

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0301/2001

17 September 2001

REPORT

on the Commission communication to the Council and the European
Parliament on E-Commerce and Financial Services
(COM(2001) 66 – C5-0257/2001 – 2001/2119(COS))

Committee on Economic and Monetary Affairs

Rapporteur: Christopher Huhne

CONTENTS

	Page
PROCEDURAL PAGE	4
MOTION FOR A RESOLUTION	5
EXPLANATORY STATEMENT	9
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET	13
.....	
.....	

PROCEDURAL PAGE

By letter of 7 February 2001, the Commission forwarded to the Council and the European Parliament a communication on E-Commerce and Financial Services (COM(2001) 66-2001/2119(COS)).

At the sitting of 2 July 2001 the President of Parliament announced that she had referred the communication to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on the Environment, Public Health and Consumer Policy, the Committee on Industry, External Trade, Research and Energy, and Committee on Legal Affairs and the Internal Market for their opinions (C5-0257/2001).

The Committee on Economic and Monetary Affairs appointed Christopher Huhne rapporteur at its meeting of 6 November 2000. The committee considered the Commission communication and the draft report at its meetings of 19 June 2001, 10 July 2001 and 13 September 2001.

At the last meeting it adopted the motion for a resolution by 29 votes to 3, with 2 abstentions.

The following were present for the vote: Christa Randzio-Plath chairman; Philippe A.R. Herzog, vice-chairman; Christopher Huhne, rapporteur; Alejandro Agag Longo, Generoso Andria, Pedro Aparicio Sánchez (for Peter William Skinner), Richard A. Balfe, Luis Berenguer Fuster, Pervenche Berès, Hans Udo Bullmann, Gérard Caudron (for Bruno Trentin), Jonathan Evans, Harald Ettl (for Helena Torres Marques), Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Pierre Jonckheer, Othmar Karas, Giorgos Katiforis, Christoph Werner Konrad, Alain Lipietz, Astrid Lulling, Thomas Mann (for Brice Hortefeux), Ioannis Marinos, Miquel Mayol i Raynal, Ioannis Patakis, Fernando Pérez Royo, John Purvis (for Piia-Noora Kauppi), Alexander Radwan, Bernhard Rapkay, Olle Schmidt, Charles Tannock, Marianne L.P. Thyssen, Jaime Valdivielso de Cué (for José Manuel García-Margallo y Marfil), Ieke van den Burg (for Simon Francis Murphy), Theresa Villiers, Karl von Wogau.

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The Committee on the Environment, Public Health and Consumer Policy decided on 11 April 2001 not to deliver an opinion and the Committee on Industry, External Trade, Research and Energy decided on 21 March 2001 not to deliver an opinion.

The report was tabled on 17 September 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Commission communication to the Council and the European Parliament on E-Commerce and Financial Services (COM(2001) 66 – C5-0257/2001 – 2001/2119(COS))

The European Parliament,

- having regard to the Commission communication (COM(2001) 66 – C5-0257/2001)
 - having regard to Directive 2000/31/EC¹ on certain legal aspects of information society services, in particular electronic commerce, in the internal market, and in particular article 3 thereof,
 - having regard to the Commission proposal for a Directive on Distance Marketing of Consumer Financial Services (COM(1998) 468 - COD 1998/0245)², and the Parliament's first reading resolution of 5 May 1999³ thereon,
 - having regard to its resolution on investment services: application of conduct of business rules of 3 April 2001⁴,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Economic Affairs (A5-0301/2001), and the opinion of the Committee on Legal Affairs and the Internal Market.
- A. whereas the adoption of the Electronic Commerce Directive was a step forward for the development of e-commerce in Europe, as the Directive is based on the country of origin principle,
- B. whereas this approach is particularly important for financial services, as being intangible they are especially well suited to cross-border electronic delivery, and because it would be unjustifiably burdensome if a financial services provider had to comply with 15 different sets of rules and regulations,
- C. whereas promoting the conclusion of cross-border contracts by electronic means in the area of financial services is only possible on the basis of continuing consumer confidence in such sensitive products,
- D. whereas there are a number of issues specific to financial services in the Directive which

¹ OJ L178, 17.7.2000, p. 1-16

² OJ C 385, 11.12.1998, p. 10

³ OJ C279, 1.10.1999, p. 197

⁴ OJ C not yet published

merit review, notably the general derogations on the taking up and carrying out of insurance business, the advertising of UCITS and the issuance of electronic money by institutions which do not benefit from a single passport, as well as the question of how to ensure that the case by case derogations under article 3(4) do not undermine the country of origin approach,

- E. whereas the Communication also provides the welcome clarification that the derogation for contractual obligations is subject to the compatibility of such measures with Article 49 of the Treaty,
- F. whereas the Directive provides the possibility for Member States to apply restrictions to consumers *including investors*, which makes it clear that this derogation cannot and must not be applied for the protection of any wider category of investors than consumers,
- G. whereas the fast approaching deadline for transposition by Member States of the Electronic Commerce Directive and the forthcoming upgrade of the Investment Services Directive makes it all the more urgent to move towards a country of origin approach for both professional and retail investors,
- H. whereas the distinction between online and offline services is in practice difficult to enforce, since transactions often require both,
- I. whereas financial services consumers, both on- and off-line, should benefit from clear and simple propositions with a consistent level of protection, irrespective of the delivery method,
 - 1. Welcomes the recognition by the Commission that there are issues specific to financial services in the Electronic Commerce Directive which need to be reviewed, with a view to ensuring as soon as possible an effective country of origin regime for financial services, both wholesale and retail;
 - 2. Stresses that the country of origin principle should be accompanied by the greatest possible degree of coordination of national legal frameworks, as otherwise the distortions in competition will inevitably lead to a detrimental process of reduced consumer protection;
 - 3. Recalls Parliament's strong support for the e-commerce directive, and reminds the Member States that timely transposition of this legislation, in a manner that reinforces the country of origin principle for on-line transactions, without extending the scope of the agreed derogations, forms the foundation for an integrated EU financial services market;
 - 4. Regrets however the continuing efforts of some Member States to roll-back the country of origin approach for online financial services, even though this was explicitly rejected by both the Council and the Parliament, and though extra competition is the consumers' friend;
 - 5. Regrets that the Commission has not laid out a detailed plan and timetable to remove all legal and other obstacles to the growth of e-commerce in the area of financial services and

urges it to agree such a 'road map' with the Council and Parliament;

6. Notes, with regard to Article 9(1)n of the electronic commerce directive, that consumer credit agreements may also be concluded in electronic commerce;
7. Draws particular attention to the need to update legislation that pre-dates the 2000 E-Commerce Directive and does not encompass electronically-enabled transactions; points out, in particular, the need to update the Consumer Credit Directive to allow electronically completed and authorised transactions equal status with traditional written agreements;
8. Emphasises that national variations in marketing and advertising rules, as applied to information available on the web, form a major obstacle to the growth of e-commerce and a common policy to facilitate its growth and the dissemination of information should be established;
9. Firmly rejects all attempts to introduce a transition period for the move to a country of origin regime for online financial services in the proposed Directive on Distance Marketing of Consumer Financial Services;
10. Calls on the Commission to propose a clear timetable for action on the derogation in instances where this is necessary, and to include both insurance and the advertising of UCITS within the scope of the country of origin principle of the Electronic Commerce Directive;
11. Expresses its concern that the Commission proposal to issue guidance to Member States on certain types of national provisions that they may apply to incoming online financial services must not be an invitation to Member States to apply such restrictions;
12. Emphasises that the Commission must fully consult industry before issuing such guidance, and should base its assessment on documented evidence provided by the Member States concerned of existing or past problems which have not been addressed in current EU legislation or bilateral contacts with the country of origin, and clearly apply the tests set out in article 3(4) in its analysis;
13. Urges the Commission to make clear that such guidance is time limited, not legally binding, that it will not prejudice individual cases, and that it will apply the article 3(4) procedure to each notified case;
14. Believes that the measures set out in the Electronic Commerce Directive, combined with alternative dispute resolution mechanisms and the safeguards set out in the proposed Directive on Distance Marketing of Financial Services as amended by Parliament, provide consumers with more confidence to use online financial services;

15. Notes however that for consumers to fully take advantage of cross-border financial services, a single payments area where it is as easy and cheap to transfer money across borders as domestically is vital; welcomes the Commission's recognition of this in its proposals on secure internet payments; calls for a more wide ranging and stringent application of the country of origin principle in order to minimise the market fragmentation which would otherwise arise from differing contractual rules for consumer financial services in different Member States;
16. Notes that the legislative framework set out in Directive 97/7/EC already provides consumers purchasing at a distance with rights to a refund in the event of non-authorised transactions or non-delivery of the goods/services purchased; calls on the Commission to assess how successful this framework has been in building consumer confidence in e-commerce, how existing mechanisms (including charge-back between card issuer and merchant) are operating and how refund mechanisms (with legislative or non-legislative backing) should be incorporated into future on-line payment systems, bearing in mind that credit or charge cards may not be the predominant medium; notes the importance of encouraging measures to tackle fraud including the development of new authentication and identification techniques; further calls on the Commission to bring forward proposals to ensure a single area for payment cards and to continue to promote the measures needed to facilitate the cross-border use of electronic money;
17. Agrees that further convergence of national rules relating to consumer contracts for financial services is desirable, provided that this is at a level which is *sufficiently* high to provide adequate protection and is not treated as a precondition for the immediate move to the country of origin approach when the Electronic Commerce Directive enters into force;
18. Is concerned that the recently adopted "Brussels II" regulation on jurisdiction in consumer legal disputes may undermine the country of origin principle and the E-commerce directive; believes strongly that proposals for a new "Rome II" regulation on non-contractual obligations must not be used to further undermine the country of origin principle or the E-commerce directive; demands that the Commission carry out a wide ranging and timely consultation on the "Rome II" proposal, involving all interested groups including the financial services industry;
19. Urges the Commission to examine as a matter of priority the question of "mandatory rules" in the context of the revision of the Rome Convention, with a view to finding solutions which respect the country of origin principle, avoid fragmentation of the Internal Market and encourage the development of e-commerce, whilst bolstering consumer confidence; notes that these rules must respect existing Treaty obligations;
20. Welcomes an inventory of existing contractual rules at national level for the protection of consumers in retail financial services, and urges the Commission to take legal action against Member States which impose disproportionately severe rules on services freely available in other Member States;

21. Points out that existing and approved market practices on e-commerce have to be taken into consideration whenever national rules are converged and/or Community rules established;
22. Proposes that the Commission encourage the financial services industry to adopt a European code of conduct on the use of clear language in consumer contracts so as to increase consumer confidence and enhance competition by permitting ready comparison of products and services on offer;
23. Congratulates the Commission on its initiative in establishing the European Extra Judicial Network (EEJ-NET) and the Financial Services complaints Network (FIN-NET), which support consumers seeking cross-border redress; calls upon the Commission, Member States and all interested parties to monitor the performance of EEJ-NET, FIN-NET and private sector ADR schemes and the overlap between them; urges the Commission to consider means of ensuring that ADR systems available on- and off-line in the European Union have adequate resources and satisfy certain common high standards, in particular as regards the qualifications of persons who may act as mediators/arbitrators;
24. Urges all websites offering financial services to advertise these means of redress, and calls on the Commission to monitor, and report annually, on the application of the service in each member state;
25. Emphasises the importance of securing as far as possible coherence between the legal frameworks for financial services provided online and offline, notably by moving as soon as possible to a country of origin regime for offline financial services as well, both wholesale and retail;
26. Takes the view that online financial services from third countries which provide a similar level of prudential supervision and investor protection to the EU should also be able to benefit from the country of origin regime; calls therefore on the Commission to seek where possible to negotiate mutual recognition agreements with third countries which meet these criteria;
27. Recognises the difficulties in applying traditional methods of tackling money laundering, such as 'know your customer' rules, in an online environment, and calls on the Commission to increase support for new identification and authentication techniques;
28. Supports research into any new risks associated with electronic business models, but notes that the old credit, settlement and other risks continue, and no undue weight should be placed on new risks by supervisors solely because they are electronic-based;
29. Stresses that the development of electronic commerce and the creation of the country of origin principle reinforce the need to establish a policy of prudence and a European system of regulatory authorities;

30. Believes that a genuine single market in financial services, whether on or off-line, cannot be achieved without consistent and timely implementation and enforcement of legislation; calls upon the Commission to enforce the e-commerce directive proactively and vigorously; calls upon financial services regulators in different member states to work closely together to ensure consistent implementation and interpretation of all legislation relating to e-commerce and financial services;

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

EXPLANATORY STATEMENT

The objective of the Commission Communication on Electronic Commerce and financial services is to clarify how the Electronic Commerce Directive, entering into force on 17 January 2002, interacts with existing and pending financial services legislation. The idea is to secure a coherent approach and examine how the internal market clause – the freedom for service providers to supply services throughout the Union based on the rules of the country of origin - will work in areas where national rules diverge significantly.

As part of the exercise, the Commission proposes to undertake a review of national provisions Member States may apply to online incoming services and subsequently provide 'guidance' on the sort of rules it may be willing to accept. It further proposes to develop a programme of convergence of contractual and non-contractual rules; to take steps to enhance consumer confidence in cross-border redress and internet payments, notably through the establishment of FIN-NET (the network of financial services ombudsmen); and enhance supervisory co-operation by continuing to review the arrangements for monitoring cross-border services.

While welcoming these measures, the resolution calls on the Commission to establish a detailed road map with deadlines to remove obstacles to the development of e-commerce in financial services.

It is of great concern that certain Member States appear to want to roll back the country of origin principle for online financial services, as seen by the failure of the Internal Market Council to reach agreement on the proposal for a Directive on distance marketing of financial services at its meeting 31 May 2001. By imposing national consumer protection rules on incoming financial services, Member States would deny businesses and consumers the full benefits of increased competition for their purchasing power, which can only arise from a genuine single market with a wider choice of services.

As the distinction between online and offline financial services is blurred, and transactions often are a mixture of both, it is important for the sake of legal coherence to also move as soon as possible to a country of origin system for offline financial services, both retail and wholesale. Moreover, it is regrettable that some aspects of financial services – notably insurance and aspects of the sale of unit trusts (mutual funds) – have been excluded from the scope of the Directive.

Whilst the proposed guidance may have some merit in terms of providing clarification, it is crucial that reluctant Member States are not allowed to turn this into a de facto block exemption. Member States must still be obliged to notify each and every restriction they wish to impose on a service, and the Commission must continue to apply thoroughly the article 3(4) procedure to every notified case. This ensures that concerned Member States must first approach the relevant home Member State to ask them to take measures, and only if they fail to take such measures or the measures are inadequate can they apply to the Commission for a derogation to insist on their national rules applying to the incoming service.

By failing to apply thoroughly Article 3(4), the Commission would be neglecting its responsibilities under the Directive, and denying industry a chance for legal redress against illegitimate, disproportionate or protectionist measures imposed on incoming online financial

services under the name of consumer protection. The burden of proof must lie on the Member State requesting the derogation, and the granting of the derogation must be based on documented evidence. Further harmonisation of consumer protection rules, whilst desirable, should not be used as an excuse to delay the move to the country of origin principle and the two processes should be simultaneous.

A high level of consumer confidence is obviously vital for the development of cross-border financial services. The establishment of alternative dispute resolutions systems is a step in the right direction, and the establishment of the European Extra Judicial Network (EEJ-NET) and the Financial Services Complaint Network (FIN-NET) is particularly welcome, as they provide very concrete support for consumers seeking cross-border redress, as well as a cheaper, simpler and more effective means of redress than going to court. However, for this to be effective, the Commission will have to monitor the application of the service in the Member States, and ensure that consumers are aware of the existence of the service. An obvious way of achieving this is for all websites providing online financial services to advertise these services. An information campaign to publicise the service in the Member States would also be helpful.

The Commission should increase its support for the development of methods to reduce the scope of fraud in online transactions such as authentication and identification. A legislative framework providing consumers with a right to a refund from payment card issuers in the event of a non-authorised transaction or non-delivery could be acceptable as long as it applies to all types of payment cards and is accompanied by steps to reduce the scope for abuse of such a system. Legislation of this type is already in place in the UK and the US.

Further action is urgently needed to create a single payments area where the cost of cross border small transfers is aligned with those for domestic transfers and the Commission should furthermore bring forward proposals to ensure a single area for debit card payments. In addition to preventing consumers from fully benefiting from the single market, the high cost of cross border retail payments will reduce consumer confidence in the Euro.

Given the nature of e-commerce, it would be beneficial both for consumers and businesses were the Commission to extend the country of origin principle to third countries with qualitatively similar regulatory supervision, such as other OECD countries. This could be done through negotiating mutual recognition agreements. It is in this context worth noting that Australia, Hong Kong and Singapore are currently negotiating such an agreement.

Retail investors are not able to benefit from a real cross-border choice due to barriers arising from contractual rules, and the Commission should review this as soon as possible to allow retail investors to fully benefit from the single market as well. The Commission must take legal action where necessary against national rules which are disproportionate and incompatible with the Treaty.

11 September 2001

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Economic and Monetary Affairs

on E-commerce and financial services. Communication
(COM(2001) 66 – C5-0257/2001 – 2001/2119 (COS))

Draftsman: Malcolm Harbour

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Malcolm Harbour draftsman at its meeting of 10 July 2001.

It considered the draft opinion at its meetings of 28 August 2001 and 11 September 2001.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Ward Beysen, acting chairman; Malcolm Harbour, draftsman; Paolo Bartolozzi, Luis Berenguer Fuster, Maria Berger, Bert Doorn, Raina A. Mercedes Echerer, Janelly Fourtou, Gerhard Hager, Ioannis Koukiadis, Kurt Lechner, Toine Manders, Luís Marinho, Arlene McCarthy, Manuel Medina Ortega, Angelika Niebler, Carlos Ripoll i Martínez Bedoya, Francesco Enrico Speroni, Antonio Tajani, Feleknas Uca and Matti Wuori, Othmar Karas (for The Lord Inglewood), Giacomo Santini (for Stefano Zappalà) and Giuseppe Nisticò (for Ana Palacio Vallelersundi), pursuant to Rule 153(2).

SHORT JUSTIFICATION

Pursuant to the deadline of 2005 set by the Lisbon European Council for establishing an integrated market in financial services, the Commission's communication puts forward a new policy framework, namely a programme of convergence of contractual and non-contractual rules, targeted steps to encourage consumer confidence in cross-border redress and Internet payments, and enhanced supervisory cooperation.

Your draftsman welcomes its emphasis on the country of origin principle and on securing coherence with the e-commerce directive. He also commends its approach, long advocated by this committee, of fostering e-confidence among consumers through the provision of alternative dispute resolution systems, particularly on-line. This opinion addresses a number of key issues falling within the terms of reference of the Committee on Legal Affairs and the Internal Market.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

Recital H (new)

Whereas financial services consumers, both on- and off-line, should benefit from clear and simple propositions with a consistent level of protection, irrespective of the delivery method,

Paragraph 1a (new)

Recalls Parliament's strong support for the e-commerce directive, and reminds the Member States that timely transposition of this legislation, in a manner that reinforces the country of origin principle for on-line transactions, without extending the scope of the agreed derogations, forms the foundation for an integrated EU financial services market;

Paragraph 3a (new)

Draws particular attention to the need to update legislation that pre-dates the 2000 E-Commerce Directive and does not encompass electronically-enabled transactions; points out, in particular, the need to update the Consumer Credit Directive to allow electronically completed and authorised transactions equal status with traditional written agreements;

Paragraph 5

Calls on the Commission to propose a clear timetable for action on the derogation in instances where this is necessary, and to include both insurance and the advertising of UCITS within the scope of the country of origin principle of the Electronic Commerce Directive;

Paragraph 6

Expresses its ***(one word deleted)*** concern that the Commission proposal to issue guidance to Member States on certain types of national provisions that they may apply to incoming online financial services ***(3 words deleted)*** ***must not be*** an invitation to Member States to apply such restrictions;

Paragraph 9

Believes that the measures set out in the Electronic Commerce Directive, combined with alternative dispute resolution mechanisms and the safeguards set out in the proposed Directive on Distance Marketing of Financial Services as amended by Parliament, provide consumers with ***more (one word deleted)*** confidence to use online financial services;

Paragraph 11

Notes that the legislative framework set out in Directive 97/7/EC already provides consumers purchasing at a distance with rights to a refund in the event of non-authorized transactions or non-delivery of the goods/services purchased; calls on the Commission to assess how successful this framework has been in building consumer confidence in e-commerce, how existing mechanisms (including charge-back between card issuer and merchant) are operating and how refund mechanisms (with legislative or non-legislative backing) should be incorporated into future on-line payment systems, bearing in mind that credit or charge cards may not be the predominant medium; notes the importance of encouraging measures (60 words deleted) to tackle fraud including the development of new authentication and identification techniques; further calls on the Commission to bring forward proposals to ensure a single area for payment cards and to continue to promote the measures needed to facilitate the cross-border use of electronic money;

Paragraph 12a (new)

Urges the Commission to examine as a matter of priority the question of "mandatory rules" in the context of the revision of the Rome Convention, with a view to finding solutions which respect the country of origin principle, avoid fragmentation of the Internal Market and encourage the development of e-commerce, whilst bolstering consumer confidence;

notes that these rules must respect existing Treaty obligations;

Paragraph 13a (new)

Proposes that the Commission encourage the financial services industry to adopt a European code of conduct on the use of clear language in consumer contracts so as to augment consumer confidence and enhance competition by permitting ready comparison of products and services on offer;

Paragraph 14

Congratulates the Commission on its initiative in establishing the European Extra-Judicial Network (EEJ-NET) and the Financial Services Complaints Network (FIN-NET), which support consumers seeking cross-border redress, *and urges the Commission to consider means of ensuring that ADR systems available on- and off-line in the European Union have adequate resources and satisfy certain common high standards, in particular as regards the qualifications of persons who may act as mediators/arbitrators;*