

# Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) Directive</p> <p>1998/0245(COD)</p>	Procedure completed
<p>Distance marketing of consumer financial services</p> <p>Amending Directive 97/7/EC <a href="#">1992/0411(COD)</a> Amending Directive 98/27/EC <a href="#">1996/0025(COD)</a> Amended by <a href="#">2003/0134(COD)</a> Amended by <a href="#">2005/0245(COD)</a> Amended by <a href="#">2013/0264(COD)</a></p> <p>Subject</p> <p>2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.08 Financial services, financial reporting and auditing 4.60.06 Consumers' economic and legal interests</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>JURI</b> Legal Affairs and Internal Market		23/09/1999
		PSE <a href="#">BERGER Maria</a>	
	Former committee responsible		
	<b>ENVI</b> Environment, Public Health and Consumer Protection		25/11/1998
		PPE <a href="#">OOMEN-RUIJTEN Ria</a>	
European Parliament	Former committee for opinion		
	<b>ECON</b> Economic and Monetary Affairs, Industrial Policy		07/12/1998
		ELDR <a href="#">KESTELIJN-SIERENS Marie-Paule (Mimi)</a>	
	<b>JURI</b> Legal Affairs, Citizens' Rights		21/01/1999
		PSE <a href="#">BERGER Maria</a>	
Council of the European Union	Council configuration	Meeting	Date
	Health	<a href="#">2440</a>	26/06/2002
	<a href="#">Agriculture and Fisheries</a>	<a href="#">2402</a>	19/12/2001
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2371</a>	27/09/2001
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2351</a>	30/05/2001
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2336</a>	12/03/2001
	Consumers	<a href="#">2255</a>	13/04/2000
	Consumers	<a href="#">2213</a>	08/11/1999
	Consumers	<a href="#">2171</a>	13/04/1999
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2136</a>	23/11/1998

Key events			

23/11/1998	Debate in Council	<a href="#">2136</a>	
02/12/1998	Committee referral announced in Parliament, 1st reading		
13/04/1999	Debate in Council	<a href="#">2171</a>	
19/04/1999	Vote in committee, 1st reading		Summary
19/04/1999	Committee report tabled for plenary, 1st reading	<a href="#">A4-0190/1999</a>	
04/05/1999	Debate in Parliament		
05/05/1999	Decision by Parliament, 1st reading	T4-0403/1999	Summary
08/11/1999	Debate in Council	<a href="#">2213</a>	
13/04/2000	Debate in Council	<a href="#">2255</a>	Summary
30/11/2000	Debate in Council		Summary
12/03/2001	Debate in Council	<a href="#">2336</a>	Summary
30/05/2001	Debate in Council	<a href="#">2351</a>	Summary
17/01/2002	Committee referral announced in Parliament, 2nd reading		
16/04/2002	Vote in committee, 2nd reading		Summary
13/05/2002	Debate in Parliament		
14/05/2002	Decision by Parliament, 2nd reading	<a href="#">T5-0218/2002</a>	Summary
26/06/2002	Act approved by Council, 2nd reading		
23/09/2002	Final act signed		
23/09/2002	End of procedure in Parliament		
09/10/2002	Final act published in Official Journal		

## Technical information

Procedure reference	1998/0245(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	<p>Amending Directive 97/7/EC <a href="#">1992/0411(COD)</a></p> <p>Amending Directive 98/27/EC <a href="#">1996/0025(COD)</a></p> <p>Amended by <a href="#">2003/0134(COD)</a></p> <p>Amended by <a href="#">2005/0245(COD)</a></p> <p>Amended by <a href="#">2013/0264(COD)</a></p>
Legal basis	EC Treaty (after Amsterdam) EC 047-p2; EC Treaty (after Amsterdam) EC 095; EC Treaty (after Amsterdam) EC 055
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/13035

Documentation gateway					
Legislative proposal		<a href="#">COM(1998)0468</a> <a href="#">OJ C 385 11.12.1998, p. 0010</a>	19/11/1998	EC	Summary
Committee draft report		PE229.267	05/03/1999	EP	
Committee draft report		PE229.267/B	10/03/1999	EP	
Amendments tabled in committee		PE229.869/AM	25/03/1999	EP	
Amendments tabled in committee		PE229.869/AM-	25/03/1999	EP	
Committee draft report		PE229.267/REV	06/04/1999	EP	
Committee opinion	<b>ECON</b>	PE229.760/DEF	12/04/1999	EP	
Committee opinion	<b>JURI</b>	PE229.869/DEF	12/04/1999	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A4-0190/1999</a> <a href="#">OJ C 279 01.10.1999, p. 0004</a>	19/04/1999	EP	
Economic and Social Committee: opinion, report		<a href="#">CES0458/1999</a> <a href="#">OJ C 169 16.06.1999, p. 0043</a>	29/04/1999	ESC	
Text adopted by Parliament, 1st reading/single reading		T4-0403/1999 <a href="#">OJ C 279 01.10.1999, p. 0163-0207</a>	05/05/1999	EP	Summary
Modified legislative proposal		COM(1999)0385 <a href="#">OJ C 177 27.06.2000, p. 0021 E</a>	23/07/1999	EC	Summary
Council position		<a href="#">12425/1/2001</a> OJ C 058 05.03.2002, p. 0032 E	19/12/2001	CSL	Summary
Commission communication on Council's position		<a href="#">SEC(2002)0030</a>	14/01/2002	EC	Summary
Committee draft report		PE312.767	11/02/2002	EP	
Amendments tabled in committee		PE312.767/AM	12/03/2002	EP	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A5-0122/2002</a>	16/04/2002	EP	
Text adopted by Parliament, 2nd reading		<a href="#">T5-0218/2002</a> <a href="#">OJ C 180 31.07.2003, p. 0024-0108 E</a>	14/05/2002	EP	Summary
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2002)0360</a>	26/06/2002	EC	Summary
Follow-up document		<a href="#">COM(2006)0161</a>	06/04/2006	EC	Summary
Follow-up document		<a href="#">COM(2009)0626</a>	20/11/2009	EC	Summary

Additional information	
European Commission	<a href="#">EUR-Lex</a>

Final act
<a href="#">Directive 2002/65</a> <a href="#">OJ L 271 09.10.2002, p. 0016</a> Summary

## Distance marketing of consumer financial services

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**PURPOSE:** to approximate the laws, regulations and administrative provisions of the Member States concerning the distance marketing of consumer financial services, amending Council directives 90/619/EEC, 97/7/EC and 98/27/EC accordingly. **CONTENT:** this proposal for a directive is designed to establish a common basis setting out the conditions under which contracts for distance marketed financial services are offered and requested, negotiated and concluded, in such a way as to reduce divergences in national approaches to this policy area, while at the same time establishing the fundamental rights of the consumer in this area. To this end, the proposal sets out principles relevant to distance marketing and establishes, in particular: - the right of the consumer to receive all contractual terms and conditions before conclusion of a distance contract; - the principle that the terms and conditions of the contract should remain fixed for a certain period of time (reflection period); In the event that the contract is concluded without the consumer having received the contractual terms and conditions or that conclusion of the contract is unfairly induced by the supplier during the reflection period, the consumer shall have a right of withdrawal for 14 days without incurring any charge or penalty, and without prejudice to his right to seek compensation for the damage he has suffered. The proposal sets the conditions to be applied in the event that the financial service which is the subject of the contract is partly or totally unavailable. Provisions are also made concerning unsolicited services and communications. Finally, the proposed directive makes provision for the right of appeal by professional organisations and consumers in order to ensure correct implementation of the directive.?

## Distance marketing of consumer financial services

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A report, drafted by Ria OOMEN-RUIJTEN (EPP, NL), on a proposed Community directive on the distance marketing of consumer financial services was adopted after amendment by the Committee. The final vote on the report was 12 votes to 4 with 3 abstentions, but some earlier votes on individual amendments - there were around 140 amendments in all - were much closer. The aim of the proposal is to facilitate the sale by telephone, fax, internet and (in France) Minitel of financial services such as banking, insurance, investment and mortgages while, at the same time, protecting consumers from fraud, high-pressure salesmanship and certain unsolicited sales communications. The main debate in committee was between two camps, the "maximalists" and the "minimalists". The "maximalists", which included the rapporteur and members of her group, wanted the legislation to set maximum Community standards from which Member States would not be allowed to diverge (even for the purpose of improving on them) since this could cause confusion in cross-border sales instead of creating a level playing-field in the interests of the single market. This argument is supported by the Commission, which had crafted its proposal along these lines, and, among the Member States, by the United Kingdom and the Netherlands. The "minimalists", on the other hand, wanted the legislation to set minimum standards on which Member States would be free to improve. The PES group backed this argument, which also has the support of the 13 other Member States. [Addressing the committee the following day 20 April, Dr Lorenz SCHOMERUS, German State Secretary for Consumer Policy and current President of the Consumer Council, confirmed that the Council definitely favoured minimum harmonization "at present".] And in the vote, it was the minimalists that won the day. The vote on the two key amendments in question was 11 to 7 with 2 abstentions. Other amendments involved extending the legal base to include Article 129a (which provides for a high level of consumer protection) and providing protection against the fraudulent use of credit cards. Furthermore, the supplier must now specify how long his offer remains valid and furnish a summary of the most important contractual conditions "in language easily understood by the consumer". Except in the case of certain financial services subject to arbitrary price fluctuations, the consumer has 30 days (instead of the 14 proposed by the Commission) in which to withdraw from the contract without giving reasons or incurring a penalty. The committee also wants the directive transposed into national law by 30 June 2001 (instead of 2002, as proposed by the Commission).?

## Distance marketing of consumer financial services

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In adopting its report, drafted by Ms. Ria OOMEN-RUIJTEN (EPP, NL), the European Parliament approved, subject to a number of amendments, the Commission's proposal for a Directive. One amendment specifies that Member States may not adopt provisions other than those laid down in this Directive in the fields harmonised by this Directive which seek to promote cross-border marketing of financial services and to protect consumers in cross-border purchases of financial services. The Parliament is also seeking to modify the legal base of the proposal by calling for it to be based on Article 47, paragraphs 55, 95 and 153 of the EC Treaty. The Parliament is calling for the supplier of the services to provide a summary of the main contractual terms and conditions in language easily understood by the consumer. this summary would include the following information : - the identity and address of the supplier, - the main characteristics of the financial service, - the price of the financial service, including all taxes, - the arrangements for payment, delivery or performance of the contract, - the existence and duration of the right of withdrawal, - the cost of using the means of distance communication, where it is calculated other than the basic rate, - the period for which the offer is valid, - where appropriate, the minimum duration of the contract in the case of financial services to be performed permanently or recurrently, - information on cancelling the contract, - the applicable law and complaints and redress procedure, including the address of the supervisory authority to which the consumer may address any complaints, - the address of the contact point established in the consumer's Member States in accordance with the Directive on certain legal aspects of electronic commerce in the internal market. Except in the cases of financial services subject to price fluctuations over which the supplier has no influence or non-life insurance contracts valid for less than one month, the consumer has the right to withdraw from the contract without incurring any charge or penalty within 30 days (as opposed to 14 days in the Commission's proposal). The Parliament calls on the Member States to take the appropriate measures to ensure that the consumer : - can request a cancellation of a payment in the case of fraudulent use of his debit/credit card in transactions falling within the Directive, - is reimbursed in case of fraudulent use of the payment. Member States are also called upon to lay down in their legislation that service providers shall provide efficient, free of charge, easy to access and well-publicised means to allow recipients to choose not to receive unsolicited commercial communications. The Parliament would like to see the Directive transposed into national legislation by 30/06/2001 rather than in 2002 as was proposed by the Commission.?

## Distance marketing of consumer financial services

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The Commission's amended proposal accepts the amendments made by the European Parliament bearing in mind certain number of amendments as a consequence of the full harmonisation level of the proposal as well as of the necessity to ensure a clear alignment with the existing provisions. The main amendments introduced by the Commission concern the following points : - Definitions: the definition of

"distance contract" has been amended, in order to cover contracts for which the supplier exclusively employs means of a distance communication up to and including the moment at which the contract is concluded. A new definition has been introduced, namely "real estate credit" in order to respond to the necessity expressed by the European Parliament to envisage particular provisions for this type of credit. - Prior information: the Parliament's amendment basically aims at providing consumers with the information prior to conclusion of the contract, has been concluded. However, the wording has been changed, the idea being on the one hand to draw up a list of information items which have added value in the context of distance contracts, and on the other hand to bring this list into line with existing rules in the sectoral directives (non-life insurance, life insurance, OCITS, prospectus, and investment services). - Communication of the contractual terms and conditions and of the prior information: the amended proposal provides that the contractual terms and conditions and a summary thereof, including the prior information, must be communicated in writing or in a durable medium before conclusion of the contract. - Right of withdrawal: the amended proposal establishes a general right of withdrawal. The period during which the consumer may withdraw is from 14 to 30 days and may be determined by the Member States depending on the degree of consumer protection required as a function of the financial services concerned. However, in order not to hamper the free movement of financial services, when the supplier respects the withdrawal period provided for by the Member State in which he is established, he is not required to respect a different withdrawal period for contracts involving large sums of money or for long-term contracts. There are exceptions and they partially take into account the amendments of the Parliament and concern: - financial services in respect of which exercise of the right of withdrawal might lead to a risk of speculation; - the non-life insurances for a period of less than two months and; - the contracts whose performance has been entirely completed before the consumer exercises the right of withdrawal. A general exclusion of all forms of credit would not be desirable. Nevertheless, in order to address the concerns expressed both by the Parliament and the Council, real estate credit is the subject of dedicated provisions. Thus, the Member States may provide that consumers can no longer rely on the right of withdrawal when, with their consent, the funds borrowed have been transferred to the seller of the real estate or to the latter's representatives; once a notarial act concerning the real estate credit has been validly and regularly recorded; and as is the case of real estate credit based on mortgage bonds. - Performance of the contract and payment of the service provided prior to withdrawal: the provision integrates a new paragraph into the text stipulating that, in order to initiate performance of the contract before the expiry of the withdrawal period, the consumer's consent must first be elicited. The provision aimed at preventing the price to be paid constituting a penalty has been included. Besides, the provision concerning prior information as to the price to be paid now features in the list of prior information. What has equally been included is the principle aiming to put a ceiling on the amounts to be reimbursed to the supplier in the event of withdrawal (the time limit is extended to 30 days). - Unavailability of the service: the amendment is aimed at laying down a maximum time limit for reimbursement in the event of unavailability of the service, this amendment has been included, but the time limit has been extended to 30 days (instead of 14 days as proposed by Parliament). - Payment by card: conforming to the wishes of the Parliament, the Member States shall take appropriate measures to ensure that consumers can request the cancellation of a payment in the case of fraudulent use of their payment card in transactions falling within this Directive; and that the amounts paid are recredited or that the consumer is reimbursed. - Unsolicited communications: with an eye to consistency with Directives 97/7/EC and 97/66/EC, prior consent may only be required in the case of automatic calling devices and fax machines. In the case of other means of communication the consumer may be contacted unless he has put it on record that he does not want to be contacted. The part of the amendment concerning the particulars to be provided in the case of telephone communications has been included.?

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## Distance marketing of consumer financial services

The Council took note of a Commission intervention on the preparation of an inventory of existing national provisions concerning distance marketing of financial services as regards, in particular, the requirements for prior consumer information. Once completed, this inventory should assist Member States in reaching an agreement on this proposal, as foreseen by the Council conclusions of the "Internal Market" session of December 1999. According to the Commission, the inventory will allow to prepare a more precise list of information items to be provided to consumers in the context of the proposal. It will be finalised in short, allowing work on the proposal to resume.?

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## Distance marketing of consumer financial services

The Council took note of the progress made with regard to the Directive on the distance marketing of financial services. The Council noted that discussions on the text of the future Directive would resume shortly under the Swedish Presidency. The negotiations conducted under the German and Finnish Presidencies revealed opposition between a majority of Member States in favour of minimum harmonisation and a few delegations in favour of total harmonisation. During the Internal Market session on 7 December 1999, the Council, faced with the inability to achieve a political compromise, invited the Commission to make a precise survey of the information obligations imposed by the Member States in the area of financial services. The key questions pending relate inter alia to the obligation of the supplier to disclose a complete list of information and the applicable law: that of the supplier's or the consumer's country of residence in the event of dispute. ?

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## Distance marketing of consumer financial services

The Council held a debate on the proposal for a Directive on distance marketing of consumer financial services. At the end of this debate, the Presidency noted that a clear majority of delegations firmly commit themselves to reaching a political agreement in June 2001 at the latest, including some delegations which are not able to agree to the compromise today. The Presidency regards this outcome as significant and irreversible progress.?

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## Distance marketing of consumer financial services

The Council examined the proposal for a directive concerning the distance marketing of consumer financial services and amending Directives 97/7/EC and 98/27/EC and in particular, the question concerning whether or not Member States could, until the expiration of the transposition period of the directive, continue to apply their national rules on incoming financial service providers. At the end of the debate the Presidency noted that the Council was not in a position to reach agreement by qualified majority on this issue.?

## Distance marketing of consumer financial services

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Following a period of long and extensive discussion, Council finally agreed to a common position on the text concerning the distance marketing of consumer financial services. The end result is that the text allows for: - A high level of harmonisation of information requirements related to Article 3 of the Directive. - The abandonment of the principle of minimum harmonisation, as initially called for by many Member States during the Luxembourg Council in April 1999. - Far reaching harmonisation of the right of withdrawal payment of the service, unsolicited services, unsolicited communication, redress etc. -Providing for the possibility of amending or further harmonising the provisions of the Directive in light of experience gained. - Clarifying the relation of this Directive to the e-commerce Directive. Other changes included a clarification the text and layout of the Directive. ?

## Distance marketing of consumer financial services

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The Commission recognises that this document reflects a hard-won yet balanced compromise requiring many concessions from most of the Member States. Rules on distance selling in financial services are now more closely harmonised than by the amended proposal. The Commission supports the text of the common position adopted by qualified majority, in view of the pressing need to adopt this directive, it being essential to ensure consumer protection and confidence.?

## Distance marketing of consumer financial services

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The committee adopted the report by Maria BERGER (PES, A) amending the Council's common position under the codecision procedure (2nd reading). Although the common position largely met Parliament's demands from 1st reading, the committee adopted a number of amendments aimed at enhancing consumer protection and taking greater account of financial service providers' interests. As regards better consumer protection, the committee broadened the scope of the directive by widening the definitions of terms such as "supplier" (to include "intermediaries") and clarifying the term "credit" so that all forms of credit are covered. It also sought to clarify the position as regards the period within which consumers can withdraw from a contract and was concerned to ensure that consumers should receive the necessary information from the supplier. It stipulated that, if the supplier fails to provide the information, the period for withdrawal shall be 3 months, starting from the day of conclusion of the contract. If the information is supplied within that 3-month period, then the period for withdrawal would begin as from that moment and would be 14 or, in some cases, 30 calendar days as originally stipulated in the proposal. Still on the question of withdrawal, the committee was also concerned to ensure better protection for financial service providers, and in particular credit and insurance providers. One amendment aimed to close a loophole left in the proposal which would have allowed a consumer to make a claim against an insurance policy and then withdraw from the contract and still have the right to almost all of the premium paid. Another amendment completely removed the consumer's right to withdraw from certain contracts for home loans or home improvements (e.g. mortgages), whereas the common position had left it up to Member States to decide whether or not to remove this right. The committee argued that this change would not only create a more harmonised internal market but would also benefit consumers as it should prevent the development of national variations in cost structures in the credit industry. Lastly, the committee clarified the provisions on 'unsolicited services' (Art. 9) with a view to ensuring that insurers could go ahead with tacit renewals in cases where a customer had previously given written consent. ?

## Distance marketing of consumer financial services

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The European Parliament adopted only two amendments to the Council's common position, one of which states that the performance of the contract may only begin after the consumer has given his approval. Parliament followed the recommendation of the rapporteur Maria BERGER (PES, Austria) to approve the legislation with the least possible changes so as to avoid disturbing the delicate agreement reached by Council. The rapporteur stated that the Council met to a high degree, Parliament's demands from first reading. On the issue of harmonisation, the rapporteur felt that the agreed solution is essentially based on the principle of maximum harmonisation, providing only a small number of cases for Member States to be able to introduce or maintain national rules.?

## Distance marketing of consumer financial services

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The European Parliament adopted two amendments to the common position, both of which are accepted by the Commission. The purpose of one amendment is to resolve the problem posed by exercising the right of withdrawal in the event of the involvement of a notary. The idea is to take account, on the one hand of the legal problems, which would arise from the withdrawal of a notarial act and, on the other hand, of the guarantees offered by the involvement of a notary in terms of consumer protection. The wording takes account of the legal situation in the Member States which do not have civil law notaries. The commission is aware of the undifferentiated application of the right to withdrawal to all such acts. In view of the additional guarantees offered by the involvement of a notary in terms of consumer protection, it accepts the inclusion of this provision. The Commission also accepts the clarification of the provision under which payment or the service provided before the right of withdrawal was exercised may be required by the supplier only if the consumer asked for performance of the contract to start before expiry of the withdrawal period. The amendment makes the principle clearer, by stipulating that the performance of the contract may only begin after the consumer has given approval. It also means that the supplier can decide not to commence performance of the contract before expiry of the withdrawal period, in which case the consumer could not be required to pay any penalty.?

## Distance marketing of consumer financial services

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**PURPOSE :** to approximate the laws, regulations and administrative provisions of the Member States concerning the distance marketing of consumer financial services. **COMMUNITY MEASURE :** Directive 2002/65/EC of the European Parliament and of the Council concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC. **CONTENT :** it is important in the context of the achieving the aims of the single market, to adopt measures designed to consolidate progressively this market and those measures must contribute to attaining a high level of consumer protection. Both for consumers and suppliers of financial services, the distance marketing of financial services will constitute one of the main tangible results of the completion of the internal market. Within the framework of the internal market, it is in the interest of consumers to have access without discrimination to widest possible range of financial services available in the Community so that they can choose those that are best suited to their needs. It is essential to the smooth operation of the internal market for consumers to be able to negotiate and conclude contracts with a supplier established in other Member States, regardless of whether the supplier is also established in the Member State in which the consumer resides. Because of their intangible nature, financial services are particularly suited to distance selling and the establishment of a legal framework governing the distance marketing of financial services should increase consumer confidence in the use of new techniques for the distance confidence of financial services such as electronic commerce. It should be noted that Directive 97/7/EC of the European parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, lays down the main rules applicable to distance contracts for goods or services concluded between a supplier and a consumer. However, that Directive does not cover financial services. This Directive, on the other hand, covers all financial services liable to be provided at a distance. However, certain financial services are governed by specific provisions of Community legislation which continue to apply to those financial services. However, principles governing the distance marketing of such should be laid down. This Directive intends to do just that. No later than 9 April 2006, the Commission shall report the European Parliament and the Council on the problems facing both consumers and suppliers seeking to buy and sell financial services, and shall submit, where appropriate, proposals to amend and/or further harmonise the information and right of withdrawal provisions in Community legislation concerning financial services. **ENTRY INTO FORCE :** 09/10/2002. **IMPLEMENTATION :** 09/10/2004.?

## Distance marketing of consumer financial services

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In accordance with Article 20 of Directive 2002/65/EC the European Commission is expected to prepare a Report on the implementation of this Directive. Although implementation was due to have taken place by 9 October 2004, the European Commission notes that implementation has been delayed. By the end of 2004 only 8 Member States had notified the Commission of the Directive's implementation. At the beginning of 2006, the Commission had only received communications from 20 Member States. In the case of two Member States, the Commission has brought the matter before the European Court of Justice and one further case is still being considered.

The Commission, therefore, argues that any examination of the Directive, within the meaning of Article 20, can not be conducted. In the absence of this requirement, the Commission has not been in a position to meet its obligations vis-à-vis Article 20.

In order to fully assess the impact of Directive 2002/65 on the internal market the Commission has launched a study in preparation for its Report. A comprehensive Commission Report, which addresses the question of implementation and any possible revision of the Directive, should be ready by 2008. The European Commission invites the European Parliament and the Council to take due note of this revised planning.

## Distance marketing of consumer financial services

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The Commission presents a review on the functioning of distance marketing in financial services to ensure the adequate development of cross border distance marketing in this sector, pursuant to Article 20 of the Distance Marketing of Consumer Financial Services Directive

2002/65/EC (the Directive). The review focuses in particular on differences in national legislation relating to aspects of the Directive which are not fully harmonised, namely pre-contractual information provisions and the consumer's right of withdrawal. It evaluates the difficulties which consumers and suppliers may face as a result of these differences and assesses if there is a need to amend the Directive.

**State of the market:** the market for cross-border financial services business in general, independent of the marketing means, is still very limited in the retail sector, both in banking and insurance. While in 2007, over half (52%) of all Europeans made a purchase of goods or services by distance marketing in the EU, the figure for financial services by distance marketing was much lower, at 12%.

While the level is low, the trend in distance marketing of financial services is upward, given that the figure for 2006 was only about 7%. Looking at cross-border, as opposed to domestic trade in financial services, there is an even greater contrast. Of the 12% of European citizens who purchased a financial service of some kind by distance marketing, 10% did so from providers in their country, while only 1% purchased distance financial services from EU providers outside their country, and 1% from providers outside the EU. The most recent statistics show cross border trade in general to be stalling. The report notes that countries with high Internet penetration rates, such as the Nordic countries, are likely to have higher levels of distance marketing. As is the case for the cross border purchasing of general goods and services, the most recent Eurobarometer survey found that citizens rated language problems as the greatest barrier to purchasing financial services cross-border. The figure for language problems was 37%, followed by fraud risk (30%), incomprehensible (29%) or insufficient (26%) information and the extra costs involved (24%). The products which lend themselves to successful adaptation to distance marketing methods primarily include simple products within savings and investments, loans and non-life insurance categories.

**Transposition:** the report looks at pre-contractual rights to information granted under Article 4(2) of the Directive and at the right of withdrawal under Article 6 (3). It states that at present, there is no evidence that legal differences on the use of Article 4 (2) or 6(3) by Member States constitute major obstacles to existing transactions or that they have a direct impact on the level of distance marketing of financial services across the EU.

**Overall impact of the Directive:** the report notes that the barriers to the development of cross-border financial services business by distance marketing are mainly supplier-centred. However, only national anti-money laundering requirements and the lack of harmonisation of relevant national legislation, or absence of EU legislation, on points not included in the scope of the Directive are ranked by the study as very significant barriers. The most significant demand-side barriers come from differences in language and culture, as well as the absence of information on cross-border products. The Commission details the steps it has taken in order to improve the quality of pre-contractual information available to consumers. The Directive has created a legal framework for purchasing financial services via distance marketing

tools. While domestic distance marketing of financial services has increased, albeit still at a low level overall, it cannot be concluded at this stage that the existence of this framework has had an impact on furthering the development of cross-border activities.

The main conclusions of the report are as follows:

- The current market for distance selling of consumer financial services across borders is very small. In most Member States national implementation laws only came into force from 2005/2006 onwards and the market has not significantly changed since the Directive was introduced. The report states that the market may increase in the medium to long term because business attitudes are often framed more by perception than actual problems and because the growing popularity among consumers of transacting online will create a demand for cross border expansion.
- Language and cultural preferences represent the most significant barrier to consumers engaging in this market. However, the Commission cannot take any measure in this area. In relation to the absence of information on financial product legislation in particular markets, the Commission is undertaking significant steps to improve the quality of information in the area of credits and investments.
- Should future advances in e-commerce in general fail to be mirrored by similar developments in the area of distance marketing of financial services, the Commission may consider re-examining the case for amending the Directive or taking other relevant initiatives.
- At this stage, there is no evidence that consumers face problems arising from incorrect implementation of the Directive. Nor is there any evidence which would indicate that the legal diversity resulting from Member States using to a varying extent the options contained in the Directive has a direct impact on the low level of cross-border distance marketing of financial services.

Accordingly, the Commission takes the view that at present it is not appropriate to propose any amendments to the Directive.