

Brussels, 27 September 2001

## **Selling financial services by mail, telephone and the Internet - Commissioners Byrne and Bolkestein welcome political agreement in the Council**

***European Commissioners David Byrne and Frits Bolkestein today welcomed the breakthrough in the Council of Ministers on the proposed Directive for the distance selling of financial services. The Internal market, Tourism and Consumer Affairs Council this morning reached a political agreement on common rules for selling contracts for credit cards, investment funds, pension plans, etc. to consumers by phone, fax or internet. Its main features are (1) the prohibition of abusive marketing practices seeking to oblige consumers to buy a service they have not solicited ("inertia selling"); (2) rules to restrict other practices such as unsolicited phone calls and e-mails ("cold calling" and "spamming"); (3) an obligation to provide consumers with comprehensive information before a contract is concluded and (4) a consumer right to withdraw from the contract during a cool-off period - except in cases where there is a risk of speculation. The newly agreed standards are in line with those already applicable to all other retail sectors. The Council is now to adopt its Common Position on the proposed Directive shortly, and will proceed with its final adoption once the European Parliament will have concluded its second reading on the proposal.***

"This is a major breakthrough that will provide consumers with much needed protection and rights. 'Distance marketing' is currently dominated by classical techniques such as mail and telephone. But the directive is also a key step in creating a regulatory framework to build consumer confidence in e-commerce, inside a consumer's Member State or across borders", Health and Consumer Protection Commissioner David Byrne said commenting today's agreement. "The directive fills a 'legal gap' in existing consumer protection legislation, left by the exclusion of financial services from the 1997 Directive on distance selling. As we all know, financial transactions such as opening a pension plan and taking out a mortgage loan may have major implications for our 'financial welfare', present and future." Commissioner Frits Bolkestein, responsible for the Internal Market, added: "The adoption of harmonised rules across the EU will make it easier for both consumers and suppliers to cross national boundaries in an environment of greater legal security and confidence. That is especially true for internet trade for which financial services are especially well suited. This Directive is an essential complement to the e-commerce Directive which was adopted last year and which will enter into force this coming January."

“Distance marketing” means selling by telephone, fax, proprietary computer networks and the Internet. A Directive regulating the distance selling of (all other) goods and services was adopted in 1997 and entered into force last year<sup>1</sup>. Financial services were excluded from its scope since they were considered to require a separate set of rules. The Directive on which political agreement was reached today prohibits so-called “inertia selling”, which involves sending unsolicited financial products or services to a consumer and charging him/her for these. “Cold faxing”, or unsolicited communication about such products and services by fax is equally prohibited. The agreed text sets out two options for rules Member States are to apply with respect to the use of “cold calling”, the same practice by telephone, and “spamming”, unsolicited communication by e-mail. Under the first option (“opt-in”) cold calling and spamming are prohibited unless the consumer has expressly consented; under the second option (“opt-out”) this is prohibited only if the consumer has signalled his/her objection, e.g. by entering his/her name in a registry set up for this purpose.

Sellers of financial services and products will also be obliged to provide consumers with a comprehensive package of information before an eventual contract is concluded. This package should include the identity, contact details etc. of the supplier, the price and payment arrangements, contractual rights and obligations as well as information about the performance of the service offered. Information on the technical quality and nature of the financial service must be also provided in accordance with the rules of the “vertical” directives on credit, insurance and investment services or with relevant national rules for services not currently subject to Community legislation.

The text will also give consumers the right to cancel a contract within 14 days after signing up, extended in the case of life insurance and pension plans to 30 days. This right will however not apply to financial services that may be subject to price speculation, such as sales of foreign currency and securities. Member States may also exclude mortgage or property credit from this right of withdrawal from a contract. In addition, in the event of fraudulent use of payment cards or other non-cash means of payment consumers will be able to cancel transactions and be entitled to reimbursement of any sums charged.

Today's political agreement is an essential part of the Commission's strategy to develop an Internal Market for retail financial services. That strategy was set out in the recently adopted Commission Communication on E-Commerce and Financial Services<sup>2</sup>. It aims to create a regulatory environment that encourages the development of e-commerce in financial services and to build consumer confidence. Underpinning the strategy is a series of measures designed to enhance consumer confidence and protection, including further harmonisation of national consumer and investor protection rules, the establishment of out-of-court redress, measures to build trust in internet payments and enhanced co-operation between public authorities responsible for the supervision of cross-border trade in financial services. The Commission has also highlighted a number of the key planned measures in the statement that is part of the compromise text agreed today.

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<sup>1</sup> 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

<sup>2</sup> COM (2001) 66 final

The proposal for this Directive was put forward by the Commission in 1998, and modified after first reading in Council and EP in 1999. It is to be finally adopted by the Council once the European Parliament has concluded its second reading in the framework of the so-called "co-decision procedure".

By virtue of their intangible nature, financial services are particularly suited to distance marketing, notably by e-commerce. An offer, even a draft contract, may be put on a web site and exchanged by e-mail; it may be signed by e-signature and be paid by electronic means. E-commerce may therefore revolutionise the provision of financial services, especially cross-border within the Internal Market. Building the regulatory framework that will convince consumers that it is safe to enter this market has therefore for some years been a Commission priority.