederland (Dutch Payments Association) organises the collective - non competitive - tasks in the national payment system for its members. Our members are providers of payment services: banks, payment institutions and electronic money institutions. The Dutch Payments Association's responsibilities lie in the areas of infrastructure, standards and shared product features. We seek to ensure a socially efficient, safe and reliable payment system, with room for innovation.

Due to the scope of our responsibilities and tasks (payments), we focus our responses to those subjects and questions, which - directly or indirectly - relate to retail payments.

The three key points of our response regarding the Commission's Green Paper on retail financial services are summarized below:

1. We note and appreciate the substantial regulatory progress made by the Commission in retail payment integration in the last decade, but we strongly recommend the European legislator to wait with new legislative initiatives regarding retail payments until the revised Payment Services Directive (PSD2), Payment Account Directive (PAD) and Interchange Fee Regulation (IFR) are fully implemented into Member States' national legislation (PSD2 and PAD) and properly enforced (PSD2, PAD and IFR).

Especially PSD2 will have major impact on the EU-market for retail payments by opening-up the payment account infrastructure (owned by credit institutions) for new third parties. When the impact and application of PSD2, IFR and PAD has been reviewed thoroughly and proper enforcement by national competent authorities has been ensured, then we believe the Commission is able to make an informed decision whether there is (still) any EU-market failure in retail payments, which needs to be 'repaired' by new EU-legislation. It is necessary to give time for current legislative measures to be effective. Over-regulation will make EU retail payments more expensive.

2. Prior to new legal initiatives a thorough problem analysis is needed that unequivocally shows that there indeed are significant unjustified and disproportionate entry - and switching barriers in retail financial services, incl. retail payments. We believe a valid problem analysis is missing in the Commission's Green Paper for a large part. Most assumptions made seem to be based on anecdotal evidence only. We would like to understand the Commission's definition of - and measurement tools and methodology for - the quality of products and why the current retail financial product offering would not be considered to be "good enough". In general, we believe such an assessment in a market economy should be left to the market (in particular end-users) and the

free play of competition.

3. We believe that any actions on the short term by the European legislator should focus on ensuring maximally harmonised EU-legislation regarding retail payments, ensuring mutual consistency between different EU-legislation and a consistent interpretation - and similar level of supervision - of EU-legislation by Member States' competent authorities. When needed, the European legislator should provide for legal certainty how existing legislation should be applied and/ or interpreted on a pan-EU level to avoid too much differences between Member States. Finally, we note that levels of supervisory costs local competent authorities charge to PSPs can vary significantly per Member States. This may lead to PSPs establishing themselves in those Member States where the competent authorities charge the lowest supervisory costs.



## Important notice on the publication of responses

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\* Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?

(see [specific privacy statement](#) )

- Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- No, I do not want my response to be published

## 2. Your opinion

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**Disclaimer:** the proposed options as responses to some of the questions do not commit the European Commission to any follow-up action.

The questionnaire contains 34 questions which seek the views of a broad range of stakeholders. However, not every question will be relevant to everyone and therefore stakeholders are not obliged to respond to all the questions.

The questionnaire below follows the structure of the [Green Paper](#) in which Section 3 outlines all the consultation questions.

### Section 3: Better products, more choice and greater opportunities for consumers and businesses

Please [refer to section 3 of the Green paper](#)  to read context information before answering the questions.

If you are a firm...

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

Please tick all relevant boxes

- Current accounts
- Saving accounts
- Mortgage credit
- Consumer lending
- Payment services (e.g. mobile payments)
- Car insurance
- Life insurance
- Private health insurance
- Saving and investment products
- Other
- Don't know / no opinion / not relevant

Please specify for which other financial products could improved cross-border supply increase competition on national markets in terms of better choice and price:

The Green Paper indicates that mobile,- internet - and instant payments emerge, but that these new payment solutions are often valid only at domestic level and are generally not interoperable and firms or groups of firms are competing to impose their own standards. We do not oppose these observations made by the Commission. However, we believe it should be left to market forces to witness which of these payment solutions have pan-EU reason to emerge. Introducing innovative services without increasing market-fragmentation as a side-effect seems impossible to us. Most PSPs offering new innovative retail payment solutions try to enter the market by targeting certain local market-niches.

When new innovative payment solutions appear to have enough potential for a broad uptake in the market, they have the potential for pan-EU use. Therefore, we believe that local retail payment solutions should be developed and implemented flexible enough to fit in with the harmonisation of standards and business rules, pan-EU reachability, interoperability and a harmonised legal framework. Unnecessary regulatory intervention should be avoided as an overly prescriptive approach could hamper innovation and market development of new innovate payments solutions and also their potential competitiveness in the EU - as well as in global - market-space. Furthermore, we note that PSPs already ensure a proper level of interoperability in retail payments for web merchants by offering them to accept all (online) payment methods in use in EU-Member States.

We see a positive (catalyst) role for the ERPB in this matter. We are therefore pleased to see the Commission's acknowledges and supports the work being done in ERPB (and EPC) to develop a pan-EU standard for instant payments, which, we expect, will be the 'new normal' in retail payments'.

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If you are a consumer or consumer organisation...

1B. Which financial products would you be most interested to buy cross-border from other Member States if they suited your needs better than products available on your local market?

Please tick all relevant boxes

- Current accounts
- Saving accounts
- Mortgage credit
- Consumer lending
- Payment services (e.g. mobile payments)
- Car insurance
- Life insurance
- Private health insurance
- Saving and investment products
- Other
- Don't know / no opinion / not relevant

If you are a firm...

2A. What are the barriers which prevent firms from directly providing financial services cross-border?

Please tick all relevant boxes

- Language
- Differences in national legislation
- Additional requirements imposed by national regulators
- Impossibility of verifying the identity of cross-border customers
- Lack of knowledge of other markets
- Cost of servicing clients cross-border (without local infrastructure)
- No EU passport available
- Other
- Don't know / no opinion / not relevant

Please specify what other barriers prevent firms from directly providing financial services cross-border:

The EU-legislators, consumer and retail organizations and the financial sector have been setting major steps in establishing a single market for payments (SEPA) in Europe over the last two decades. The introduction of the euro, PSD1 and 2, SEPA Regulation, Payment Account Directive, Interchange Fee Regulation and have been major milestones in establishing a secure, harmonized, efficient, more transparent, more competitive and more innovative single market. A lot has been accomplished in this respect.

Over the longer term we expect a further convergence in EU-retail payments,

offered by pan-EU operating PSPs. However, Europe is not (yet) a fully integrated market in terms of e.g. economic development, cultural background, customer preferences, tax legislation or regulatory framework. This also applies for retail payments. Even between countries that are physically very close to each other, there can be considerable differences in domestic consumer payment habits, such as the use of cheques, overdraft facilities on current accounts and the way people tend to pay both in physical stores and online, e.g. using cash, a debit (and/or credit) card or other payment method (such as iDEAL for online payments in the Netherlands).

Ex

isting national differences in retail payment markets should not be underestimated, like domestic legislation and institutional arrangements and business models (value propositions and pricing structures of PSPs). For example for current accounts, in some Member States it is common use to charge consumers per payment transaction made. In other Member States, such as the Netherlands and Sweden, flat-fee payment account packages, including an unlimited number of payment transactions, apply for consumers.

O

ther barriers that prevent PSPs from directly provide retail payment services cross-border are inconsistencies in relevant EU-legislation, different interpretation of EU-legislation incl. additional requirements imposed by national competent authorities and differences in Member States' national legislation. Finally, a consumer-friendly pan-EU eID-solution, or interoperable national eID solutions which are recognized in all EU-Member States, is not yet available. This makes onerous and 'old-fashioned' procedures (making copies of IDs, physical identification at the counter, place legally binding ("wet") signatures) to identify and verify someone's identity still relevant.

And of course, language barriers exist, which the Green paper acknowledges but seems to underestimate. Studies show that (still) only about 40% of Europeans actually speak English as a foreign language (not counting the 13% that speak it as a mother tongue). Imposing PSPs to sell their products and services in 22 languages (pages on their websites, and all documents (pre-contractual, contractual, and post-contractual information)) would otherwise impose on the industry an important translation system, IT investment and recruitment of people which would be impossible to overcome at a reasonable and justifiable cost.

We note that a recent study of the Dutch Central Bank ("Banking products: you can take them with you, so why don't you?") shows, amongst others, that particularly for foreign banks it is difficult to attract Dutch consumers. 60 percent of respondents set as a condition for their new bank that it is Dutch. This is a further indication that also psychological (instead of only rational) factors play a role. We believe that a lot of consumers still consider physical presence of PSPs in their Member State, even if limited, as a measure of soundness, confidence and continuity.

If you are a consumer or consumer organisation...

## 2B. What are the barriers that prevent consumers from directly purchasing products cross-border?

Please tick all relevant boxes

- Language
- Territorial restrictions (e.g. geo-blocking, residence requirement)
- Differences in national legislation
- Lack of knowledge of the offer of products in another Member State
- Lack of knowledge of redress procedures in another Member State
- Other
- Don't know / no opinion / not relevant

Please specify what other barriers prevent consumers from directly purchasing products cross-border:

We and our members are not consumer organizations. However, we do believe to have an insight into consumers' demands and needs. Consumers in The Netherlands require safe, secure, reliable, easy to use, efficient and fast payment solutions. We believe that market forces will meet consumer demand at local, regional or global level if appropriate. A harmonized EU-legal and tax framework will support consumers in making informed choices on which retail payment services they will use.

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

- Yes
- No
- Don't know / no opinion / not relevant

3.1 Please specify which of these barriers can be overcome in the future by digitalisation and innovation in the FinTech sector:

Please tick all relevant boxes

- Language
- Territorial restrictions (e.g. geo-blocking, residence requirement)
- Differences in national legislation
- Additional requirements imposed by national regulators
- Impossibility of verifying the identity of potential cross-border clients
- Lack of knowledge of other markets
- Lack of knowledge of the offer of products in another Member State
- Lack of knowledge of redress procedures in another Member State
- Cost of servicing clients cross-border (without local infrastructure)
- No EU passport available
- Other

Don't know / no opinion / not relevant

Please specify what other barriers can be overcome in the future by digitalisation and innovation in the FinTech sector:

As for retail payments, most barriers mentioned above (except the legal ones) can be overcome by further digitalization and innovation. For example, it could help facilitate remote knowledge of the customer (remote KYC, and remote contract signature). Digitalization can certainly improve transparency and harmonization in consumers' user experiences. Digitalization is, however, not an final goal in itself. It will not take away the issues addressed in our response to question 2a (legal and tax barriers, cultural differences and differences in consumer behavior).

We expect that the current trend where non-banks play a stronger role in retail payments continues over the next years to come. This contributes to an increased competition and a wider choice of products. However, digitalization and innovation in the Fintech-sector should not be seen as the only tool to tackle the barriers identified above. Digitalization and innovation in retail payments is not only restricted to FinTechs as the Green Paper seems to suggest, but can be achieved by 'traditional' PSPs (such as banks) or in cooperation between traditional - and Fintech players as well.

Banks bear the efforts and cost to maintain - and to further develop - the current payments infrastructure in use, which swiftly processes hundreds of millions retail payments per day. We mention, for example, iDEAL in this matter, which has proven to be a very successful online banking e-payment (OBeP) solution in the Netherlands, and was developed jointly by the Dutch banks. FinTechs often use the existing payment infrastructure to provide new innovative payment services. We encourage that traditional PSPs also foster new techniques in a more and more digital market, and sometimes partner with - or invest in - FinTechs to further improve their customers' payment experience. Banks have a large user base that FinTechs could tap into, especially with PSD2. On the other hand, FinTechs can stimulate and help banks providing solutions that could lead banks into becoming an omni-channel, customer centric business.

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?

Please tick all relevant boxes

- Improved access to digital means
- Digital training offered by the financial industry
- Digital training offered by NGOs
- Digital training offered by public authorities
- Other
- Don't know / no opinion / not relevant

Please specify what else can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate:

We believe that most essential basic retail payment services should also be kept available and accessible for people having difficulties keeping up with the speed of digitalisation of services, or simply do not (want) to have access to - and use - online services. Digital exclusion should not lead to financial (or social) exclusion. Regarding the provision of bank accounts to people that are not active online, we note that the new Payment Account Directive (PAD) ensures that basic payment accounts offered by credit institutions provide not only payment accounts with solely online facilities.

In the Netherlands, where the internet penetration is among the highest in the EU, still about one million elderly (of a total population of 16,8 million inhabitants) are not (yet) using internet- and mobile banking services. Of all over-65s, this still covers for 44 percent. Almost all consumer banks in the Netherlands have special teams of employees - and/ or have developed clear and comprehensive user manuals - to support non-digital clients and help them learning to work with internet - and mobile banking facilities. This contributes to customers' ability to access and use digital products, ensuring they are used as intended, and that consumers enjoy the full benefits of digitalization.

Due to the massive uptake of internet- and mobile banking facilities and the declining societal need for cash (due to the still increasing use of debit card payments and strong growth in online shopping), we note that banks in the Netherlands have been rationalizing their number of physical branches and ATMs. They also gradually discourage consumers from using relatively costly paper-based credit transfer forms and receipt of paper-based periodic paper bank account statements.

However, we note that Dutch consumer banks are aware of their social responsibility to maintain a minimum level of these physical retail payment services for the sake of national interest to keep retail payment services reachable and accessible for everyone, also for those who are not online at all. New players in retail payments do mostly not face any societal and political obligations to service non-digital consumers. And of course, these new players are - generally spoken - not interested to invest in a declining - and unprofitable - market of the physical retail payment services as mentioned above. This gives traditional PSPs a certain comparative cost-disadvantage against new entrants.

**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?**

Open competition on the market enables consumers to access a range of new competitive retail payment services. It also enables companies to offer their retail payment services to a broader array of customers. Because products and

services will be under high pressure to be supplied instantly, safely and with a guarantee of quality, the principle of “same services/risks, same rules” should apply to all PSPs offering similar retail payments products and services involving comparable risks, whatever the market/sector they are targeting, should be submitted to the same rules (e.g. AML/KYC) or offered the same flexibility as their competitors (e.g. prudential and compliance). The Digital Single Market should ensure a level playing field in the application of such measures.

We note the substantial regulatory progress made by the Commission in retail payment integration over the last decade. However, we believe that especially for retail payment services, new EU-legislation should remain the ultimum remedium to repair any supposed pan-EU market failure. We prefer that the European legislator would leave it to the relevant market actors in first instance to solve any possible new consumer protection risks when they occur. When the market itself is not able to solve the issue in a satisfactory way, the ERPB could play an important role.

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 6:

As for retail payments, we believe that PSD2, PAD, IFR, Revised Funds Transfers Regulation, 2nd E-Money Directive (EMD2), SEPA End-Date Regulation, EBA Guidelines on the security of internet payments and Regulation on equality of charges for national and cross-border payments provide for a solid legal foundation to ensure that EU-consumers have access to safe, simple and understandable retail payments. And the recently proposed European Accessibility Act (EAA) will harmonise accessibility requirements (for helping people with disabilities) for a number of essential products and services, including ATMs and online banking services, such as mobile- and internet banking throughout the EU.

The PAD and IFR are not yet fully implemented (and enforced) in Member States' national legislation. PSD2 has only recently entered into force on 13 Jan. 2016. Two years later, on 13 Jan. 2018, the PSD2 should have been implemented in Member States' national legislation. We strongly recommend the Commission to judge on whether consumers have sufficient access to safe, simple and understandable retail payment services throughout the EU, when the impact and application of PSD2, PAD and IFR has been reviewed and proper enforcement has been ensured.

Furthermore, we note that even when consumers have access to safe, simple and understandable retail payment services, they risk to be overloaded more and more by masses of information due to the growing range of obligatory

information to be delivered to consumers by PSPs. Consumers need to be adequately informed to make a reasonable decision on buying a product, but the extent of contracts and the additional information sheets lead to be incommunicable to the majority of customers who will at the end not read any of the documents. Limiting an overload of information remain also important objective to make products simple and more understandable.

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 7:

The enforcement of EU legislation dealing with retail payments (such as PSD, EMD2 and IFR) can differ significantly per Member State. This is, of course, obvious in those cases where Member State have chosen to apply certain Member State options as provided in this legislation, and others do not.

However, the interpretation and/ or intensity of enforcement of EU-legislation can also differ per Member State. Sometimes national competent authorities impose their own additional requirements. This can create difficulties for PSPs who want to offer their retail payment services cross-border in the EU. Of course, disproportionate hurdles preventing new innovative PSPs from entering the market must be avoided. At the same time, all entities providing retail payment services should be regulated proportionately and risk-based. Regarding to consumer trust, we note that different national consumer protection - and contractual laws apply across the EU. PSPs need to act in accordance with the host countries' national consumer protection laws (incl. its enforcement).

When needed, the European legislator should provide for legal certainty how existing EU-legislation should be applied or interpreted on a pan-EU-scale.

Finally, we note that levels of supervisory costs local competent authorities charge to PSPs can vary significantly per Member States. This may lead to PSPs establishing themselves in those Member States where the competent authorities charge the lowest supervisory costs.

## 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?

The difficulties of having to deal with many different national legislation (especially when it is changed relatively often) when trying to offer services cross-border can constitute an obstacle for PSPs. For example, diverging national civil law regimes require PSPs to adapt product strategies locally. For example, regarding the SEPA direct debit (SDD), we note that data

protection laws in some Member States are restricting the correct use of reasons codes when a direct debit return is made by a PSP. This results in the manual processing of the return at considerable cost to the PSP. We are aware that the Commission is already investigating the matter and hope that these investigations will result in actionable recommendations to resolve the issue.

Regarding diverging member state-specific legislation, we refer to the recently implemented Dutch national legislative act 'Regeling Oversight goede werking betalingsverkeer'. This applies on the oversight of the smooth operation of payments. As from end-2015 this legislation applies to banks, payment institutions and electronic money institutions that have their registered office in the Netherlands and together represent about 95% of total domestic transaction volume within the scope of the regulation.

From the end of 2016, time-critical payment orders (e.g. payment made using debit cards and iDEAL) must meet an availability standard of at least 99.64%, to be increased to 99.76% from the end of 2017 and 99.88% from the end of 2018, in the peak demand period measured on a quarterly basis, and 98.5% outside the peak demand period. As far as we know, the Netherlands are the only EU-Member State where such strict and legally enforced availability standards for retail payments apply. This gives PSPs that have their registered office in the Netherlands and which are (regarding their payments volume) in scope of the legislative act, a competitive disadvantage due to the significant costs for being able to comply to these - high - availability norms against PSPs from other EU-member states.

Furthermore, existing EU-legislation which directly or indirectly impacts retail payments and PSPs should be assessed whether they are consistent with each other and suited for the digital market reality. Particular attention should be given to the need to avoid conflicting obligations for PSPs in areas such as faster access to services/ e-identification versus the fight against money laundering (4th AML Directive).

Also attention is needed regarding consumer protection (security and fraud prevention) versus sharing personal credentials with Third Party Providers in light of PSD2; see our answer to question 22. And in view of the NIS Directive, it would be important to harmonise the legal framework in the context of security and incident notification. Finally, we note that the danger that exchange of data between PSPs on fraudsters and money-mules could be blocked due to legal (privacy) restrictions due to the current Data Protection Directive and future GDPR.

## **3.1 Helping consumers buy products cross-border**

### **3.1.1 Knowing what is available**

Please [refer to section 3.1.1 of the Green paper](#)  to read context information before answering the questions.

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?

Please tick all relevant boxes

- Independent pan-European comparison websites, including the information on cross-border products
- Information campaigns by regulators
- Information campaigns by consumer organisations
- Marketing campaigns by financial services providers or their associations
- Financial intermediaries empowered to offer cross-border financial products
- Other
- Don't know / no opinion / not relevant

Please specify what other channel would be the most appropriate to raise consumer awareness about the different retail financial services and insurance products available throughout the Union:

The commercial basis of a PSP's products and services reinforces the inherent dynamic that encourages widespread awareness of products available to customers, driven by PSPs themselves, and reinforced by independent national-level price comparison websites. Driving PSPs via regulation to service markets that are commercially not attractive does not provide that dynamic, and should be avoided.

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

It seems obvious to us that (commercial) intermediaries tend to select, market and distribute those retail payment services from PSPs located in other Member States, for which there seems to be a sufficient existing - or potential - demand in the Member State in which the intermediary operates. And of course, intermediaries themselves want to enjoy financial benefits in doing so. We see no role for the EU-legislator in this matter, other than removing unnecessary and cumbersome legal - and tax barriers on EU-level and on Member States' level, which prevent PSPs to offer their services cross border within the EU.

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?

- Yes, at Member State level
- Yes, at EU level
- No
- Don't know / no opinion / not relevant

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

Please tick all relevant boxes

- Aligning cross-border and domestic fees
- Before every transaction, consumers should be clearly informed what fee they will be charged and for comparison should be presented the fee for national payment
- Before every transaction consumers should explicitly accept the fee they will be charged
- No further action is needed
- Other
- Don't know / no opinion / not relevant

Please specify what else can be done at the 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 are curious what the Commission means with “excessive fees”? This seems a subjective and unsubstantiated concept or statement to us. What is key is compliance with applicable legislation (e.g. PSD(2) and PAD) as well as competition among payment methods and PSPs. Compliance monitoring and complaint handling are responsibilities entrusted by the PSD and the PAD to Member States’ competent authorities.

Regulation (EC) No 924/2009 on cross-border payments has already eliminated the differences in charges applicable to cross-border payments in Euro. Even though this Regulation was extended to two foreign currencies, applying this provision to all currencies within the EU (i.e. aligning cross-border and domestic fees) would force payment providers to subsidize forex transactions to the detriment of own-currency transactions with no economic justification.

It is therefore preferable to ensure that consumers are properly informed about the charges that will be levied in case a transaction involves a foreign currency exchange, in line with PSD2. No further action is therefore needed as PSD2 imposes already clear transparency requirements on PSPs.

13. In addition to already 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?

*\* Articles 59 and 60(3) of the revised Payments Services Directive (PSD2): 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))*

Please tick all relevant boxes

- No further action is needed
  - Before every transaction, consumers should be clearly informed what conversion fee they will
  - be charged and for comparison should be presented the average market conversion fee (e.g. provided by the European Central Bank)
  - Before every transaction consumers should explicitly accept the conversion fee they will be charged
  - Other

Don't know / no opinion / not relevant

Please specify what other further actions needed to ensure that consumers know what currency conversion fees they are being charged when they make cross-border transactions:

We have no indication that further legislative or non-legislative action is needed to ensure that consumers know what conversion fees they are being charged for cross-border transactions where funds are held at a payment account. However, we note that under PSD2 'cash-to-cash currency exchange operations where the funds are not held on a payment account' are exempted from its scope.

Furthermore, we note that as compared to PSD1, PSD2 brings currency conversion services at an ATM (Dynamic Currency Conversion - DCC) in scope. This means that the party offering the DCC-service on an ATM to the payer shall disclose to the payer all charges as well as the exchange rate to be used for converting the payment transaction. Compliance monitoring by Member States' competent authorities should also cover the DCC-situations.

We also notice an increased competition in the market for cross-border payments involving different currencies; also by FinTech companies, which offer their services at competitive rates. Often these new players use alternative business processes (such as peer-to-peer systems) instead of using the traditional cross-border payments infrastructure. An example of how such a peer-to-peer system works: Someone wants to convert pounds to euros. The technology behind the peer-to-peer system finds someone who wants to transfer money in the opposite direction (euros into pounds). This means that the money never actually moves across borders.

### 3.1.2 Accessing financial services from anywhere in Europe

Please [refer to section 3.1.2 of the Green paper](#)  to read context information before answering the questions.

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

Regarding payment accounts, the Payment Account Directive (PAD) ensures that credit institutions do not discriminate against EU-consumers by reason of their nationality or place of residence or by reason of any other ground as referred to in Article 21 of the Charter, when those consumers apply for or access a payment account within the EU.

There are simply a range of practical, risk-based considerations that currently restrict the ability of PSPs to serve applicants from other jurisdictions. These are not considered, and are certainly not intended to be, 'discriminatory' on the grounds of residence. Member States shall notably ensure that credit institutions refuse an application for a payment account

with basic features where opening such an account would result in an infringement of the provisions on the prevention of money laundering and the countering of terrorism financing laid down in Directive 2005/60/EC.

We therefore oppose the flawed logic that dictates that failure to service a customer in another EU jurisdiction is by definition 'discrimination'. In principle, PSPs should retain the ability to decide which customer segments and markets are appropriate as part of their business model and risk management procedures (cross-border sales appear to be more risky to some PSPs), and not be forced by regulation to enter markets that they may feel that they are operationally non-equipped or simply commercially unable to service (without being considered as discriminating).

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

Please tick all relevant boxes

- Prohibit insurance firms from geographically limiting cover to the country where the policy-holder is living
- Encourage insurance firm to sell insurance products with wide geographical coverage
- Other
- Don't know / no opinion / not relevant

Please specify what else can be done at the EU level to facilitate the portability of retail financial products:

This question mostly relates to life assurances and health insurances. As for retail payments, we note that due to SEPA, EU-consumers are already able to maintain and use the payment account (IBAN) kept at a PSP in their home Member State, when temporally (or permanently) moving to another Member State.

The Green Paper mentions that full portability of bank account numbers is being examined in some Member States to further encourage switching. We note that during the PAD-review (in 2019), the costs for realizing pan-EU number portability will be examined and quantified, together with potential benefits. The results will allow to verify whether the benefits, in terms of improved market competition, would outweigh the costs, and hence whether it is justified to consider the introduction of EU-wide portability.

We conceptually support the realization of EU-wide payment account number portability in due course, if based on a thorough (and positive!) societal business case (incl. a realistic and coherent impact assessment and cost-benefit analysis). And if so, we believe that it should be realized on a pan-EU scale and not on Member States' level. This to prevent an unlevel playing field between Member States, and the development of national solutions that could appear to be non-interoperable on a pan-EU scale.

We emphasize that account portability will not eliminate all switching costs and - efforts for consumers who actually switch payment accounts between

banks. This because consumers will, for example, still have to request, receive and activate the debit and/or credit card(s) from their new bank and have to familiarize themselves with the internet- and mobile banking facilities of the new bank. This is inherent to a competitive, not-(completely) commoditized market for payment account services.

Finally, we note that with the digital revolution on-going, the use of aliases for IBANs may partly remove the supposed necessity for introducing bank account number portability. Linking an IBAN to an alias, such as a mobile phone number or email address increases the ease of payment for consumers. With such a linkage account holders can "remember" their payment account number more easy. When people switch payment accounts, the chosen alias can remain the same, only the underlying IBAN changes. In some EU- is the use of aliases for IBANs in 'peer-to-peer'-payment solutions is already quite wide-spread.

## 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?

We are not aware of any problems in this matter. However, we note that this issue could be relevant in light of PSD2. PSD2 obliges - newly regulated - Payment Initiation Service Providers (PISPs) and Account Information Service Providers (AISPs) to hold a professional indemnity insurance or comparable guarantee to cover their liabilities in respect of PSD2. EBA will provide guidance on the monetary amount of this insurance.

### 3.1.3 Having trust and confidence to benefit from opportunities elsewhere in Europe

Please [refer to section 3.1.3 of the Green paper](#)  to read context information before answering the questions.

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

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 17:

We note that the Payment Account Directive (PAD) already optimizes transparent, easy-to-understand and comparable payment account related products and services that consumers use for their day-to-day payment transactions. The PAD enforces standardization of glossary and terms regarding payment account services on a pan-EU-level. Also the PAD requires that consumers must have

access to at least one independent comparison website per Member State. By drawing together available information on the payment accounts offered on the national market, and presenting these in an accessible and engaging format, these comparison websites will help to encourage shopping around and switching within the respective Member State.

Furthermore, PSD(2) clearly indicates strict obligations of PSPs to provide payment services users (PSUs) with sufficient and transparent information about the content, mutual rights and obligations between PSP and PSU, and fees regarding retail payments. These obligations make it easier for PSUs (and comparison websites) to compare retail payment services of several PSPs.

The effective implementation of existing (incl. recently agreed) legislation, including a proper monitoring of compliance, should be the first priority. We do not believe that further legislative or non-legislative action is needed beyond existing legislation to improve the transparency and comparability of retail payment services to strengthen consumer trust.

**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?**

*\* FIN-NET is a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries that handle disputes between consumers and financial services providers*

- Yes  
 No  
 Don't know / no opinion / not relevant

**Please explain your answer to question 18:**

We recommend the Commission to wait for the Commission's reports regarding the application of the Recommendation of collective redress (2017), the ODR Regulation (2018) and the ADR Directive (2019), before hypothesizing that there is a need for more consumer awareness of FIN-NET and its effectiveness.

**19. Do consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance?**

- Yes  
 No  
 Don't know / no opinion / not relevant

**Please explain your answer to question 19:**

In EU Member States consumers have a clear route to seek to redress in any cases of mis-selling. There is a clear requirement for PSPs to treat customers fairly, and to ensure that financial services are sold to customers in a manner that is "fair, clear and not misleading". National regulators and

out-of-court resolution bodies play a key role in receiving and investigating financial services complaints. Therefore we do not believe that further enhancement of customers' access to seek redress in cases of mis-selling is necessary.

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?

- Yes
- No
- Don't know / no opinion / not relevant

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?

This question is not applicable for us to answer, since it does not refer (directly or indirectly) to retail payment services.

21.1 With respect to the car rental sector, are specific measures needed with regard to add-on products?

- Yes
- No
- Don't know / no opinion / not relevant

## 3.2 Creating new market opportunities for suppliers

### 3.2.1 Meeting the challenges and opportunities presented by digitalisation

Please refer to section 3.2.1 of the Green paper  to read context information before answering the questions.

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

We focus our answer to this question on the access to customers' payment accounts and data information by third party payments providers (TPPs) in light of PSD2. With the PSD2 published on 23 Dec 2015, the list of activities that payment institutions can carry out is expanded to include payment

initiation services (PIS) and account information services (AIS). Legally (until PSD2), these TPPs have been operating in a grey zone. At the same time, their emergence demonstrates that an actual market need was not being covered sufficiently by the traditional market. The PSD2 stipulates that 'Account Servicing PSPs' (banks) shall make it possible for PISPs and AISPs to rely on the authentication procedures provided by banks. It means that these TPPs will have access to clients' payment accounts and customer data information via the banks' infrastructure.

The challenge is to ensure security and privacy for AS PSPs and consumers. The structure behind the functioning of PIS/ AIS potentially calls into question the AS PSP's measures to keep online banking secure, and might put at risk existing AML - and fraud prevention measures already in place. The appropriate technical standards for authentication methods and the customer's data which TPPs are allowed to retrieve (via the Regulatory Technical Standards (RTS) are to be defined by EBA as mandated in PSD2.

We hope that the EBA RTS will clear out that under no circumstances consumers should be allowed to hand-over their own personal credentials as provided by their AS PSP to any TPP.

We believe security should not be sacrificed at the expense of competition and innovation. However, we also believe that innovation brought by digitalisation should not be seen as the enemy of security. It can actually enhance security, as has been demonstrated by the introduction of the EMV-standard for payment cards. Finally, we believe that cooperation and raising EU citizens' awareness on the growing threats from cybercrime is essential. It should be a concern for all, including public and private actors.

**23. Is further action needed to improve the application of European Anti-Money Laundering legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?**

- Yes
- No
- Don't know / no opinion / not relevant

**If further action is needed to improve the application of European Anti-Money Laundering legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework, please state additional comments on possible actions (e.g. guidelines at EU level, etc.):**

We are aware that the requirements of EU AML-legislation limits the ability to open and maintain business relationships with customers at a distance, which is also been confirmed in the Commission's study on the Distance Marketing of Consumer Financial Services Directive. This affects financial services, including the opening of payment accounts. We agree that the financial sector, incl. retail payment services, is an important area which can benefit from true pan-EU eID solutions.

Identity plays a central role in retail payments as varied as paying for an

online order and to open a payment account. In order to enjoy the full benefits of such increasingly digitalised environments, an assured way of authenticating identities of consumers is required, also on a pan-EU cross-border context. We certainly believe the eIDAS Regulation is a good step forwards in providing a pan-EU regulatory framework which provides a predictable regulatory environment to enable secure and seamless electronic interactions between businesses, citizens and public authorities.

Nonetheless, in practice, a number of legal obstacles remain. We observe that inconsistencies exist between the eIDAS Regulation and the 4th AMLD. The eIDAS regulation presents e-identification and e-signature as a new opportunity to facilitate the establishment of non-face-to-face business relationships. The 4th AMLD, which is currently being transposed into national law, holds that entering into relationships with customers (for example, when opening a bank account for a new customer) not physically present in a bank branch is inherently considered high risk. PSPs have an obligation to check the identity of their clients (KYC-obligations) as required by the 4th AMLD. The result is that PSPs, when selling digital services to new customers, must observe a more thorough KYC-procedure than otherwise mandated. This often means that customers need to provide physical copies of ID or other documentation before being able to use it. It does not support the objectives of the Digital Single Market to build a smooth access to online products and services for customers whenever and wherever they wish. We believe that reliable technologies allowing for digital on-boarding should also be considered as equivalent and valid identification methods.

Some procedures of identification at a distance already exist (for example wire transfer to identify customer through the bank where he has payment account), but these procedures are difficult to apply between a firm of one Member State and a consumer of another Member State across the EU. It would be useful to define a European system of identification that could be used by all European firms without difficulties. In this way should be overcome an important barrier which prevents firms from complete application of identification obligations of EU anti-money laundering.

Finally, we note that the eIDAS regulation places the full and unlimited liability for possible misuse of an eID with the organization which has issued the eID. This could act as a barrier for eID-issuing parties which want to offer their services on a cross-border basis within the EU. We therefore favour some kind of legal limitation on the extent to which an eID-issuing organization can be held liable for possible misuse of an eID it has issued. We note that, in light of the eIDAS regulation, eID-issuing parties could also be PSPs - such as credit institutions - when their eID solutions are acknowledged and identified as (one of) the national eID solution(s) in EU-Member States.

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

- No
- Don't know / no opinion / not relevant

If further action is necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards, please state additional comments on possible actions:

Trusted e-identification and e-signature are essential for the development of the digital internal market and offers many opportunities for retail financial services (including retail payments) such as: facilitating access to distance product and services for consumers and the verification of customer identity. We believe that eID-solutions to enable identification of consumers at a distance are able to ensure the same level of security as face to face identification.

Furthermore, a reliable and consistent cross-border identification system would certainly help digitalisation efforts and cross-border provision. A consumer-friendly pan-EU eID-solution, or interoperable national eID solutions which are recognized in all EU-Member States, are not (yet) available. Short of establishing a common e-identity and e-authentication system, digital signing of documents (such as for an SDD-mandate) should be mutually recognized across borders as having the same legal status as physical signatures. The legal effect of an electronic signature should not be denied on the grounds that it has an electronic form, as provided by the eIDAS Regulation. We observe that certain national authorities and regulators have difficulties to recognise officially private identification keys as a proper and legitimate form of client identification. Also we note that it is difficult to validate an electronic signature in a technically simple manner, and to use it in the same way as a physical ("wet") signature.

The identification keys provided to clients by the banks (for internet banking) could be a valid substitute for e-identification and e-signature used in business dealings with consumers and not only for payment transactions in EU-jurisdictions. In the Netherlands, the banks have recently developed a service (called iDIN), by which their customers can identify themselves online at other organizations including governmental bodies. Customers who opt for this service will be able to identify themselves with the secure and trusted login procedures (and tokens) of their own bank, for example, at insurance companies, government parties or online shops. Therefore these customers do not to apply for - and have to remember - separate access codes. Pilots have started in March 2016 under the supervision of the Dutch Payments Association.

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

This question is not applicable for us to answer, since it does not refer (directly or indirectly) to retail payment services.

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, at Member State level
- Yes, at EU level
- No
- Don't know / no opinion / not relevant

If the increased use of personal financial and non-financial data by firms does require further action to facilitate provision of services or ensure consumer protection, please state additional comments on possible actions:

The use of data analytics contributes widely to a better personalized service provision to consumers and a more effective fraud monitoring and prevention by PSPs. However, a right balance needs to be found between data protection and data analytics methods. In our view a customer should provide for informed consent, when a PSP wants to use his payments-related data for data analytics.

We note that the ongoing discussions on the proposed EU General Data Protection Regulation (GDPR) on a possible restrictive definition of profiling, could limit considerably the possibilities for PSPs to use data-analytics to know their customers better, provide more personalised payment services and to prevent fraud. We would favour that the upcoming GDPR should leave enough room for PSPs for being able to use profiling for these important activities. Profiling should not be perceived as simply negative. Rather, it is a measure based on a balance of interests: preventing criminal actions and building consumers' trust in the digital economy as well as developing e-commerce.

A recent study of the Dutch National Forum on the Payments System concluded that the Dutch show little acceptance of the commercial use of payment data by banks. Acceptance is higher with regard to the use of payment data for such purposes as meeting the duty of care avoiding fraud, security and improving services. The study also showed that the Dutch have limited knowledge of how banks use their payment data. Of all respondents, 45% said they did not know what banks use their payment data for.

However, banks face competition from new players such as Google, Facebook and Apple, who also move into retail payments. These organisations build their business on big data analytics based on personal information. Consumers expect banks to be able to deal with financial data in a highly confidential and trustworthy manner. This trust is - of course - important. However, we believe it should not lead to a significant competitive disadvantage regarding the use of data analytics for banks against these new players in retail payments.

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?

- Yes
- No
- Don't know / no opinion / not relevant

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

- Yes, at Member State level
- Yes, at EU level
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 28:

The provision of post-contractual services and ongoing support for consumers living in another Member State can be challenging in many ways - in terms of branch availability, providing communications (for example in another language), or in maintaining oversight of a customer's behaviour in order to enable PSPs to manage their risks and to provide protection against fraud, money laundering and other forms of financial crime.

It is difficult to see what action the EU could take to alleviate issues directly relating to branch availability in the instance where a PSP or its subsidiaries are not active in a market, for commercial or other reasons. From a commercial cost perspective alone, servicing customers in other markets remotely can be challenging, but maintaining direct access to branch services in such instances immeasurably more so.

A strict obligation for every PSP offering retail payments services via internet to deliver them throughout the EU would significantly increase the risk connected to such kind of activity, especially for SME's and start-ups. It even could prevent start-ups from entering this part of the market. The costs of legal services related to conducting business in 27 Member States would be too high to bear by the majority of European PSPs and allow global players to strengthen their position in European market.

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

- Yes
- No
- Don't know / no opinion / not relevant

30. Is action necessary at the 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
- No
- Don't know / no opinion / not relevant

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)?

As for PSPs, we consider maximally harmonised EU-legislation (as less member state options as feasible and as less member state-specific domestic legislation), mutual consistency between EU-legislation and a consistent interpretation by - and enforcement of - Member States' competent authorities as an important step in this matter. We also note that levels of supervisory costs local competent authorities charge to PSPs can vary significantly per Member States. This may lead to PSPs establishing themselves in those Member States where the competent authorities charge the lowest supervisory costs.

For more information, we refer to our answers to question 2A, 7 and 22.

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?

Please tick all relevant boxes

- Life insurance (This work would build on existing EIOPA research on the Pan-European Personal Pension product)
- Mortgage
- Other
- None
- Don't know / no opinion / not relevant

Please specify for which other retail financial services products standardisation or opt-in regimes might be most effective in overcoming differences in the legislation of Member States:

The Green Papers mentions that in some instances a separate legal framework might be the best way to increase choice of product while decreasing costs for business and ensuring that consumers are adequately protected. Specifically an opt-in regime could be a framework for identical product characteristics, to be used on a voluntary basis.

We note that such an opt-in regime for products/ services with comparable characteristics could indeed be useful in some cases. As for payments, we believe however that the current framework is sufficient, and no action is necessary before the recommendations and regulatory technical standards, which must be supplied by the EBA in relation to PSD2 have been completed and are in

effect. But we do see possibilities for such an opt-in regime for processes (instead of products) with identical process characteristics. For retail payments, such a process could be the online-identification of consumers and /or the digital signing of documents. Both processes as part of the distance selling process of financial retail services.

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

- Yes
- No
- Don't know / no opinion / not relevant

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

*5000 character(s) maximum*

We will be happy to provide more detailed comments in due course, should these be required by the Commission.

Yours sincerely,  
DUTCH PAYMENTS ASSOCIATION

Drs. M. (Marc) A. van der Maarel  
Senior policy Advisor

## Useful links

Details of the Green paper ([http://ec.europa.eu/finance/consultations/2015/retail-financial-services/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/retail-financial-services/index_en.htm))

Green paper document (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:630:FIN>)

Specific privacy statement

([http://ec.europa.eu/finance/consultations/2015/retail-financial-services/docs/privacy-statement\\_en.pdf](http://ec.europa.eu/finance/consultations/2015/retail-financial-services/docs/privacy-statement_en.pdf))

More on the Transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en>)

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