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Distance marketing of financial services: Commission welcomes European Parliament's support for Directive

European Commissioners David Byrne and Frits Bolkestein have welcomed today's support by the European Parliament of the proposed Directive for the distance marketing to consumers of financial services. This Directive lays down common rules for selling contracts for credit cards, investment funds, pension plans, etc. to consumers by phone, fax or internet. The Directive will now go back to Council for final adoption.

Parliament endorsed all key elements of Council's Common Position with only two minor changes. The Commission is confident that these amendments will not prove an obstacle to rapid final adoption of the Directive under negotiation since 1998.

"This Directive provides for enhanced consumer protection in the important and often complex area of marketing financial products," Health and Consumer Protection Commissioner David Byrne said. "It complements and underpins the e-commerce Directive, making it easier for businesses to operate under legal certainty and for consumers to make transactions with confidence. Winning consumer confidence is the key to opening up the financial services market across national borders to the benefit of European consumers through increased competition and choice."

Internal Market Commissioner Frits Bolkestein added: "We need a truly European market for personal financial services. We need consumers and investors to have confidence in financial services providers. We need to make sure that the full potential of providing services by phone and internet is realised. This Directive is a big step towards those goals and towards better value for consumers and ensuring a pan-European market for reputable operators."

The Directive fills the 'legal gap' in existing consumer protection legislation, left by the exclusion of financial services from the 1997 Directive on distance selling. 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 price fluctuations in the financial market.

The agreed standards are in line with those already applicable to all other retail sectors. The Council may now proceed with its final, formal adoption.

"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 in 2000 (Directive 97/7/EC). Financial services were excluded from its scope since they were considered to require a separate set of rules.

The agreed text sets out two options for rules Member States are to apply with respect to the use of "cold calling and "spamming". 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 on a register 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 a 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 EU 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 not however apply to financial services that may be subject to fluctuations in the financial market, 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.

The Directive is an essential part of the Commission's strategy to develop an Internal Market for retail financial services. This strategy was set out in the Commission Communication on E-Commerce and Financial Services (see [IP/01/185](#)). 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. These include 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 highlighted a number of the key planned measures in a statement that is part of the compromise text agreed today.

The proposal for this Directive was put forward by the Commission in 1998, and modified after first reading in Council and the European Parliament in 1999. 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 could therefore revolutionise the provision of financial services, especially cross-border, within the Internal Market. Building a regulatory framework that will convince consumers that it is safe to enter this market has been a long-standing priority for the Commission.