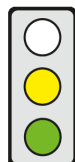


## KEY ISSUES

**Objective of the Regulation:** The Commission wants to strengthen the internal market for consumer financial services.

**Affected parties:** Consumers, providers of financial services.



**Pro:** (1) The Commission's reluctance to bring in new rules on territorial restrictions is appropriate because such restrictions are not per se limitations on the internal market.

(2) An optional set of EU rules on financial services ("29th Regime") will intensify cross-border competition by reducing the costs of market entry.

**Contra:** The envisaged rule on equal fees should be rejected. Payments to and from non-eurozone countries are subject to higher costs due to the currency conversion which depends on the exchange rate.

## CONTENT

### Title

**Communication COM(2017) 139** of 23 March 2017: **Consumer Financial Services Action Plan: Better Products, More Choice**

### Brief Summary

#### ► Context and objectives

- According to the Commission, only 7% of consumers purchase financial services – including bank accounts, payment cards, insurance and loans – in other EU countries. It regards the markets for these services as fragmented despite the "high degree of harmonisation that has been achieved over recent years". (p. 3)
- The aim of the Communication is to (p. 4)
  - "increase consumer trust and empower consumers" when buying financial services at home and in other EU countries,
  - "reduce legal and regulatory obstacles" affecting businesses that provide financial services in other EU countries, and
  - create an "innovative" internal market for "technology-based" financial services, e.g. online banking and online investment advice.

#### ► Increasing consumer trust and empowerment

##### Territorial restrictions ("geo-blocking")

- According to the Commission, many consumers complain about territorial restrictions when buying financial services ("geo-blocking"). This includes discrimination based on nationality or residency, such as the refusal to provide a service in another EU country or to accept means of payment, such as bank cards, from other EU countries. (p. 5)
- The Commission has already looked at the issue of geo-blocking in (p. 5)
  - the Directive on payment accounts (2014/92/EU, see [cepPolicyBrief](#)); this states that EU citizens can open bank accounts with basic functions – including cash withdrawal, direct debit, bank transfers – ("basic accounts") in any Member State; and
  - a proposal for a general Regulation "against geo-blocking and other forms of discrimination" [COM(2016) 289, see [cepPolicyBrief](#)]; this states that online access to goods and services cannot be blocked based on the customer's place of residence or nationality.
- The Commission initially intends to refrain from new measures against geo-blocking. It first wants to monitor the impact of the existing provisions on payment accounts and the extent to which geo-blocking arises in relation to financial services other than payment accounts. (p. 5)

##### Transparency and fees

- According to the Commission, the fees for cross-border EU transactions involving non-euro currencies, are frequently "opaque" and "potentially excessive" and consumers often do not know (p. 5 and 6)
  - which exchange rate applies in the case of card payments or cash withdrawals and
  - whether it is more advantageous to pay in foreign currency or in their own currency.

- The Commission wants (p. 6 and 7)
  - to extend the scope of the Regulation on cross-border payments [Regulation (EC) No. 924/2009, see [cepPolicyBrief](#)], which stipulates the same fees for cross-border and domestic payments in euro, to cover transactions in non-euro currencies as well (4th quarter 2017),
  - - to gain an insight into “good and bad practices” regarding transactions in foreign currencies, particularly in relation to currency conversion and, where necessary, take measures to allow consumers to choose the best means of payment (1st quarter 2018).

#### **Transparency and switching of provider or product**

- Under the Directive on payment accounts (2014/92/EU, see [cepPolicyBrief](#)), consumers can switch the provider of their “payment account” within 14 days. A “payment account” is an account that is used to effect payment transactions [Art. 2 (3) Directive 2014/92/EU], i.e. a current account. They can compare the fees for payment accounts on at least one provider comparison website.
- No similar rights exist for financial services other than payment accounts. In particular, complex contractual terms and high fees make it more difficult to switch provider in this case. (p. 7)
- The Commission wants to (p. 7 and 8)
  - examine, in the context of the review of the Directive, whether and how switching provider can also be made easier in relation to financial services other than just payment accounts (2019) and
  - work with stakeholders to enhance the “quality and reliability” of comparison websites, such as by promoting voluntary certification schemes (1st quarter 2018).

#### **Motor insurance**

- According to the Commission, in the event of damage caused by traffic accidents in other EU countries, there is no harmonised compensation mechanism to compensate accident victims where the liable insurer is insolvent. Some insurance companies also refuse to recognise no-claims bonuses acquired with insurance companies in other EU countries. (p. 8)
- As part of the review of the Motor Insurance Directive (2009/103/EC), the Commission wants to protect traffic accident victims more effectively against insurer insolvency and improve the cross-border recognition of no-claims bonuses (4th quarter 2017) (p. 8).

#### **Consumer credit**

- According to the Commission, EU legislation such as the Consumer Credit Directive (2008/48/EC) does not always cover adequately the new forms of lending via online or peer-to-peer platforms. In the case of online lending, it is not always clear which supervisory authority is responsible or which requirements apply. (p. 9)
- According to the Commission, over-indebtedness of European households is a “serious issue”. Despite creditworthiness assessments, provided for under the Consumer Credit Directive and the Mortgage Credit Directive (2014/17/EU, see [cepPolicyBrief](#)), 10% of EU households are over-indebted (p. 10).
- The Commission therefore wants to examine ways to (p. 9)
  - address consumer over-indebtedness in a “more efficient manner” such as by way of better debt advice (1st half-year 2018) and
  - facilitate cross-border access to loans whilst ensuring consumer protection (1st half-year 2018).

### ► **Reduction of legal and regulatory obstacles**

#### **29th Regime**

- According to the Commission, in addition to a lack of demand, regulatory uncertainty in particular is preventing financial services from being offered across borders (p. 9).
- It therefore wants to examine separate EU provisions for certain financial services in addition to national provisions (known as 29th Regime). The Commission made a start on 29th June 2017 with a proposal for an EU-wide personal pension product (see also COM(2015) 468, see [cepPolicyBrief](#)). (p. 9)

#### **National regulatory constraints**

- According to the Commission, national rules and procedures disrupt the proper functioning of the internal market. It therefore wants to (p. 10)
  - publish a report on barriers to the free movement of capital, containing the actions to be taken by Member States by 2019,
  - give an opinion on barriers in the area of fund distribution (2017) and
  - examine whether national consumer protection and conduct rules create unjustified barriers to cross-border business (2nd half-year 2018).

#### **Cross-border credit**

- According to the Commission, lenders have difficulty assessing the creditworthiness of consumers from other EU countries due to poor availability and comparability of relevant data or because access to the relevant data is not granted even though this is provided for in the Mortgage Credit Directive and the Consumer Credit Directive (p. 10 and 11).
- The Commission wants to create common creditworthiness assessment standards and principles for consumer credit and a minimum set of data for the cross-border exchange of information between credit registers (2nd half-year 2018) (p. 13).

## ► Innovative Digital Single Market for financial services

### Support from financial technologies

- According to the Commission, many EU citizens have concerns about the security of electronic payments and fear digital fraud (p. 12). It has set up an internal task force, “FinTech”, to deal with the subjects of “financial regulation, technology, data and competition” and has also launched a [Consultation](#) on FinTech innovations (p. 12 and 13).
- The Commission wants (p. 13 and 14)
  - to submit a legislative proposal to review the existing EU legal framework on combating fraud and counterfeiting of non-cash means of payment – including credit cards and cheques – (Decision 2001/413/JI) (Autumn 2017) and
  - to examine measures, based on the consultation results and the work of the task force, to support the development of financial technology (4th quarter 2017).

### Digital customer relationships

- Today, consumers often still have to go into the provider’s offices in order to identify themselves or to sign contracts. According to the Commission, a single market for financial services requires “fully digital customer relationships”. (p. 15)
- The Regulation on electronic identification [eIDAS, (EU) N. 910/2014, see [cepPolicyBrief](#)] regulates, in particular, cross-border mutual recognition of national identity schemes (e.g. electronic ID cards). For the first time, notification of identity schemes by Member States, for recognition by the Commission, will be possible as of mid-2017. The Commission wants Member States to ensure that the identity schemes are interoperable and available for private sector use. (p. 13 and 14)
- The Commission wants to further facilitate the cross-border use of electronic identity schemes to enable banks to identify their customers digitally (4th quarter 2017) (p. 14).
- According to the Commission, the current pre-contractual disclosure requirements for using financial services – e.g. the Directives on mortgage lending and consumer credit – “might not be fit” for the digital world (p. 14). The Commission therefore wants to revise the existing disclosure requirements where appropriate (1st half-year 2018) (p. 17).

## Policy Context

In December 2015, the Commission submitted a Green Paper on Retail Financial Services [COM(2015) 630, see [cepPolicyBrief](#)]. This was accompanied by a consultation. The Action Plan now draws its conclusions from this consultation. It is also part of the Commission’s efforts to create a Capital Markets Union [COM(2015) 468, see [cepPolicyBrief](#)].

## Options for Influencing the Political Process

Directorates General:	DG Financial Stability, Financial Services and Capital Markets Union (leading)
Committees of the European Parliament:	Economic and Monetary Affairs, Rapporteur: Olle Ludvigsson (S&D)
Federal Ministries:	Finance Ministry
Committees of the German Bundestag:	Finance (leading); Digital Agenda, EU Affairs, Legal Affairs and Consumer Protection, Transport and Digital Infrastructure, Economic Affairs and Energy

# ASSESSMENT

## Economic Impact Assessment

### Ordoliberal Assessment

The Commission’s desire to strengthen confidence in financial services in other EU countries and to reduce legal and regulatory obstacles in the internal market should be supported because if it is easier for businesses to offer their products across borders and for consumers to demand them across borders, competition becomes more intense and prices ultimately fall. It is, however, crucial that only unjustified barriers are removed. Not every national rule giving rise to costs for foreign suppliers is unjustified because national rules – such as those which protect investments or increase legal certainty – can also encourage a company to risk entering the market in another EU country, or a consumer to risk buying products in another Member State. In such cases, national rules can help cross-border competition to take off.

**The Commission’s reluctance to bring in new rules on territorial restrictions is appropriate because such restrictions are not per se limitations on the internal market.** They may reflect differences in the intensity of competition or in the customers’ willingness to pay in the Member States. Contractual risks may also depend on the Member State in which the customer is resident.

Under the Regulation on cross-border payments, fees for cross-border payments in euro were made subject to the same rules as fees for domestic payments in euro. This measure was misguided: as long as cross-border payments involve higher costs than domestic payments, higher fees are justified. Where costs are identical, varying fees will not last in a competitive market. **Payments to and from non-eurozone countries are**

**subject to higher costs** simply **due to the currency conversion which depends on the exchange rate. The Commission's envisaged expansion of the rule on equal fees to include payments from and to non-eurozone countries should be rejected.** In fact, the requirement for equal fees should be abandoned completely for the reasons stated.

The reduction of obstacles to switching providers in relation to financial services may promote competition and strengthen the internal market. Some important hurdles for switching providers arise, however, from the fact that, for some products, customers and providers enter into long-term commitments which cannot easily be cancelled. This is primarily the case for products such as pension or health insurance in which providers build up reserves which cannot simply be transferred to other providers. The cross-border switching of providers involves additional hurdles arising from the fact that socio-political legislation in the Member States - such as reimbursement rules in the case of hospitalisation - varies.

Comparison websites can help to reduce the transaction costs of switching providers. State certification schemes for comparison websites are superfluous, however, due to the intense competition.

Cross-border recognition of no-claims bonuses by motor insurance companies should not be stipulated. Firstly, the respective national schemes for no-claims bonuses are not easily comparable. Secondly, competing insurance companies will generally recognise the bonuses acquired with foreign insurance companies. The level of the bonus will depend on the level of the transaction costs and the intensity of competition.

**An optional set of EU rules for financial services ("29th Regime")** should be brought in because it **will intensify cross-border competition**, in particular **by reducing the costs of market entry.** It makes services which fall under the regime easier to compare. At the same time, consumers can also continue to use the tried and tested national products. It is important to note, however, that even in the case of the 29th Regime, various national rules, e.g. under tax law, would continue to apply.

The convergence of the data sets collected by credit agencies requires them to be comparable and thus increases market efficiency because informational asymmetries between borrowers and investors are reduced. This is at the expense of competition between the credit registers, however, which is detrimental to the quality of the registers and can impede innovation. Restraints on competition and reductions in quality are also a risk when it comes to the standardisation of creditworthiness assessments.

Due to digitisation, it is likely that the cross-border supply of financial services will occur less and less through the establishment of an office but digitally from the home Member State of the service provider. For this, it is necessary to have secure digital proof of identity which is valid EU wide. It is therefore logical for the Commission to prepare the ground for this.

## 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 Commission's reluctance to bring in new rules on territorial restrictions is appropriate because such restrictions are not per se limitations on the internal market. Payments to and from non-eurozone countries are subject to higher costs due to the currency conversion which depends on the exchange rate. The envisaged rule on equal fees should be rejected. An optional set of EU rules on financial services ("29th Regime") will intensify cross-border competition by reducing the costs of market entry.