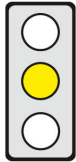


## KEY ISSUES

**Objective of the Green Paper:** The Commission wants to remove barriers to cross-border retail financial services.

**Affected parties:** Financial service providers, retail customers



**Pro:** (1) Removing barriers gives rise to more intensive competition, greater innovation and lower prices.

(2) The free choice of law for contracting parties and fully harmonised, optional EU rules ("29th Regime") strengthen competition.

**Contra:** (1) Rules on reducing termination costs will not necessarily lead to lower prices for all customers in the case of long term contracts. In fact, they will result in faithful customers being forced to subsidise the more fickle customers.

(2) The requirement for "objective criteria" for restricting cross-border financial services must not result in an obligation to enter into a contract nor in price regulations.

(3) The Commission's portability plans - particularly for life insurance and private health insurance - are currently unrealistic.

## CONTENT

### Title

**Green Paper COM(2015) 630** of 10 December 2015 on **retail financial services**

### Brief Summary

#### ► Context and objective

- According to the Commission, "true Europe-wide markets in retail financial services", such as insurance, loans, payments, savings accounts and investments, do not exist (p. 2).
- In the Green Paper, the Commission considers the current situation, looks to the future and describes how obstacles to cross-border activity can be removed.

#### ► Current situation: Fragmented markets

- The retail financial services markets are "fragmented" i.e., they are predominantly national. According to the Commission, this "to some extent" reflects "cultural and national preferences and customers' choice" (p. 5).
- Although the Commission states that 38% of EU citizens live in another Member State or in "cross-border areas", the level of direct cross-border transactions in retail financial services is limited. This applies to insurance (EU-wide 3%), loans (in the eurozone 1%) and payment services such as current accounts (EU-wide 3%) (p. 6).
- According to the Commission, foreign suppliers "adjust their pricing to local conditions and do not generally export more competitive pricing to other markets". The prices for comparable financial services differ greatly between the Member States. Diverging economic conditions, funding costs, taxes and other objective differences "do not always sufficiently" explain the price differences. (p. 8)
- The Commission believes that competition on the retail financial services market is not working sufficiently well. It criticises a combination of high market concentration, "high levels of dissatisfaction" among customers and low levels of switching. (p. 10)

#### ► Outlook: Change due to digitalisation

- The Commission is expecting digitalisation to result in more intensive competition and higher levels of innovation in financial services. Since providers no longer need national establishments thanks to online distribution channels, these effects will also have an impact on cross-border business. (p. 12)
- As a result of digitalisation, the Commission sees "regulatory challenges" for consumer protection, cyber-security and ensuring a level playing field between new and established providers (p. 11).
- The Commission supports the work being done to establish European standards for new types of financial services such as instant payments. Until now, such services have frequently only been available at national level because the lack of standards meant they were not interoperable (p. 12).

► **Removing barriers for providers**

- Financial services providers should be able to examine customer identity more easily "at a distance" - such as via webcam or by way of scanned documents. EU rules to combat money laundering will remain in force. (p. 21 to 23)
- Although, under the Directives on credit agreements for consumers (2008/48/EC) and credits relating to residential immovable property (2014/17/EU, see [cepPolicyBrief](#)), credit registers must provide information on the creditworthiness of potential customers to lenders from other Member States, according to the Commission, many financial services providers still have difficulties providing services across borders. The Commission is therefore considering whether the data collected by the credit registers should be harmonised. (p. 23)
- The Commission examines the convergence of national procedures on insolvency, repossession and property valuation in order to facilitate cross-border mortgage lending (p. 25).
- The Commission is considering whether to supplement the varying national regimes with uniform but optional EU rules ("29th Regime") with regard to certain financial products. This concerns inter alia contract law, data protection, consumer protection, disclosure, anti-money laundering and taxation. (p. 27)
- The choice of law in insurance contracts is currently restricted; generally the law of the consumer's Member State applies. The Commission examines whether this should be relaxed. (p. 27)

► **Removal of barriers for consumers**

- The Commission wants, (p. 13 and 14)
  - consumers to have easier access to information about financial services in other Member States, and
  - to facilitate cross-border distribution - such as via comparison websites or "internet-based independent financial advice services".
- In order to make it easier to switch suppliers - including across borders - the Commission is considering measures (p. 14 and 17)
  - to improve the comparability of financial services which may also increase confidence in foreign products, and
  - to reduce the costs involved in terminating a financial service.
- The Commission believes that consumers should not be prevented from using financial services from other Member States on the basis of their residence unless justified by objective criteria (p. 16).
- The Commission wants consumers to be able to continue using financial services which they have already purchased - particularly life insurance and private health insurance - even when they move to another Member State ("portability") (p. 17).
- For certain sectors - e.g. construction - Member States require mandatory indemnity insurance. The Commission wants to make it easier for companies in these sectors to take out insurance covering claims in more than one Member State. Alternatively, it proposes the mutual recognition of such insurance. (p. 17)
- The Commission wants to examine whether the Member States are implementing its Recommendation on collective redress (2013/396/EU, see [cepPolicyBrief](#)) in the financial services sector. This Recommendation contains non-binding, EU-wide standard principles on collective redress actions. The Commission is considering further measures in order to ensure "adequate access to financial compensation" in the case of "mis-selling of retail financial products". (p. 19)

► **Cross-border compensation for car accidents**

- The Commission is examining how to ensure that victims of car accidents can be compensated where the liable insurer is in another Member State and becomes insolvent.
- Not all Member States participate in the voluntary agreement between some Member States which aims to ensure compensation in this case (p. 20).

## Policy Context

In mid-2016, the Commission wants to submit legislative proposals preventing discrimination in financial services against consumers based on their place of residence or nationality. A consultation on this was concluded on 28 December 2015.

## Options for Influencing the Political Process

Directorates General:	DG Financial Stability, Financial Services and Capital Markets Union
Committees of the European Parliament:	Economic and Monetary Affairs, Rapporteur: TBA
Federal Ministries:	Federal Ministry of Finance
Committees of the German Bundestag:	Finance Committee (leading)
Consultation procedure:	All citizens may express their opinion. The procedure ended on 18 March 2016; <a href="http://ec.europa.eu/finance/consultations/2015/retail-financial-services/index_de.htm">http://ec.europa.eu/finance/consultations/2015/retail-financial-services/index_de.htm</a>

## ASSESSMENT

### Economic Impact Assessment

#### Ordoliberal Assessment

In principle, **the envisaged removal of barriers to the cross-border supply or take-up of retail financial services** is worthy of support: it **results in more intensive competition, greater innovation and lower prices** and it is first and foremost the customers who benefit from this.

Problematic is what precisely constitutes a barrier. Every provider of financial services can already enter another market by setting up an establishment. There is no denying that this involves substantial costs which potentially restrict competition. Cross-border competition on the basis of the freedom to provide services, i.e. without a physical establishment in another Member State, is cheaper - and with digitalisation, increasingly relevant. This also gives rise to costs for the provider, e.g. because regulatory provisions and jurisdiction in the host country - rather than those of the home country - apply.

**The existence of costs for cross-border business as a result of national legislation cannot, however, be regarded per se as an unlawful barrier to cross-border competition.** These national rules are what have allowed foreign providers to gain the confidence of local retail customers and to compete with local providers. It is only thanks to them that customers have been able to rely on the standard of foreign providers being equivalent to that of local providers.

The Commission's considerations can be evaluated individually as follows:

Uniform EU criteria which allow for the digital verification of identity without facilitating money laundering, are urgently needed. The important thing is that they are uniformly applied EU wide otherwise fair competition and the effective combating of money laundering will not be possible.

The harmonisation of data collected by credit registers does increase their cross-border comparability but should not undermine competition between the credit registers. Legislating for such harmonisation jeopardises the quality of the credit assessments due to lack of competition and innovation.

**More cross-border competition could be achieved** by reducing market entry costs for foreign providers. It would be beneficial in this respect, **firstly if the contracting parties were free to decide which law should govern the contract and, secondly, if a fully-harmonised but optional EU body of rules ("29th Regime") were brought in.** The optional character ensures that varying customer preferences in the Member States are respected. The products of providers who opt for this body of rules will thus - as envisaged by the Commission - be comparable with one another. At the same time, these providers would be free to continue to offer the established national products.

**Statutory provisions to reduce termination costs** do facilitate switching between providers and increase competition. They **do not necessarily, however, especially in the case of long term contracts** - such as life or health insurance - **lead to lower prices for customers** because lower termination costs increase the probability of terminations. Providers will add the resulting costs onto the price of the products. **Faithful customers will therefore be forced to subsidise the more fickle customers.** There is no justification for this.

**The requirement for "objective criteria" for restricting cross-border financial services must not result in an obligation to enter into a contract nor in price regulations** for providers of financial services. Providers as well take risks in relation to many contracts - e.g. loans or insurance. The customer's place of residence may have a decisive impact on this risk - and therefore also on the price of the service. It is the provider who is responsible for specific risk assessment and not the EU Commission or the legislator. Every provider of financial services should therefore be able to decide for themselves what risks to take, with whom and at what price.

The Commission's portability plans - particularly for life insurance and private health insurance - are currently unrealistic. The respective provisions of the Member States - in health insurance e.g. on the employer's contribution or refunds for medicines - are too varied and the likelihood that they will soon be harmonised too small. De facto portability of such services is at best achievable, with providers offering products in the same form in several Member States on the basis of the 29th Regime.

### Legal Assessment

#### Legislative Competency

The legal basis for harmonising financial markets regulation is provided by the internal market competence (Art. 114 TFEU) and by the competence to coordinate national provisions concerning the taking-up and pursuit of self-employed activities (Art. 53 (1) TFEU).

#### Subsidiarity

Dependent on the actual design of the follow-up measures. Unlikely to be problematic, however, due to the cross-border nature of the financial markets.

#### Proportionality with respect to Member States

Dependent on the actual design of the follow-up measures.

#### Compatibility with EU Law in other respects

Dependent on the actual design of the follow-up measures.

#### Impact on German Law

Dependent on the actual design of the follow-up measures.

### Conclusion

The removal of barriers to the cross-border provision or take-up of retail financial services will result in more intensive competition, greater innovation and lower prices.

More competition would be achieved if the contracting parties were free to decide which law should govern the contract and if a fully-harmonised but optional EU body of rules ("29th Regime") were brought in.

Statutory rules on reducing termination costs will not necessarily lead to lower prices for all customers especially in the case of long term contracts. In fact, they will result in faithful customers being forced to subsidise the more fickle customers.

The requirement for "objective criteria" for restricting cross-border financial services must not result in an obligation to enter into a contract nor in price regulations.

The Commission's portability plans - particularly for life insurance and private health insurance - are currently unrealistic.