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*Committee on Economic and Monetary Affairs*

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## **DRAFT REPORT**

on the Green Paper on retail financial services in the single market  
(2007/2287(INI))

Committee on Economic and Monetary Affairs

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(\*) Procedure with associated committees – Rule 47 of the Rules of Procedure

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the Green Paper on retail financial services in the single market (2007/2287(INI))

*The European Parliament,*

- having regard to the Commission's Green Paper on retail financial services in the single market (COM(2007)0226),
- having regard to the Commission's Communication 'Sector Inquiry under Article 17 of Regulation (EC) No 1/2003 on retail banking (Final Report)' (COM(2007)0033),
- having regard to the Commission's Communication 'Sector Inquiry under Article 17 of Regulation (EC) No 1/2003 on business insurance (Final Report)' (COM(2007)0556),
- having regard to the Commission's Communication 'A single market for 21st century Europe' (COM(2007)0724), and particularly the accompanying working document by Commission staff 'Initiatives in the area of retail financial services' (SEC(2007)1520),
- having regard to Commission Regulation (EC) No 358/2003 of 27 February 2003 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector<sup>1</sup>,
- having regard to its position at second reading on the common position adopted by the Council with a view to the adoption of a directive of the European Parliament and of the Council on credit agreements for consumers and repealing Council Directive 87/102/EEC<sup>2</sup>,
- having regard to its resolution of 12 December 2007 on European contract law<sup>3</sup>,
- having regard to its resolution of 11 July 2007 on financial services policy (2005-2010) – White Paper<sup>4</sup>,
- having regard to its resolution of 4 July 2006 on further consolidation in the financial services industry<sup>5</sup>,
- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Legal Affairs (A6-0000/2008),

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<sup>1</sup> OJ L 53, 28.2.2003, p. 8.

<sup>2</sup> Texts adopted, P6\_TA(2008)0011.

<sup>3</sup> Texts adopted, P6\_TA(2007)0615.

<sup>4</sup> Texts adopted, P6\_TA(2007)0338.

<sup>5</sup> OJ C 303E, 13.12.2006, p. 110.

- A. whereas citizens' assent to European integration depends on the tangible benefits that they derive from it; whereas all citizens must therefore share fairly in the enjoyment of the single market's advantages,
  - B. whereas under the Lisbon Treaty the European economic model is the sustainable social market economy,
  - C. whereas in recent years the integration of the single market in financial services has made encouragingly rapid progress for large business clients, but the single market in financial services for private clients and small businesses (SMEs) still has room for improvement,
- 1. Welcomes the above Commission Green Paper on retail financial services in the single market and its aims, to deliver tangible benefits for consumers by securing greater choice and lower prices, enhancing consumer confidence and empowering consumers;

#### ***In general***

- 2. Notes that not only private clients but also small businesses are less inclined to take up cross-border financial services; underlines the need to ensure that the advantages of the financial single market also benefit small businesses; favours a definition such as that in the above-mentioned Sector Inquiry on retail banking;
- 3. Considers that the provision of financial services to private clients and small businesses will remain to a large extent a local business, in view linguistic and cultural factors and the need for personal contact;
- 4. Emphasises that a single market in financial services for consumers and small businesses can be created only by measures that provide a secure environment both for the demand and the supply side;

#### ***Better law-making***

- 5. Supports the Commission in its aim only to pursue initiatives that demonstrably offer citizens tangible benefits, are soundly justified and have been subject to proper impact studies; agrees that, in the case of the single market in financial services for consumers and small businesses, only an increase in cross-border activity can justify legislative measures;
- 6. Points out that a proper impact study must always include correctly ascertaining the original market conditions; emphasises that assessing the integration and competitiveness of a market and the impact of an initiative should be carried out not just by means of an indicator but by the largest possible number of measurements; calls on the Commission to take account not only of the price and range of choice on offer but also of the quality of services and the social and cultural context;
- 7. Notes that the legislative approaches currently available, minimum harmonisation and full harmonisation, are in a state of tension between simplifying cross-border business and maintaining national standards for consumer protection;

8. Recognises the option of a 28th legal framework, such as the Common Reference Framework, as a possible new approach to European regulation, to enable cross-border market choice to be provided to a uniformly high consumer protection standard; calls on the Commission again to put forward a time-frame for developing a 28th legal framework;
9. Opposes standardised products, as these undermine the aim of greater product diversity;
10. Emphasises that effective self-regulation of the financial services industry should be preferred to any legislative regulation; calls on the financial services industry to work steadfastly towards the aims of the above Green Paper by self-regulation and thus reduce the need for binding legal acts;

***More choice and lower prices for consumers and SMEs***

11. Stresses that, for the creation of a single market in financial services for private clients and small businesses, the establishment of Europe-wide competition and cross-border provision of financial services are a basic precondition; points out that lower prices follow from healthy competition;
12. Reminds the Commission that effective competition between financial service providers is secured by having a large number of market participants; draws attention to its resolution on consolidation in the financial services industry, in which it averred that the pluralistic structure of the European banking market, where financial institutions could take on diverse legal forms in accordance with their diverse business aims, was an asset to the European economy;
13. Notes that real competition can arise only in equal competitive conditions; concludes that any legislation must follow the principle of 'equal risk, equal regulation'; points out, however, that in the financial services sector product design is particularly influenced by the regulatory environment and a 'one size fits all' approach would adversely affect product diversity;
14. Regrets that cross-border providers of financial services incur high costs as a result of the differing legal provisions and differing practice of national supervisory authorities; calls on the Lamfalussy committees to step up their work for uniform standards; in particular, advocates agreement on standard forms for reporting and approval procedures;
15. Calls on the Commission and the Member States to further promote e-commerce and the electronic signature; further calls on them to investigate the money-laundering directive<sup>1</sup> to ascertain whether it is hindering the remote provision of services and how this situation might be remedied;
16. Recognises the great importance of financial service brokers in providing financial services from other Member States to private clients and small businesses; calls on the Commission to create a framework that will strengthen this industrial sector;

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<sup>1</sup> Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 166, 28.6.1991, p. 77).

17. Points out that differences in tax law constitute one of the greatest obstacles to the single market in finance; reminds the Member States of their great responsibility in this area;

### ***Banking***

18. Emphatically draws attention to the importance of enabling credit institutions and credit data agencies to have non-discriminatory cross-border access to credit data registers;

### ***Insurance***

19. Urges the Commission to support cooperation in the insurance industry on promoting market access; calls on the Commission to extend Regulation (EC) No 358/2003 beyond 2010;
20. Advocates abolishing the requirement of a fiscal representative when taking up activities in another Member State;
21. Supports the Commission in its endeavours to scrutinise all national legally binding provisions of general interest for their compliance with Community law;

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22. Instructs its President to forward this resolution to the Council and Commission.

## EXPLANATORY STATEMENT

### I Background

#### *1 The single market in retail financial services*

Retail financial services (for private clients) are significant in macro-economic terms. The banks' retail business turns over an annual 2 % of the EU's GDP. And the ageing population is increasing the need for private and industrial provision for pension, health and sickness insurance. This is one reason for the growing economic importance of the insurance and investment fund industries. At the end of 2004 investment by primary insurers reached six billion euros and private pension funds in the EU were managing an investment capital of 2.5 billion euros. The funds of undertakings for collective investment in transferable securities (UCITS) are calculated to have a capital value of over 5.7 billion euros, representing more than 50 % of the EU's GDP. Life assurance premiums alone amount to 5 % of the EU's GDP.

However, cross-border retail trading, with the exception of UCITS, is limited. According to Commission surveys at present only 1 % of the EU's consumers obtain financial services across borders by means of telecommunication systems, while the domestic figure is 26 %. In the same way, more than 90 % of all premium revenue in the insurance industry in most markets is earned by domestic insurance companies.

Without further effort the European financial services markets will remain relatively fragmentary for private clients.

#### *2 The Green Paper on retail financial services in the single market*

In its Green Paper COM(2007)0226 the Commission looks into ways and means of further promoting the integration of the retail market in financial services. It proposes three main strategies for this purpose: 'Lower prices and more choice', 'Enhancing consumer confidence', and 'Empowering consumers'. After receiving opinions from all the areas concerned, it has published its conclusions in an annex, SEC(2007)1520, to the Communication 'A single market for 21st century Europe', COM(2007)0724.

In addition to the Green Paper this report will also, where appropriate, consider the sectoral inquiries, COM(2007)0033 into retail banking and COM(2007)0556 into business insurance.

#### *3 Procedure*

This report is a document by the ECON Committee. However, under Rule 47 of Parliament's Rules of Procedure it is being drawn up in enhanced cooperation with the IMCO Committee. Both committees are concerned to avoid duplication of work, and for this reason the ECON report is confined to better law-making, the supply side and general issues, leaving IMCO priority on all demand-side issues, consumer protection and so on.

## **II Content**

### *1 General*

A market needs both supply and demand, in equal parts. Thus to bring about a single market in retail financial services not only the service providers, such as banks, insurance companies or investment firms, but also the recipients, such as consumers, need to be empowered. The one-sided support of one of the two parts would be less effective or even detrimental to integration of the market.

Moreover it is not only private clients who have problems with cross-border financial services. Small businesses too face similar difficulties. So the creation of a retail market for financial services affects not only consumers but also some 98 % of all European companies. They would not benefit from further development of consumer protection law. The measures and initiatives that assist all those involved are therefore the ones to welcome.

Finally it should be said that the nature of the retail business – where cultural and linguistic factors are highly important, as is the need for personal contact – means it will remain largely a local business. Great progress will presumably be made only in border regions and with simple transactions – such as current and savings accounts. The more complex products – such as life assurance cover – will only rarely be purchased over great distances.

### *2 Better law-making*

The Commission is required to subject all legally binding proposals to an impact assessment study before publication. It needs emphasising here that such a study must first include a correct analysis of the status quo. However, this assessment of the current situation can only be correct if it takes account of the widest possible number of factors. It would be a mistake, for instance, to conclude solely from the differing insurance premiums for motor-vehicle insurance that the market was fragmented. Differences in national infrastructure, driving culture and so on may justify differences in premiums. Price comparisons alone are insufficient as a way of assessing market integration.

At present the Community has two options available for harmonisation: either full harmonisation or minimum harmonisation. There is a tension between the two approaches, arising from the partial contradiction in the underlying interests. On the one hand, full harmonisation is the most efficient way of promoting cross-border business. The fewer the differences, the easier entry into another Member State becomes. On the other hand, the Community is committed to the principle of subsidiarity. National traditions and habits, including the way in which a legal matter is regulated, must be upheld. While consumer protection law is affected, the Member States' insistence on preserving their own traditions is an understandably stronger influence. So it remains a tightrope act to confine measures to the essential by purposeful harmonisation, and this leaves plenty of scope for argument over the definition of 'essential'.

The work on an option of a 28th legal framework could suggest a solution here. If both contractual partners had the possibility of choosing purely European law for a given transaction, such as an insurance policy, the adaptation costs that always arise in the case of cross-border contracts would be unnecessary. At the moment while consumers can opt into



the law of another Member State, they cannot opt out of the binding consumer protection provisions of their home country. But a 28th legal framework would find acceptance only if it fulfilled the most stringent requirements of consumer protection. At any rate, it would seem worthwhile continuing to work in this direction. The issue of the competent supervisory authority should, although it is not inseparably linked with this, be considered in parallel.

The notion of product standardisation must be clearly rejected. The Commission itself aims to enable consumers and other recipients of retail financial services to have greater choice. The standardisation of products is diametrically opposed to this. A distinction should of course be drawn between standardising the law and standardising the product.

### *3 Lower prices and more choice for consumers and small businesses*

Cheaper products and greater choice are only feasible if there is real competition. And competition itself requires a large number of market participants. Limiting the market to a few large providers would undermine that aim. For the same reason the diversity of legal forms (limited company, cooperative, savings bank and mutual association) should be encouraged.

Competition also requires equal conditions of competition. In accordance with the principle of 'equal risk, equal regulation', transactions whose content is legally equivalent must receive equivalent treatment. For instance, consumers pursuing business transactions that carry the same risks for those consumers should be informed in the same way. This is particularly important in the case of substitute products.

It is true that the shape of financial services is strongly influenced by their regulatory environment. So it is no less important that only equivalent content or risks receive equivalent treatment. Differences, such as the presence of a guarantee and whether the guarantee is provided by the service provider or an independent third party, justify a difference in treatment. The trick must therefore be to ensure that the same things are treated the same way, and not when they are not.

Practical measures supporting the supply side are accordingly proposed in this report. They include:

- First, the purchase of financial services through telecommunications should be further promoted. The money-laundering directive should also be examined with this aim in view. Many of its provisions are intended to prevent money-laundering but obstruct transactions such as opening an account at a distance. The aim would be for provisions that still make money-laundering difficult but do not impede legitimate business. The electronic signature system could bring about improvements here.
- A further obstacle to the provision of cross-border financial services is posed by the Member States' differing tax systems and their low level of interoperability. Particularly in areas where certain financial products attract tax incentives – such as pension insurance schemes, pension funds and so on – it is often difficult for products from third countries even to obtain national tax concessions. In view of the Council's unanimity the Member States have a special responsibility to make progress in this area.
- For credit business in the broadest sense of the term to be conducted successfully, it is

essential to have access to credit data registers. The consumer credit directive does regulate this aspect to some extent. But its regulation is still extremely vague, and is silent on the relationship between public and private registers, and on positive and negative credit data. Access to credit data is also of great importance to clients, as they will otherwise lose their credit history if they change their place of residence or head office and may encounter problems in obtaining credit. They must obviously be granted the right to inspect and correct their data. Data protection law must be complied with.

- For similar reasons the fact that the Concerted Practices Regulation, No 358/2003, for the insurance market has been extended seems a welcome move. In this regulation the Commission deems certain types of cooperation to be in conformity with competition law: the joint collection and assessment of national risk data, the development of national general business conditions and the uniform assessment of security measures are forms of cooperation that facilitate insurers' entry into a new market without hindering competition.
- The need for insurers to appoint a permanent representative in every state in which they operate seems questionable today. It ought to be possible for the Community to devise more proportionate instruments to enable the state concerned to enforce its fiscal claims.
- The Commission's initiative in undertaking to review national 'general-interest provisions' is much to be welcomed, as such provisions constrain fundamental freedoms. The only provisions that should remain in existence are those that comply with the case-law of the European Court, in other words those that are non-discriminatory, effective and proportionate and serve an interest that the Court deems admissible.