

European Commission Consultation Document, March 2017
**FINTECH: A MORE COMPETITIVE AND INNOVATIVE
EUROPEAN FINANCIAL SECTOR**

BdV comments, June 2017
(selected questions on insurance sector)

Questions

1.1. What type of FinTech applications do you use, how often and why? In which area of financial services would you like to see more FinTech solutions and why?

BdV comment:

- No, we do not use any applications of other FinTechs. But we offer - for free - on our website a tool for the analysis of individual insurance needs of consumers (in German: BedarfsCheck). This tool, which may be loaded down as a smartphone application, is definitely not linked to any contract conclusion or sale!
Web Link to BdV-BedarfsCheck:
<https://www.bdv-beratung.de/entscheidungshilfen/bedarfscheck>
- An area of financial services in which we possibly would like to see more FinTech solutions is EIOPA's proposal for Pan-European Personal Pension Product (PEPP) following to EIOPA's Advice on the development of an EU Single Market for personal pension products (PPP) in July 2016. But important pre-conditions have to be fulfilled: there must not be any setbacks related to the level of consumer protection already reached by information and disclosure duties, product oversight and governance requirements, prevention of possible conflicts of interest by remuneration and inducement systems (consistency of relevant EU directives like MIFID II and IDD).
- If PEPP will be able to stand for a positive convincing example of this new distribution technology, FinTechs will very probably have an even deeper impact on the distribution practices for life- and annuity insurances on the national level of the EU member states.

1.3. Is enhanced oversight of the use of artificial intelligence (and its underpinning algorithmic infrastructure) required? For instance, should a system of initial and ongoing review of the technological architecture, including transparency and reliability of the algorithms, be put in place? What could be effective alternatives to such a system?

BdV comment:

- Yes, enhanced oversight of the use of artificial intelligence (and its underpinning algorithmic infrastructure) is strongly required. The EP Report on FinTech of 28 April 2017 (p. 7) has already clearly emphasized that “whereas, as FinTech emerges, consumers and investors must be able to continue relying on high standards of consumer and investor protection, of data protection and privacy rights and of legal responsibility on the part of financial services providers.” Needless to say that public confidence in the technologies concerned is vital for the future growth of FinTech. Therefore we do not see any effective alternatives to a system of initial and ongoing review of the technological architecture, including transparency and reliability of the algorithms, which should definitely be put in place.

1.4. What minimum characteristics and amount of information about the service user and the product portfolio (if any) should be included in algorithms used by the service providers (e.g. as regards risk profile)?

BdV comment:

- It must be ensured that an algorithm delivering financial advice is well calibrated and the necessary checks have been performed before it enters the production phase, including taking samples and comparing them against the advice that a human advisor would have suggested; human advisors should closely be involved in the design and oversight of automated advice tools, to ensure that the algorithm delivers the expected outcome (cf. ESAs Report of 16 December 2016 on automation in financial advice).
- There is already the overarching obligation that all information provided to clients and potential clients should be fair, clear and not misleading following the EU directives of MIFID II and IDD. Consumers must be enabled to understand all the information that is provided about how the data they have given is used by the tool. This does not only depend on financial literacy, but also on what information and how that information is presented to the consumer.

- Indispensable part of these information obligations is the presentation of the new product information documents (KID for PRIIPs and IPID for non-life insurances) before any conclusion of the contract.
- Following the IDD article 20 (1) the test of demands and needs has obligatorily to be offered to the potential client by the distributor. Related to complex insurance-based investment products the suitability and appropriateness assessment has to be carried out, and an additional warning must be given, if an IBIP appears to be non-appropriate (IDD article 30 (1) to (3)).
- Following to IDD article 25 online sales on a non-advice basis, too, must clearly indicate the identified target market for any insurance product and of course all those consumer groups for which it is not appropriate. If a consumer decides not to follow the default investment options, automatically there should “pop up” comprehensive explanations where and how to get additional advice.
- It must be assured that consumers will have the possibility - at any phase of the online service - to ask clarifying questions to a human advisor, even if the service in itself is a “fully automated tool”. Sufficient advisors with different education and skills must be available for purely technical information and for contractual advice. There has to be the additional possibility that the ongoing online service offered by the FinTech may be interrupted and even abandoned by the consumer at any stage of the procedure without any fees or loss of data protection.

1.5. What consumer protection challenges/risks have you identified with regard to artificial intelligence and big data analytics (e.g. robo-advice)? What measures, do you think, should be taken to address these risks/challenges?

BdV comment:

- The same consumer protection requirements must be applied to robo-advice as to face-to-face advice. The key issue is *disintermediation*, which entails – from a consumer perspective – potential benefits and risks simultaneously. One very important potential benefit might be the decreasing importance of commissions mainly in the life insurance sector which are highly responsible for mis-selling cases. But of course this possible positive effect will only be realized, if conflicts of interest by holdings or remuneration systems are strictly excluded as required by IDD article 19.
- We do not think that robo-advice is *per se* more consistent than human advice. This assumption represents a rather simplistic point of view, because as ESAs already pointed out in their recent Report (cf. our comment on Q 1.4), there might be “flaws

in the functioning of the tool due to errors, hacking or manipulation of the algorithm”. We stress that there must not be any “hidden” fees depending on the choices following to the decision tree of the algorithm, transparency of costs must be an indispensable pre-condition of the entire online service. The algorithm must always include the possible final decision that the conclusion of the contract is not appropriate (following to the demands and needs of the consumer) and therefore the sale of the product is not recommended.

- Another very important issue related to disintermediation are possible legal disputes due to the unclear allocation of liability, especially when consumers receive advice via a fully automated tool. It must definitely be assured that even in cases of IT-based manipulation of the tool or of hidden fees the consumers will have the technical possibility to preserve a comprehensive documentation of the entire online service up the point they have just reached.
- It must be guaranteed that incorrect data can be changed and that only verifiable and relevant data are used by the provider.
- In January 2015 EIOPA published its Opinion on sales via the Internet of insurance and pension products, in which the main “types of consumer protection issues” were depicted. It was clearly emphasized that consumers wishing to research premiums via the Internet may not be fully aware that they may inadvertently enter into unsolicited contracts. This can particularly be the case given the various options and fields to 'tick-off', also taking into account that sometimes such fields are ticked-off as default options by the distributor. Such inadvertent and unsolicited contracts may be caused by a lack of comprehension of the online purchasing process. That is why online distributors must have a “duty of advice” in order to provide consumers with appropriate information and “with a view to avoiding unsolicited, or mistakenly concluded contracts”. Only by this “proactive approach” consumer detriment will be reduced.

1.9. Can you give examples of how sensor data analytics and other technologies are changing the provision of insurance and other financial services? What are the challenges to the widespread use of new technologies in insurance services?

BdV comment:

- In the insurance sector up to now we see three main applications of this new data analytics: telematic black boxes for motor vehicle insurances, “smart homes” with special burglary and housebreaking insurances and fitness or activity trackers linked to health policies. We underline two main challenges:

- The terms and conditions of the contract must clearly disclose the measures of data protection taken by the insurers. Consumers must have the right to know, which data are collected, how they are used, for which period and how can they be deleted?
- On a more general level we see the dilemma that the more “big data” are used the more the “law of large numbers” loses its foundation. Private insurances are based on this fundamental principle – at least until now. The more premiums are calculated on an individual basis the more the mutual exchange of risks on a collective basis is reduced. But that is a problem which has to be solved by the insurers themselves.

1.10. Are there already examples of price discrimination of users through the use of big data? Can you please provide examples of what are the criteria used to discriminate on price (e.g. sensor analytics, requests for information, etc.)?

BdV comment:

- As already pointed out in our comment on Q 1.9 we stress the danger of the loss of the “law of large numbers” the more big data are used. In order to prevent from any price discrimination mainly of consumers who are classified as “bad risks” we make the following proposal for the premium calculation: for each tariff there should be a definite cap of possible increase of premiums (for “bad risks”) as well as a definite cap of possible decrease of premiums (for “good risks”). For reasons of competitiveness the cap for good risks might be broader than for bad risks. Both caps should obligatorily be disclosed in the product information documents by the insurers.

1.11. Can you please provide further examples of other technological applications that improve access to existing specific financial services or offer new services and of the related challenges? Are there combinations of existing and new technologies that you consider particularly innovative?

BdV comment:

- As already pointed out in our comment on Q 1.1, we offer - for free - on our website a tool for the analysis of individual insurance needs of consumers (in German: BedarfsCheck). This tool, which may be loaded down as an software application for mobile devices, is definitely not linked to any contract conclusion or sale!

Web Link to BdV-BedarfsCheck:

<https://www.bdv-beratung.de/entscheidungshilfen/bedarfscheck>

- The frequent and comprehensive use of this kind of applications, which must be independent from any particular products and from any manufacturers, should be a crucial part of any financial guidance for consumers. Quite on the contrary to this independent application very often well-established comparison websites for financial services do not fully disclose neither the range of providers they include at all nor the commissions they grab. This has recently been shown by an empirical study for the Federation of German Consumer Centres in Berlin (VZBV) related to current accounts, installment loans and motor vehicle insurances.

VZBV-Website (in German):

Studie zu Finanzvergleichsportalen: Unter falscher Flagge, Mai 2017.

<http://www.vzbv.de/pressemitteilung/studie-zu-finanzvergleichsportalen-unter-falscher-flagge>

http://www.vzbv.de/sites/default/files/downloads/2017/05/26/1317_vzbv_vergleichsportale_2017_05_19.pdf

3.1. Which specific pieces of existing EU and/or Member State financial services legislation or supervisory practices (if any), and how (if at all), need to be adapted to facilitate implementation of FinTech solutions?

BdV comment:

- As it was stated in Better Finance's response on the Mid-term review of the Capital Market Union, it is very important "the promotion of independent comparative website, surfing on the new possibilities offered by FinTech. "Independent" is the key word here".
- In our view, this is a crucial feature for a strong single market for retail investors, which should have been included in the Green paper for retail financial services. This should be reflected in the CMU Action Plan.

3.8. How can the Commission or the European Supervisory Authorities best coordinate, complement or combine the various practices and initiatives taken by national authorities in support of FinTech (e.g. innovation hubs, accelerators or sandboxes) and make the EU as a whole a hub for FinTech innovation? Would there be merits in pooling expertise in the ESAs?

BdV comment:

- Regulators and supervisors should work together to coordinate, complement or combine the various practices to support FinTech.
- For the solutions proposed by the EC to support supervisor's endeavours, we believe that enhancing the understanding of FinTech by supervisors through regular forums with all stakeholders (innovation hubs) is a good solution. We also think that consumer representatives should play an active role on this matter due to their link to customers' needs and requirements.
- Moreover, the introduction of basic principles for firm support at EU level should also be helpful to support supervisors' tasks as they would structure the criteria for support of firms.