

Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC

DIRECTIVE 2002/65/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 23 September 2002

concerning the distance marketing of consumer financial services and
amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2), Article 55 and Article 95 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽³⁾,

Whereas:

- (1) It is important, in the context of 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, in accordance with Articles 95 and 153 of the Treaty.
- (2) 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.
- (3) Within the framework of the internal market, it is in the interest of consumers to have access without discrimination to the widest possible range of financial services available in the Community so that they can choose those that are best suited to their needs. In order to safeguard freedom of choice, which is an essential consumer right, a high degree of consumer protection is required in order to enhance consumer confidence in distance selling.
- (4) 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.
- (5) 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 marketing of financial services, such as electronic commerce.

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- (6) This Directive should be applied in conformity with the Treaty and with secondary law, including Directive 2000/31/EC⁽⁴⁾ on electronic commerce, the latter being applicable solely to the transactions which it covers.
- (7) This Directive aims to achieve the objectives set forth above without prejudice to Community or national law governing freedom to provide services or, where applicable, host Member State control and/or authorisation or supervision systems in the Member States where this is compatible with Community legislation.
- (8) Moreover, this Directive, and in particular its provisions relating to information about any contractual clause on law applicable to the contract and/or on the competent court does not affect the applicability to the distance marketing of consumer financial services of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters⁽⁵⁾ or of the 1980 Rome Convention on the law applicable to contractual obligations.
- (9) The achievement of the objectives of the Financial Services Action Plan requires a higher level of consumer protection in certain areas. This implies a greater convergence, in particular, in non harmonised collective investment funds, rules of conduct applicable to investment services and consumer credits. Pending the achievement of the above convergence, a high level of consumer protection should be maintained.
- (10) 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⁽⁶⁾, 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.
- (11) In the context of the analysis conducted by the Commission with a view to ascertaining the need for specific measures in the field of financial services, the Commission invited all the interested parties to transmit their comments, notably in connection with the preparation of its Green Paper entitled 'Financial Services — Meeting Consumers' Expectations'. The consultations in this context showed that there is a need to strengthen consumer protection in this area. The Commission therefore decided to present a specific proposal concerning the distance marketing of financial services.
- (12) The adoption by the Member States of conflicting or different consumer protection rules governing the distance marketing of consumer financial services could impede the functioning of the internal market and competition between firms in the market. It is therefore necessary to enact common rules at Community level in this area, consistent with no reduction in overall consumer protection in the Member States.
- (13) A high level of consumer protection should be guaranteed by this Directive, with a view to ensuring the free movement of financial services. Member States should not be able to adopt provisions other than those laid down in this Directive in the fields it harmonises, unless otherwise specifically indicated in it.
- (14) This Directive covers all financial services liable to be provided at a distance. However, certain financial services are governed by specific provisions of Community legislation

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which continue to apply to those financial services. However, principles governing the distance marketing of such services should be laid down.

- (15) Contracts negotiated at a distance involve the use of means of distance communication which are used as part of a distance sales or service-provision scheme not involving the simultaneous presence of the supplier and the consumer. The constant development of those means of communication requires principles to be defined that are valid even for those means which are not yet in widespread use. Therefore, distance contracts are those the offer, negotiation and conclusion of which are carried out at a distance.
- (16) A single contract involving successive operations or separate operations of the same nature performed over time may be subject to different legal treatment in the different Member States, but it is important that this Directive be applied in the same way in all the Member States. To that end, it is appropriate that this Directive should be considered to apply to the first of a series of successive operations or separate operations of the same nature performed over time which may be considered as forming a whole, irrespective of whether that operation or series of operations is the subject of a single contract or several successive contracts.
- (17) An 'initial service agreement' may be considered to be for example the opening of a bank account, acquiring a credit card, concluding a portfolio management contract, and 'operations' may be considered to be for example the deposit or withdrawal of funds to or from the bank account, payment by credit card, transactions made within the framework of a portfolio management contract. Adding new elements to an initial service agreement, such as a possibility to use an electronic payment instrument together with one's existing bank account, does not constitute an 'operation' but an additional contract to which this Directive applies. The subscription to new units of the same collective investment fund is considered to be one of 'successive operations of the same nature'.
- (18) By covering a service-provision scheme organised by the financial services provider, this Directive aims to exclude from its scope services provided on a strictly occasional basis and outside a commercial structure dedicated to the conclusion of distance contracts.
- (19) The supplier is the person providing services at a distance. This Directive should however also apply when one of the marketing stages involves an intermediary. Having regard to the nature and degree of that involvement, the pertinent provisions of this Directive should apply to such an intermediary, irrespective of his or her legal status.
- (20) Durable mediums include in particular floppy discs, CD-ROMs, DVDs and the hard drive of the consumer's computer on which the electronic mail is stored, but they do not include Internet websites unless they fulfil the criteria contained in the definition of a durable medium.
- (21) The use of means of distance communications should not lead to an unwarranted restriction on the information provided to the client. In the interests of transparency this Directive lays down the requirements needed to ensure that an appropriate level of information is provided to the consumer both before and after conclusion of the contract.

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The consumer should receive, before conclusion of the contract, the prior information needed so as to properly appraise the financial service offered to him and hence make a well-informed choice. The supplier should specify how long his offer applies as it stands.

- (22) Information items listed in this Directive cover information of a general nature applicable to all kinds of financial services. Other information requirements concerning a given financial service, such as the coverage of an insurance policy, are not solely specified in this Directive. This kind of information should be provided in accordance, where applicable, with relevant Community legislation or national legislation in conformity with Community law.
- (23) With a view to optimum protection of the consumer, it is important that the consumer is adequately informed of the provisions of this Directive and of any codes of conduct existing in this area and that he has a right of withdrawal.
- (24) When the right of withdrawal does not apply because the consumer has expressly requested the performance of a contract, the supplier should inform the consumer of this fact.
- (25) Consumers should be protected against unsolicited services. Consumers should be exempt from any obligation in the case of unsolicited services, the absence of a reply not being construed as signifying consent on their part. However, this rule should be without prejudice to the tacit renewal of contracts validly concluded between the parties whenever the law of the Member States permits such tacit renewal.
- (26) Member States should take appropriate measures to protect effectively consumers who do not wish to be contacted through certain means of communication or at certain times. This Directive should be without prejudice to the particular safeguards available to consumers under Community legislation concerning the protection of personal data and privacy.
- (27) With a view to protecting consumers, there is a need for suitable and effective complaint and redress procedures in the Member States with a view to settling potential disputes between suppliers and consumers, by using, where appropriate, existing procedures.
- (28) Member States should encourage public or private bodies established with a view to settling disputes out of court to cooperate in resolving cross-border disputes. Such cooperation could in particular entail allowing consumers to submit to extra-judicial bodies in the Member State of their residence complaints concerning suppliers established in other Member States. The establishment of FIN-NET offers increased assistance to consumers when using cross-border services.
- (29) This Directive is without prejudice to extension by Member States, in accordance with Community law, of the protection provided by this Directive to non-profit organisations and persons making use of financial services in order to become entrepreneurs.
- (30) This Directive should also cover cases where the national legislation includes the concept of a consumer making a binding contractual statement.

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- (31) The provisions in this Directive on the supplier's choice of language should be without prejudice to provisions of national legislation, adopted in conformity with Community law governing the choice of language.
- (32) The Community and the Member States have entered into commitments in the context of the General Agreement on Trade in Services (GATS) concerning the possibility for consumers to purchase banking and investment services abroad. The GATS entitles Member States to adopt measures for prudential reasons, including measures to protect investors, depositors, policy-holders and persons to whom a financial service is owed by the supplier of the financial service. Such measures should not impose restrictions going beyond what is required to ensure the protection of consumers.
- (33) In view of the adoption of this Directive, the scope of Directive 97/7/EC and Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests⁽⁷⁾ and the scope of the cancellation period in Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services⁽⁸⁾ should be adapted.
- (34) Since the objectives of this Directive, namely the establishment of common rules on the distance marketing of consumer financial services cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 385, 11.12.1998, p. 10](#) and [OJ C 177 E, 27.6.2000, p. 21](#).
- (2) [OJ C 169, 16.6.1999, p. 43](#).
- (3) Opinion of the European Parliament of 5 May 1999 ([OJ C 279, 1.10.1999, p. 207](#)), Council Common Position of 19 December 2001 ([OJ C 58 E, 5.3.2002, p. 32](#)) and Decision of the European Parliament of 14 May 2002 (not yet published in the Official Journal). Council Decision of 26 June 2002 (not yet published in the Official Journal).
- (4) [OJ L 178, 17.7.2000, p. 1](#).
- (5) [OJ L 12, 16.1.2001, p. 1](#).
- (6) [OJ L 144, 4.6.1997, p. 19](#).
- (7) [OJ L 166, 11.6.1998, p. 51](#). Directive as last amended by Directive 2000/31/EC ([OJ L 178, 17.7.2001, p. 1](#)).
- (8) [OJ L 330, 29.11.1990, p. 50](#). Directive as last amended by Directive 92/96/EEC ([OJ L 360, 9.12.1992, p. 1](#)).