Basic information

1998/0245(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Distance marketing of consumer financial services Amending Directive 97/7/EC 1992/0411(COD) Amending Directive 98/27/EC 1996/0025(COD) Repealed by 2022/0147(COD) Amended by 2003/0134(COD) Amended by 2005/0245(COD) Amended by 2013/0264(COD) **Subject** 2.50.03 Securities and financial markets, stock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	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs and Internal Market	BERGER Maria (PSE)	23/09/1999

Former committee responsible	Former rapporteur	Appointed
ENVI Environment, Public Health and Consumer Protection	OOMEN-RUIJTEN Ria (PPE)	25/11/1998

Former committee for opinion	Former rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs, Industrial Policy	KESTELIJN-SIERENS Marie-Paule (Mimi) (ELDR)	07/12/1998
JURI Legal Affairs, Citizens' Rights	BERGER Maria (PSE)	21/01/1999

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	2136	1998-11-23
Competitiveness (Internal Market, Industry, Research and Space)	2351	2001-05-30
Competitiveness (Internal Market, Industry, Research and Space)	2336	2001-03-12
Competitiveness (Internal Market, Industry, Research and Space)	2371	2001-09-27
Agriculture and Fisheries	2402	2001-12-19

Consumers	2171	1999-04-13
Consumers	2213	1999-11-08
Consumers	2255	2000-04-13
Health	2440	2002-06-26

Key events

Date	Event	Reference	Summary
19/11/1998	Legislative proposal published	COM(1998)0468	Summary
23/11/1998	Debate in Council		
02/12/1998	Committee referral announced in Parliament, 1st reading		
13/04/1999	Debate in Council		
19/04/1999	Vote in committee, 1st reading		Summary
19/04/1999	Committee report tabled for plenary, 1st reading	A4-0190/1999	
04/05/1999	Debate in Parliament		
23/07/1999	Modified legislative proposal published	COM(1999)0385	Summary
08/11/1999	Debate in Council		
13/04/2000	Debate in Council		Summary
30/11/2000	Debate in Council		Summary
12/03/2001	Debate in Council		Summary
30/05/2001	Debate in Council		Summary
19/12/2001	Council position published	12425/1/2001	Summary
17/01/2002	Committee referral announced in Parliament, 2nd reading		
16/04/2002	Vote in committee, 2nd reading		Summary
16/04/2002	Committee recommendation tabled for plenary, 2nd reading	A5-0122/2002	
13/05/2002	Debate in Parliament		
14/05/2002	Decision by Parliament, 2nd reading	T5-0218/2002	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
Amendments and repeals	Amending Directive 97/7/EC 1992/0411(COD) Amending Directive 98/27/EC 1996/0025(COD) Repealed by 2022/0147(COD) Amended by 2003/0134(COD) Amended by 2005/0245(COD) Amended by 2013/0264(COD)
Legal basis	EC Treaty (after Amsterdam) EC 055 EC Treaty (after Amsterdam) EC 095 EC Treaty (after Amsterdam) EC 047-p2
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/13035

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A4-0190/1999 OJ C 279 01.10.1999, p. 0004	19/04/1999	
Text adopted by Parliament, 1st reading/single reading		T4-0403/1999 OJ C 279 01.10.1999, p. 0163-0207	05/05/1999	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0122/2002	16/04/2002	
Text adopted by Parliament, 2nd reading		T5-0218/2002 OJ C 180 31.07.2003, p. 0024-0108 E	14/05/2002	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	12425/1/2001 OJ C 058 05.03.2002, p. 0032 E	19/12/2001	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1998)0468  OJ C 385 11.12.1998, p. 0010	19/11/1998	Summary
Modified legislative proposal	COM(1999)0385  OJ C 177 27.06.2000, p. 0021 E	23/07/1999	Summary
Commission communication on Council's position	SEC(2002)0030 	14/01/2002	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2002)0360 	26/06/2002	Summary

Follow-up document	COM(2006)0161	06/04/2006	Summary
Follow-up document	COM(2009)0626	20/11/2009	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0458/1999 OJ C 169 16.06.1999, p. 0043	29/04/1999	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Directive 2002/0065
OJ L 271 09.10.2002, p. 0016 Summary

Distance marketing of consumer financial services

1998/0245(COD) - 12/03/2001

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.

Distance marketing of consumer financial services

1998/0245(COD) - 05/05/1999 - Text adopted by Parliament, 1st reading/single reading

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, wherre 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

1998/0245(COD) - 23/07/1999 - Modified legislative proposal

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 notorial actconcerning 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 unavaiability 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. - Unsollicited 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.

Distance marketing of consumer financial services

1998/0245(COD) - 23/09/2002 - Final act

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

1998/0245(COD) - 26/06/2002 - Commission opinion on Parliament's position at 2nd reading

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

1998/0245(COD) - 30/05/2001

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

1998/0245(COD) - 14/05/2002 - Text adopted by Parliament, 2nd reading

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

1998/0245(COD) - 20/11/2009 - Follow-up document

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.

Distance marketing of consumer financial services

1998/0245(COD) - 19/12/2001 - Council position

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

1998/0245(COD) - 30/11/2000

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.

Distance marketing of consumer financial services

1998/0245(COD) - 13/04/2000

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.

Distance marketing of consumer financial services

1998/0245(COD) - 14/01/2002 - Commission communication on Council's position

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

1998/0245(COD) - 19/11/1998 - Legislative proposal

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

1998/0245(COD) - 06/04/2006 - Follow-up document

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.