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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE
EUROPEAN PARLIAMENT**

**REVIEW OF THE DISTANCE MARKETING OF CONSUMER FINANCIAL
SERVICES DIRECTIVE (2002/65/EC)**

1. INTRODUCTION

1. Article 20 of the Distance Marketing of Consumer Financial Services Directive 2002/65/EC (the Directive) provides for a Commission review on the functioning of distance marketing in financial services to ensure the adequate development of cross-border distance marketing in this sector.
2. The objectives of the Directive are to consolidate the single market while attaining a high level of consumer protection. In line with Article 20, 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.
3. The Directive, a horizontal measure covering all financial services, was adopted on 23 September 2002, giving Member States two years in which to transpose it into national law. The Commission's report, duly submitted to the European Parliament and the Council in April 2006,¹ stated that the review would be postponed due to Member States being late in transposing the Directive.² Most Member States only transposed it in 2005/2006.
4. This report is fed by conclusions from studies, analyses and feedback on the state of the market and on whether the explicit leeway applied by Member States to provisions not fully harmonised has impacted on the achievement of the internal market and consumer protection objectives of the Directive. The bulk of the analysis comes from two studies launched by the Commission.³ The Legal Study examines the impact of the Directive from a legal perspective, and its findings have been taken into account in the Economic Study which explores the economic impact of the Directive on the cross-border distance marketing of financial services.
5. In addition, discussions with consumer groups and the financial services industry took place in 2007 and 2008. A questionnaire was circulated to Member States in September 2007 and a workshop with Member States was held in March 2008. The report also takes account of the results of surveys, national and EU-wide, such as Eurobarometer, and output from the Commission's 2007 focus groups on pre-contractual information, as well as the Commission's transposition checks. The data collected are based on material obtained prior to the economic and financial crisis. More recent data does not exist.

¹ COM(2006) 161 final.

² The Court found that two Member States had not respected the obligation to transpose the Directive on time; see cases C-127/06, *Commission/Luxembourg*, judgement of 7 December 2006, ECR p. I-131, and C-141/06, *Commission/Spain*, judgement of 19 April 2007, ECR p. I-58.

³ See http://ec.europa.eu/consumers/rights/fin_serv_en.htm

2. STATE OF THE MARKET

6. 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. Eurobarometer⁴ results for EU citizens who have obtained, for instance, a bank account across borders⁵ give 4% as the figure for 2003 in EU-15 Member States. This increased to 8% (in EU-25) in 2006⁶.

Contrasting overall (cross-border and domestic) distance marketing of general goods and services with distance marketing of financial services, the most recent Eurobarometer shows that while in 2007, over half (52%) of all Europeans made a purchase of goods or services by distance marketing in the European Union⁷, the figure for financial services by distance marketing was much lower, at 12%⁸. 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%.⁹

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.¹⁰ The most recent statistics show cross border trade in general to be stalling.¹¹ This finding is reinforced by the Economic Study which noted that the level of distance marketing of financial services cross border is extremely low.

7. The profile of the typical cross-border shopper is that of a young, well-educated professional with an Internet connection, by far the most popular distance marketing channel, as shown by the Commission's focus groups study.¹² In fact, 31% of European citizens are not interested in cross-border shopping because they do not have Internet access.¹³ Therefore countries with high Internet penetration rates, such as the Nordic countries, are likely to have higher levels of distance marketing.
8. Confirming the Internet preference and the gap between domestic and cross border levels of business, the Commission's recent Report on cross-border e-commerce in the EU¹⁴ noted that between 2004 and 2008, the level of consumers who ordered

⁴ Eurobarometer (EB) 60.2 (2004), EU Public Opinion in Europe: Financial Services, Report B. p.53, http://ec.europa.eu/public_opinion/archives/ebs/ebs_205_fullreport_en.pdf

⁵ Qualitative study among cross-border buyers of financial services in the European Union, Optem. December 2003, p. 5. Although the sample was not representative, bank accounts were found to be the easiest product to measure.

http://ec.europa.eu/consumers/cons_int/fina_serv/cons_experiences/cross_border_final_report_en.pdf

⁶ Special EB 252 (2006), Consumer Protection in the Internal Market, p.106, see footnote 4

⁷ Special EB 298 (2008), Consumer Protection in the Internal Market, p. 14, see footnote 4

⁸ Idem p. 84.

⁹ See footnote 6, p. 112.

¹⁰ See footnote 7 p. 84.

¹¹ European Commission Second Consumer Markets Scoreboard, COM (2009) 25 final, p. 3.

¹² European Commission, Pre-contractual Information for financial services. Qualitative study in the 27 Member States, January 2008.

http://ec.europa.eu/consumers/rights/docs/PCI_final_report_22Feb2008_en.pdf

¹³ See footnote 6, p. 57.

¹⁴ SEC (2009) 283 final, p. 5.

goods or services over the Internet increased from 22% to 34%. However, this growth was confined to national markets. E-consumers continue to resist purchasing goods and services across borders, with the gap in fact widening; cross-border e-commerce increased only marginally, from 6% to 7%, between 2006 and 2008.

9. Cross-border shopping in the original 15 Member States and in eurozone countries is more common than in the Member States who joined post-2004 and in the non eurozone countries. In general, Europeans are now more confident about shopping in other EU countries than in 2006.¹⁵
10. Input from the banking industry demonstrated that meaningful levels of cross-border distance marketing of financial services have not yet been reached, partly because distance marketing is not yet one of the main channels used by banks. As is the case for the cross border purchasing of general goods and services, the most recent Eurobarometer 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%).¹⁶
11. There is an important distinction between distance services offered across border directly by the service provider and those where the offering is made indirectly by the establishment of a branch, a subsidiary, using an intermediary or an online facility in another Member State, with the latter typically having back office support from the home Member State. In addition, there is usually no distinct model for customer interaction; rather, financial services suppliers use multi-channel marketing combining both distance and face-to-face interaction. This pronounced preference is noted in the Economic Study, which found that contracts were seldom concluded over a single channel, i.e. internet, phone or face-to-face only. This preference was echoed in the Commission's focus groups study,¹⁷ which noted that, in addition to the information available on the internet, consumers wanted to receive advice from professionals by means of face-to-face interviews.
12. Although reliance on such advice is unlikely to change, the channel through which financial services are marketed has the potential to develop over time. The findings of the Economic Study show that there is potential for growth where economies of scale can be achieved by large companies entering markets, or within large markets. However, critical mass is difficult to achieve in smaller or less developed financial markets, although sometimes significant price differentials attract banks to markets, overcoming this obstacle. Market consolidation and integration in both banking and insurance sectors result in a small number of large companies doing business on a pan-European basis, and their market share is reportedly increasing, both in insurance¹⁸ and in banking.¹⁹

¹⁵ See footnote 7, p. 52.

¹⁶ See footnote 6, p. 89.

¹⁷ See footnote 12, p. 14.

¹⁸ CEIOPS (2007), Report on Financial Conditions and Financial Stability in the European Insurance and Occupational Pension Fund Sector 2006-2007 (Risk Update), p. 16,
<http://www.ceiops.eu/media/files/publications/reports/CEIOPS-DOC-12-07.pdf>

¹⁹ SEC(2007) 1696, European Financial Integration Report 2007, Annex II, Chart 1.4, p.50 and Chart 3.1, p. 64.

13. The offerings which lend themselves to successful adaptation to distance marketing methods primarily include simple products within savings and investments, loans and non-life insurance categories. The Economic Study reported non-mortgage loans and savings accounts as the two most popular distance marketing products for banks, followed by stocks/shares/bonds and credit cards. When it comes to cross-border offerings of products by distance marketing, the range of products narrows, with savings and credit cards being the simplest and hence the most popular for this market.

3. TRANSPOSITION OF THE DIRECTIVE

Transposition in the Member States

14. In checking the conformity of the national provisions with the Directive, most of the difficulties in transposing the Directive appear in connection with a few provisions.
15. Article 3 deals with the information to be given to the consumer prior to the conclusion of the distance contract. The Directive requires that consumers are informed about the identity of the representative of the supplier established in the Member State where they are domiciled or about the identity of any professional, other than the supplier, dealing with them. A few Member States have omitted to transpose one of these requirements.
16. Article 6 defines the right of withdrawal and its paragraph (2) sets out where such right does not apply. A few Member States defined a scope which goes beyond the exemptions enumerated in Article 6(2).
17. Article 7 concerns the payment of the service provided before withdrawal. When consumers exercise their right to withdraw they may only be required to pay for the service actually provided by the supplier in accordance with the contract. A maximum period of 30 days is set for the supplier or consumer to return any sums received. A few Member States have not correctly implemented one of these provisions.
18. In some cases, as mentioned above, the Commission has launched formal infringement procedures and may do the same for other cases.

Pre-contractual information rights

19. Article 4 (2) grants Member States the right to opt for additional pre-contractual information rights (either by maintaining existing rights or by introducing new ones).
20. According to the information available, 16 Member States (Austria, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Malta, Portugal, Romania, Slovakia, Sweden and United Kingdom) have made use of Article 4 (2).²⁰
21. Such additional information requirements include for example details of the address of the provider/supplier, authorisation and licensing schemes, conditions for exercise

²⁰ See Legal Study; pp. 51-56, 63-74 and national reports.

of the right to vary contractual terms, form of information to meet the needs of disabled people, duration of the contract, details of guarantee funds and guarantee schemes, whether the provider is subject to any insolvency procedure, language to be used, receipts, details of redress schemes or the right of withdrawal, risks involved, the way information is to be stored and disclosure requirements in the context of telephone calls.

22. At present, there is no evidence that legal differences due to the use of Article 4 (2) 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. The Legal Study did not detect any specific complaints or concerns related to the use of this provision.

Right of withdrawal

23. Article 6 (3) allows Member States to exclude the right of withdrawal in some specific cases, such as (a) any credit intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building, or for the purpose of renovating or improving a building, (b) any credit secured either by mortgage on immovable property or by a right related to immovable property, or (c) declarations by consumers using the services of an official, provided that the official confirms that the consumer is guaranteed the right under Article 5 (1).
24. According to the information available, 14 Member States (Belgium, Bulgaria, Denmark, France, Ireland, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Spain, Sweden and United Kingdom) have used the options under a) and b). Four Member States (Italy, Luxembourg, Poland and Romania) have made use of the option under c).²¹
25. At present, there is no evidence that the differences on the right of withdrawal due to Article 6 (3) create a significant legal barrier or that they have a direct impact on the level of distance marketing of financial services across the EU. The Legal Study did not detect any specific complaints or concerns in relation to this provision.

4. OVERALL IMPACT OF THE DIRECTIVE

26. The Economic Study reveals 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. While the first category concerns differing, detailed national rules, prescribing how financial institutions should confirm the address and identity of a customer, the second concerns mainly product-specific national rules. Neither of these categories of barriers falls within the scope of the Directive. In addition, there is insufficient and partially contradictory evidence on the importance of the second barrier because financial services providers themselves and banking associations have divergent views on the significance of this barrier. While banking associations

²¹ See Legal Study, national reports.

rated the barrier as significant, only a small number of companies (financial services providers) considered it significant. In addition, the European Banking Industry Committee, representing banking associations at European level, supports the finding that differences in legal regulations in Member States do not impede the cross-border distance marketing of financial services.²²

27. The most significant demand-side barriers come from differences in language and culture, as well as the absence of available information on cross-border products. The European Commission has already taken steps in order to improve the quality of pre-contractual information available to consumers, for instance in the Standard European Consumer Credit Information Sheet, annexed to the new Consumer Credit Directive,²³ and in the Key Investor Information document, being tested for the revision of the UCITS Directive.²⁴ In the area of mortgages, the examination of the European Standard Information Sheet aims to improve the presentation of pre-contractual information to consumers.²⁵ The Commission Communication on Packaged Retail Investment Products proposes measures to deliver clear, comparable pre-contractual information to investors of these products.²⁶ The impact of these measures is to standardise the presentation of pre-contractual information in a way which makes it easier for the consumer to compare the offers of different providers. This reduces the danger of consumers paying more or taking unnecessary risks regarding financial services products. In addition, the Commission is launching a behavioural study on retail investment services. This study will provide a mapping of the key behavioural traits affecting consumers' choices in this sector.
28. The combination of supply and demand-side inhibitors is reinforced by the character of financial services. Compared with non-financial goods and services, financial services exhibit distinguishing features, notably because they are usually more complex and often require a substantial and important long-term economic commitment to a target outcome. This necessitates the provision of advice to enable the consumer to make this commitment. In addition, some services such as motor insurance are local by virtue of the location of the risk and therefore do not easily transfer across borders. Although the Directive provides a regulatory infrastructure which can support distance marketing of financial services, it does not change their complex nature.
29. The Directive has created in all Member States a legal framework offered to suppliers and consumers 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 Legal Study reported that there is currently no practical experience of consumers complaining about the way the Directive is applied. Legal experts and

²² EBIC Position on the Draft Final report on the Legal Impact of Directive 2002/65 on the Distance Marketing of Consumer Financial Services, p. 9.

²³ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, Annex II, OJ L 133, 22.5.2008, p. 66–92.

²⁴ Recast of the Directive 85/611/EEC, COM (2008) 458 final, cf. Art. 76.

²⁵ White Paper on the Integration of EU Mortgage Credit Markets, COM (2007) 807 final, p. 6 .

²⁶ COM (2009) 204 final.

consumer organisations who were consulted in the context of the study explained this lack of evidence by the still insignificant level of transactions in this area.

5. CONCLUSION

30. 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. This is in line with the e-commerce report²⁷ conclusions, according to which 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.
31. 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.
32. 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.
33. 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.
34. In light of the above, the Commission takes the view that at present it is not appropriate to propose any amendments to the Directive. It will continue to monitor developments in the market and the application of the Directive.

²⁷ See footnote 14, p. 20.