

**Decision
of the Bundesrat**

Green paper on retail financial services: Better products, more choice, and greater opportunities for consumers and businesses

COM(2015) 630 final

At its 941st sitting on 29 January 2016 the Bundesrat adopted the following opinion pursuant to Sections 3 and 5 of the Act on Cooperation between the Federation and the *Länder* in European Union Affairs (EUZBLG):

The proposal in general

1. Financial services play a central role in the life of all EU citizens. Private pensions or real estate financing are long-term decisions, and insurance policies against unexpected accidental damage or injury or special risks are often needed. To conclude insurance contracts or consumer contracts for financial services, consumers therefore need to have not only sufficient information, but also confidence that compensation will be paid when damage, injury or loss occurs. Ensuring that consumers are effectively protected must therefore be one of the key principles underpinning a cross-border financial services market. The Bundesrat therefore welcomes this consultation on the creation of a European market for retail financial services.
2. It welcomes the Commission's plans to improve the single market for retail financial services by reducing the obstacles deterring consumers from cross-border purchasing of financial products and services. It also shares the Commission's view that a single market for financial services across Europe can increase the range of products available to consumers and at the same time make it easier for businesses to access new markets.
3. The Bundesrat also appreciates the approach adopted by the Commission of first assessing the nature of existing obstacles and then addressing them with the action plan announced for 2016.

4. It agrees with the Commission that excessive concentration of services among too few providers limits the choices available to consumers. It is pleased to note that the situation in Germany is very consumer-friendly in comparison with the EU as a whole. According to the Green Paper, Germany and Luxembourg are the most consumer-friendly EU countries as regards concentration in the banking sector (in Germany the five largest providers have a market share of 30 %). Germany, along with Croatia, is also the most consumer-friendly country in the insurance sector (the five largest providers have a market share of 40 %).
5. In the Bundesrat's opinion, the announced action plan must not put this positive situation at risk. Small and medium-sized banks and regional insurers contribute to the wide range of options available to consumers. The action plan should therefore focus on cross-border access to banking and insurance services. Consumers in the countries with services very concentrated among a few providers (according to the Green Paper, in the banking sector the five largest providers in Greece have a market share of 95 %, while in Estonia and Malta they have a market share of 100 %) would benefit the most from simple and transparent access to financial services in other Member States. Moreover, only in this way can we complete the single market.
6. The Bundesrat is in principle in favour of the reduction of obstacles to the cross-border purchase of financial services, in particular as regards the 'portability' of financial services to other Member States, for example when a citizen moves to another Member State. It agrees with the Commission that cross-border supply can help increase the range of financial services on offer and reduce prices for consumers. However, this needs to be accompanied by a high level of protection to prevent financial losses and so reinforce confidence in financial markets. The objective of creating a truly European market in financial services must on no account result in any cut-back in consumer protection provisions. Investor protection provisions at EU level must not be weakened.
7. In the Bundesrat's view it is essential for the protection of consumer interests to ensure that the action plan does not result in further market concentration. Consequently, the action plan and all subsequent individual measures should serve to improve the range of choices

through access to cross-border providers, and not squeeze small and medium providers such as savings and cooperative banks out of the market with unnecessarily complex and detailed rules.

8. The action plan and all subsequent individual measures should take account of the fact that the rules recently introduced at European level to regulate money transfers, payment accounts and mortgage credit agreements first need to be transposed into national law and applied in all Member States. Only then, in the Bundesrat's view, can the effects on the single financial market for consumers and businesses be measured and evaluated. Only if this evaluation shows a clear need for action should the necessary adjustments be made.
9. The Bundesrat welcomes the Commission's thoughts on the digitalisation of financial services and the new business models for distance sales to which this is giving rise, such as the provision of text loans. It agrees with the Commission that digitalisation can offer major opportunities for better access to financial products and more competition. However, the Bundesrat also considers that new payment providers and processes must not bypass the existing regulatory framework. On the contrary, the possible need to adjust the rules to digital reality should be investigated. In addition, differing regulation must not be allowed to create competitive advantages. Consumers must be able to count on adequate consumer protection and common security standards for EU-wide financial services too. The Bundesrat is sceptical about the adequacy of consumer protection when financial services are provided through electronic channels and via mobile devices. The absence of personal consultation involves particular risks. The purely electronic distribution of financial services needs in particular to be accompanied by clear and comprehensible presentation of the services on offer and the risks involved. The Bundesrat doubts that these requirements can be satisfied when using, for example, a smartphone with a small screen. It should also be borne in mind that smartphones and tablets are frequently used casually. There is a risk that promoting distribution via mobile devices will give people the false impression that decisions about financial investments can be taken lightly. The Bundesrat refers in this respect to

the arrangements introduced in the Scandinavian countries in response to consumers becoming over-indebted through the use of text loans.

10. The Bundesrat does not consider the potential for cross-border financial services and the associated need for EU action to be as great as the Commission does. Many consumers still set great store by personal contact with their bank, insurance providers and any intermediaries involved. Particularly in the case of financial services, some of which, such as mortgages and pensions, involve significant economic decisions and often entail long-term commitment, personal consultation is considered very important in terms of consumer protection. Moreover, most consumers need to use their mother tongue for the consultation and to understand all the relevant information.
11. The Bundesrat also believes that it will be difficult to guarantee effective individual enforcement of the law by the authorities in respect of cross-border financial services. Nor can these difficulties be fully overcome by reinforcing the conciliation procedure, which continues to be used predominantly for domestic cases.
12. However, the Bundesrat agrees with the Commission that the digital revolution can also create opportunities for consumers, provided that adequate security standards are in place. A particular challenge in this respect will be to maintain the existing level of consumer protection, for example data protection, even for new market participants in digital financial services, who are not subject to the existing regulatory and supervisory framework to the same extent as established market participants. In this regard, consumer protection must be ensured consistently and firmly throughout the EU, particularly in terms of setting standards and supervision.
13. The Bundesrat is glad to see that the Commission is paying attention to consumer needs, and in particular data protection, in the context of increasing digitalisation and the ongoing development of financial services. The Bundesrat advocates ensuring that consumers' current freedom to choose between digital and non-digital financial services is maintained in future, and protected by legislation if necessary, including as regards the possibility of cash payment, which is a low-data form of

real time payment that is independent of technology and so can be used even in exceptional situations.

14. The Bundesrat emphatically calls for measures to improve the financial literacy of consumers. Consumers will not be able to hold their own on a competitive financial services market unless they have the necessary knowledge. Efforts to improve the financial literacy of the public should therefore be stepped up. The Bundesrat once more calls for greater EU support for such measures.

Specific Issues

15. According to the Green Paper, one reason for the fragmentation of the financial services sector across the EU is that there are substantial differences between Member States as regards certain financial and insurance products. Furthermore, consumers often have no access to information about financial services available on a cross-border basis. In the Bundesrat's view, resistance to switching is not explained merely by the shortage of deals on offer, but much more by the fact that decisions about products on the financial market particularly affect the security and life plans of consumers, who therefore feel very uncertain about unknown products and providers. Consumers will take up deals offered across borders only when and if there are financial products tailored to their needs and they can be sure that after purchasing such a product they will be adequately protected, wherever in the EU they purchased it. This applies in particular to protection from the effects of provider insolvency. In addition to sufficient and easily comprehensible information for consumers available through, for example, comparison websites with fixed quality criteria, standardisation of the financial products on offer could also improve transparency and comparability, thereby increasing consumer acceptance of such products.
16. The Bundesrat welcomes the Commission's announcement that it will present legislative proposals by mid-2016 to end unjustified geoblocking and prevent discrimination against consumers on the basis of their place of residence or nationality. It seems sensible to consider different potential forms of discrimination here. A particularly conspicuous form occurs in the area of payment accounts: in some Member States the

requirements concerning customer identification make cross-border use of such services impossible.

17. The Bundesrat recognises the need to be able to maintain agreements on certain financial services even when moving to live in another Member State. At the same time, it would point out that contractual relations cannot always simply be continued in another Member State because of, for instance, differences in the social security and insurance systems in different Member States. This should also be borne in mind when considering, as suggested in the Green Paper, creating an optional European Insurance Contract Law. If and when this is done, it must be ensured that consumers are in no way worse off than under national protection standards.
18. The Bundesrat also believes that Member States should continue to have the right to take account of the economic, social and demographic situation in their country, as well as other factors affecting supply and demand for financial services, when transposing EU legislation such as the Mortgage Credit Directive or the Directive on Markets in Financial Instruments (MiFID). The same applies, fundamentally, to determining which financial services and products are offered and how, as these products and services are embedded in an overall economic and social context that may vary from one Member State to another.
19. With increasing digitalisation, increasing use is made of simplified methods of data collection in the digital world to assess the credit-worthiness of consumers. At the same time, ever more complex processes in the form of algorithms are used to evaluate consumers. Despite the new provisions in the EU's new General Data Protection Regulation, the Bundesrat would stress that using data relating to a consumer's home address or residential environment or consumer data from social networks for credit rating purposes should be forbidden in order to effectively put an end to a method of calculating ratings that consumers see as inappropriate and discriminatory. High standards should be set for the scientific soundness and forecasting accuracy of scoring methods. It advocates a high level of consumer protection and calls for a comprehensive transparency and information requirement for the rating of consumers.

Direct transmission of the opinion

20. The Bundesrat is submitting this opinion directly to the Commission.