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.