



COMMISSION OF THE EUROPEAN COMMUNITIES

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**FINANCIAL SERVICES:
MEETING CONSUMERS' EXPECTATIONS**

Green Paper

(presented by the Commission)

EXECUTIVE SUMMARY

The creation of the single market for financial services is inevitably having a profound impact on both financial service providers and on all those, including private consumers, who purchase them. The providers are gaining access to a much wider market and at the same time are being subjected to fiercer competition at home. The buyers of financial services are benefiting from greater competition in terms both of price and service and a wider choice of financial products.

This Green Paper considers the specific protection of a particular category of user of financial services - the private consumer - since that category generally needs a higher level of protection than other more experienced or powerful users. Although the financial services directives are targeted primarily at the financial sector they are also concerned with the rights and interests of the consumer. They contain certain provisions that safeguard consumers' rights to correct and complete information, protect their legal interests and provide access to means of redress. Furthermore, all these directives are intended to secure the stability and trustworthiness of the financial services sector, by imposing strict prudential rules and minimum capital requirements.

Until the results of the 1996 Studies become available later this year, the Commission's experience of the operation of the single market is, at present, limited. However, a number of problems encountered by consumers have already been identified and need to be examined carefully to see what action can be taken to remedy them. These problems include the refusal to sell financial services to non-residents, the lack of information and the fraudulent activities of unscrupulous intermediaries. It is also quite possible that, in the future, other consumer concerns will become evident.

The distance selling of financial services is an area that merits special attention. The directive currently being approved covers distance selling of all goods and services, with the exclusion of financial services. Both the scale and complexity of distance selling are increasing. Although the vast majority of these contracts are currently offered and concluded at domestic level, it is anticipated that cross-border business is also destined to expand rapidly. This is a sector which is still at an embryonic level of development. The Commission is therefore examining whether binding legislation will be required.

In order to assess clearly what problems might need to be addressed both generally and in relation to the distance selling of financial services, the Commission invites comments on present and anticipated developments in the cross-border provision of financial services. With the publication of the Green Paper, the Commission intends to stimulate a wide-ranging debate with all interested parties. A hearing will be organised in the next few months to enable interested parties to discuss the issues raised in this Paper.

Responses (in writing) to this Green Paper are requested no later than 15 October 1996 to:

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FINANCIAL SERVICES: MEETING CONSUMERS' EXPECTATIONS

Financial services are a crucially important part of the economy of the European Union. Virtually everyone uses financial services: from public authorities, financial institutions, industrial and commercial enterprises of all sizes (whether SMEs or giant corporations) through to non-profit making organisations, households and individual consumers.

On 29 June 1995 the Council adopted a common position on the proposal for a directive on the protection of consumers in respect of distance contracts¹. At the second reading in the European Parliament on 15 December 1995, an amendment seeking to bring financial services within the scope of the proposal failed to win the necessary majority required for its adoption. Although financial services were included in the original Commission proposal, the Commission, during this debate, accepted the exclusion of financial services, explaining that, given the increasing complexity and diversity of the European financial sector, the consumer protection aspect of the marketing of financial services in general and the particular question of distance selling merited specific consideration.

This Green Paper covers a number of consumer policy issues in the financial services sector, including, in particular, the distance selling of financial services. Given their particular needs, it concentrates on some of the concerns of private consumers. Nevertheless, the Commission is aware that not all problems facing consumers may be addressed in the present Green Paper.

In Part I, the Commission indicates to what extent the interests of the consumer of financial services have been taken into account in Community legislation. In Part II, a number of concerns that have already become apparent are identified. The final part of this Green Paper considers briefly future trends in the marketing of financial services, including distance selling. The views of interested parties are sought on all these issues, to enable the Commission to undertake further action.

¹ OJ No C 288, 30.10.1995.

PART I - WHAT HAS BEEN ACHIEVED SO FAR?

In financial services the Commission's primary objective has been the creation of a single market putting into effect the Treaty principles of free movement of persons, goods, services and capital. That objective has now been largely achieved by the progressive adoption of some 50 directives targeted at the providers of financial services, the Community's banks, insurance companies and securities houses.

The single market in financial services is built on the principles of home country control and mutual recognition based on the implementation of agreed minimum standards of prudential supervision. As a result providers of financial services may operate freely across the European Union. This should result in greater competition, increased economies of scale and greater consumer choice. These effects are already becoming apparent notably in the availability of new financial products and of new ways of doing business (for example, in insurance and share trading), as well as in increased cross-border activity. More detailed information on the benefits of the single market will be available later this year, as the Commission, following a request from the Council, is currently undertaking a major review of the impact of the single market legislation, including financial services. This study will contain economic and other data on the effects of the single market on the major economic sectors and industries including the financial services sector. In particular, these data will measure the impact of the single market in terms of the price of different services and products, current and future trends, and in terms of consumer choice. From this viewpoint, the 1996 study will be useful as regards the issue of consumer policy in financial services, but might not provide enough information to answer the specific questions that are raised in this Green Paper.

The financial services sector has traditionally been subject to strict regulation and the European Union's 'minimum' standards are far-reaching. Such regulation, the primary objective of which has been to establish the necessary conditions for the free circulation of financial services, has also had the effect of increasing the protection available to the consumer who entrusts his or her money and financial interests to the financial services industry. In safeguarding the financial strength, probity and reliability of the providers of financial services these prudential standards provide valuable protection to the purchasers of those services.

The financial services directives have also laid down a number of provisions designed to protect consumer interests in particular areas (for example, law applicable to insurance contracts, redress, right of withdrawal, minimum information, conduct of business principles). Thus, while the financial services directives are targeted essentially at the financial institutions, protecting the interests of consumers has also played an important role. The financial institutions are themselves well aware that a reputation for honesty and good customer service are among the most effective marketing tools in an increasingly competitive market. Various aspects of consumer protection in the field of financial services have been addressed - directly or indirectly - by the existing texts of Community law. In particular those relating to information, legal protection and systems of redress, which together form a basic set of rights established for the benefit of the consumer, are examined in the sections that follow.

- **Consumer information**

Given the complexity of financial services, it is essential that the consumer be provided with the necessary information to enable him or her to make an informed decision on whether to purchase a financial service and on the most suitable 'product' to buy. Accordingly, financial services directives contain a number of provisions requiring financial institutions to provide their clients with appropriate information. These provisions apply to the relevant financial contracts without distinction as to how the contract was concluded (face-to-face, at a distance, etc.).

In **banking**, depositors - including *inter alia* consumers - must be informed about the deposit-guarantee scheme which is there to protect their deposits and savings. In the field of consumer credit, prior information must be given on credit limits, the cost of the credit (in particular the annual percentage rate of charge - APR) and termination procedures. The proposal for a directive on cross-border credit transfers requires clients to be properly informed, both before and after the transfer is made.

In **insurance**, the policy-holder must be informed before and during the execution of the contract of the essential aspects of the contract (duration, right of cancellation, applicable law, complaint procedures). The information required is more detailed in the field of life assurance than for non-life insurance given the fact that life assurance products generally imply a long term commitment.

In the **securities and stock exchanges** field, a number of the directives are solely concerned with the provision of information, while all of the directives in this area seek to ensure investor protection by means of maximum transparency. Examples are the stock exchange listing and public offer prospectuses, requirements for the information to be supplied to unit holders in collective investment funds and the investment services directive's requirement to publish transaction details to the market.

- **Legal protection**

Certain provisions in a number of directives strengthen the consumer's position vis-à-vis the financial institution and protect the consumers' legal interests should something go wrong. In **all three sectors**, host countries may impose rules they have adopted to protect the interest of the general good. A co-ordinated collective investment fund (UCITS) must respect the marketing and advertising rules laid down by the state where it is seeking to do business, while investment firms must respect the conduct of business rules of the State in which they are providing services. These provisions reflect the case law of the Court of Justice, which has always ruled that the need to protect the recipient of a service may justify limitations on the cross-border provision of services, an example being the prohibition of cold-calling. Accordingly, consumers can be protected by their own domestic set of consumer protection rules, provided that these rules are non discriminatory, necessary, non duplicative and proportionate.

The Rome Convention of 19 June 1980² on the law applicable to contractual obligations, which has been ratified by almost all the Member States³, contains specific rules covering all kinds of contracts concluded with consumers. Whenever a contract has been concluded with a consumer further to a solicitation or publicity by the provider, the choice of applicable law made by the parties may not deprive the consumer of the benefit of the "imperative provisions" of his/her own legislation (provisions from which the law of a given country does not allow any derogation in a contract). If no law has been chosen, the applicable law will be that of the country where the consumer is resident. This Convention, which does not cover insurance, constitutes a significant guarantee that the most vulnerable party may benefit from the most protective provisions of the legislation which he or she knows best, even if another law has been chosen in the contract. The fact that the Rome Convention tends towards the application of the law of the country where the consumer has his/her main residence may create a potential conflict with the principle of mutual recognition applicable within the single market, which tends towards the application of the law of the service provider. Where such conflict occurs, the consumer's home state law can take precedence over the law of the supplier provided that it respects the "general good" criteria laid down by the Court of Justice (proportionality, necessity and non-duplication). If these criteria are not fulfilled, the law of the country where the provider is established will apply.

In **banking**, the directive on deposit-guarantee schemes creates a minimum coverage of ECU 20 000 (with a transitional figure of ECU 15 000 for some countries) in case deposits become unavailable. This measure, which is mainly designed to strengthen the stability of the banking system as a whole, nevertheless has significant implications in terms of consumer protection. Directives on consumer credit have laid down minimum requirements such as the need for a written agreement, the possibility that consumers may discharge their obligations before the time fixed, and the formula to calculate the APR. The proposal for a directive on cross-border credit transfers contains clear obligations for banks, such as the prohibition of double charging and the minimum refund of lost transfers, which give legal protection to users (including consumers). The Commission's recommendation on payment systems also contain provisions setting out rights and obligations of card issuers and card holders, including provisions on responsibility in cases of loss, theft or forgery of cards.

The **insurance** directives contain provisions on the determination of the law applicable to a contract. The "standard" situation is that the law applicable will be that of the country where the risk is located, which is usually where the policy-holder is resident. This system ensures that insured persons are normally subject to the set of rules with which they are most familiar and may only lose the protection of their national set of rules if they so decide. Moreover, the life assurance directives have granted subscribers a cooling-off period of 14 to 30 days to enable them to reflect fully on the suitability of the long-term commitment they are proposing to enter into.

² OJ No L 266, 9.10.1980, p.1.

³ Austria, Finland and Sweden have not yet ratified the Convention.

In **securities** and **stock exchanges**, the Commission has proposed a mechanism for investor compensation, based on the same principles as the deposit-guarantee directive. When enacted, each Member State will be required to have an investor compensation scheme, providing a minimum level of compensation (at least to the smaller investor) in the event that an investment firm is unable to meet its obligations to its clients.

- **Systems of redress**

In **banking**, Member States must ensure that the depositor's rights to compensation may be the subject of an action by the depositor against the deposit-guarantee scheme. A similar clause is proposed in the investor compensation scheme draft directive. In the area of consumer credit, the consumer has the right to pursue remedies against the grantor of the credit and Member States are required to adopt one of three alternative systems of surveillance, i.e. either to ensure that persons offering credit or arranging for credit obtain official authorisation or that these persons are subject to inspection or monitoring of their activities by an official body, or to promote the establishment of appropriate bodies to receive complaints and to provide information or advice to consumers in this regard. The proposal on cross-border credit transfers requires Member States to ensure that there are adequate and effective means for the settlement of disputes.

In **legal expenses insurance**, the policy-holder must be explicitly informed in the event of a conflict of interest with the insurer, about his or her rights to have the free choice of a lawyer, and to have recourse, if necessary, to an arbitration procedure.

Furthermore, the existing Community law in the field of financial services has addressed some aspects that indirectly affect consumer protection. These are the following:

- **A trustworthy financial services industry**

One of the main objectives of the financial services directives is to maintain the stability and the trustworthiness of the sector. All directives contribute to this goal. A series of stock market directives - many in fields where no national legislation previously existed - require that all important and price-sensitive information be rapidly supplied to the market. In addition, the directives on money laundering and insider trading have permitted the adoption of common sets of rules to ensure orderly financial markets.

Measures in all three sectors require that senior staff and major shareholders of financial firms should be fit and proper persons of recognised probity and professional experience. A recent directive adopted in response to the collapse of the BCCI (Bank of Credit and Commerce International) imposed a further series of requirements to combat fraud. Financial institutions must not form part of a structure that is lacking in transparency and makes supervision more difficult: the head office and registered office must be in the same Member State and auditors must report serious problems to the competent authorities.

Reference should also be made to the Community's competition rules, which are of crucial importance in safeguarding the interests of the consumer in the single financial market.

- **Strong financial institutions**

The smooth functioning of the mutual recognition and home country control principles, the corner-stones of the single market, is largely dependent on the mutual trust between national control authorities. A sufficient level of confidence could not have been reached without the creation of a harmonised basic set of prudential rules. For users and, in particular, for consumers it means that whatever institution they choose, the same minimum prudential rules will be followed. This is particularly important when financial services such as life assurance imply long term commitments.

In all three sectors providers of the relevant financial services are subject to a formal authorisation procedure and to detailed and strict minimum capital requirements both initially and on an on-going basis. Firms that are not authorised may not provide the core services covered by the directives.

- **A wider choice of financial services and products**

One of the principal objectives of creating a single market in financial services has been to increase and diversify the choice of financial products offered to users. The principle is quite simple. Based in part on the "Cassis de Dijon" judgement⁴, any financial service benefiting from mutual recognition may, if it is legally provided in the home country, be offered in the host country, via a branch or on a cross-border basis, even if the service in question does not exist in the latter country or even if domestic institutions may not offer it. As a result, savings and insurance products are already being offered on markets where they were previously unavailable.

- **The pricing of financial services**

Users and in particular consumers look to the single market to bring them cheaper as well as better financial services. The financial services directives do not seek to interfere with the free determination of prices. Indeed the only direct intervention in this area has been in the insurance sector, where imposed and approved tariffs have been abandoned. Having removed this obstacle, the insurance directives have opened the way for more competition.

⁴ Judgement of 20 February 1979, No 120/78, *Rewe-Zentral AG*, Rec. p.649.

PART II - CONSUMER CONCERNS IN CROSS-BORDER TRANSACTIONS

The Community's legislative framework already provides all clients with a certain degree of protection, by imposing rules and obligations on the providers of financial services.

However, as stated earlier, the Commission's practical experience of the operation of the single market is still rather limited. This is due in part to the fact that certain of the financial services directives have only recently entered into force. But it is also true that not all of the directives have been implemented in full and on time by the Member States.

The Commission is determined to make every effort to ensure that the legislative commitments made by the Member States are fully honoured notably by making available details of each Member State's record in transposing directives into national law and taking legal action to secure the timely and correct implementation of the directives.

Apart from the implications deriving from the failure to implement Community legislation in a timely and correct manner, a number of problems encountered by consumers have already been identified and reported to the Commission. The Commission is aware that this list is by no means exhaustive and that other problems are likely to arise in the future. This Green Paper is precisely aimed at focussing the debate on some of the current and future problems in order to elaborate the appropriate action plan to solve them.

- **The refusal of financial services to non-residents**

Some consumers have been refused financial services in another Member State on the grounds that they are not resident in or nationals of that State. Such "private" discrimination is deeply resented by European consumers and is apparently in total contradiction with the idea of a single market without frontiers.

The Commission has, for example, been informed by many consumers that, in one Member State, a number of insurance companies refused to insure them or granted them less favorable contractual terms on the grounds that, as they came from certain EU countries, they entailed a higher risk for the company than others. The Commission is also aware that, in another Member State, certain credit institutions, allegedly for tax reasons, refuse to offer some banking services (current account, credit card, etc.) to non-residents.

The main difficulty in dealing with such situations lies in the fact that, since contractual freedom is an essential principle of contract law, Community law cannot oblige financial institutions to accept clients, be they national or foreign. Consumers suffering discrimination can only address themselves to national courts. This is an important issue which the Commission is monitoring closely in co-operation with the Member States.

- **Difficulties in providing financial services in another Member State**

Host countries may still impose their domestic rules adopted in the interest of the general good, or falling within their residual competence (e.g. monetary policy). This may significantly reduce the range of services offered. For example, interest-bearing current accounts are not available in at least one Member State.

Limitations of supply caused by the application of the general good clause are a matter of concern. The services of the Commission have published a draft communication⁵ inviting comments. It details the legal conditions under which general good provisions may still restrict the flow of banking services. A similar exercise is anticipated in relation to the insurance and securities sectors. Legal restrictions related to general good considerations dissuade foreign companies from offering their products abroad, and, by limiting choice, may therefore be detrimental to the consumer. The proportionality of such restrictions with the objective pursued must therefore be demonstrated.

In the insurance sector, many complaints refer to difficulties in obtaining compulsory motor insurance cover from insurers based in another Member State.

Insurers often justify their refusal on the ground that the system of compulsory motor insurance is too complex. This is partly due to the need to protect both the policy-holder and the victim of an accident. The arrangements put in place to ensure such protection (green card system, compulsory membership of guarantee funds) may make it less attractive to offer cross-border services. Furthermore, the obligation to appoint a fiscal representative and a local claims representative in the country of the risk often entails significant costs. The Commission is currently examining this issue in order to meet these concerns. It will also consider other consumer issues in the insurance sector.

- **Poor quality of the service offered and lack of information**

Consumers face difficulties in assessing and fully grasping the increasing variety and complexity of financial services. The Commission has been informed that some financial institutions, sometimes in breach of host country legislation, have offered, on a cross-border basis, complex financial services such as mortgage or consumer credit, without providing the consumers with sufficient information. For example, documents were not made available in the language of the consumer, amortisation tables were missing, and figures were presented in a misleading manner. Although the Commission cannot take any direct action against the companies or their intermediaries, the national authorities can do so in accordance with the terms of the directives and making use of the co-operation with other supervisory authorities that has been developed.

⁵ Draft Commission communication on freedom to provide services and the interest of the general good in the Second Banking Directive (OJ No C 291, 4.11.1995, p.7).

Most complaints addressed to the Commission about the lack of information provided to the consumer on prices and conditions, the lack of professional advice and the difficulties in comparing various services are found in the field of banking, where the directives do not themselves impose consumer information requirements (except for consumer credit and - when the current proposal is adopted - for cross-border credit transfers). As a follow-up to its May 1995 report on the operation of the consumer credit directive⁶, the Commission is examining the current situation regarding customer information (both before and after the signing of a contract) in the credit sector with particular reference to mortgage credit, consumer credit and leasing.

With regard to cross-border payments, and in particular cross-border credit transfers, the main problems reported by consumers - lack of full written information on conditions, double charging, excessive execution time and lack of adequate redress procedures - are tackled in the relevant proposal which is currently before Parliament and the Council and which, it is hoped, could be adopted before this Summer. The improvement of cross-border credit transfers and the introduction of a single currency will undoubtedly remove two of the main obstacles affecting the cross-border provision of financial and other services. The market should be more integrated and the existence of a single currency should facilitate comparisons for the consumer.

As regards payment cards, user groups appear mainly concerned about the unsatisfactory implementation of the principles contained in the 1988 Commission recommendation on payment systems⁷, notably the rules defining the responsibility of the parties in the event of loss, theft and copying of a payment card. Consumers also call for greater transparency as regards the conditions for use of a payment card particularly when it is being used in a Member State other than that in which the consumer is resident. The Commission is examining the area of payment cards (including pre-paid cards) and other payment facilities (including home banking and cyber-payments), with a view to promoting an effective single market for such instruments, while also assuring the consumer better legal protection and clear and complete information. The Commission has already held initial consultations with its advisory groups on payment systems, one of which includes consumer representatives. Additional input into this debate is welcomed, with a view to further action.

- **Intermediaries**

Cases have been reported of "aggressive", sometimes illegal, actions by unregulated intermediaries, mainly in the field of banking and investment, often causing considerable distress and even hardship. Consumers seeking credit have been proposed seemingly attractive conditions by brokers representing foreign institutions. Such intermediaries took high advance fees, whilst the information given proved to be poor (for example,

⁶ Commission report on the operation of directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (COM(95) 117 final, 11.5.1995).

⁷ Commission recommendation 88/590/EEC concerning payment systems and in particular the relationship between card holder and card issuer (OJ No L 317, 24.11.1988, p.55).

credits proved to be much more complicated and expensive than was apparent at first sight). There have also been other cases where unregulated intermediaries sell commodities or commodity derivatives on a cross-border basis. The Commission is examining whether it would be appropriate to bring these instruments (commodities and commodities derivatives) within the scope of Community legislation, thus making such activities subject to authorisation and supervision throughout the Community.

With the exception of actions falling within the consumer credit directive⁸, the activities of unregulated intermediaries are not within the scope of the secondary Community legislation: Member States are therefore free to regulate them as they see fit in order to protect the consumer, provided that they respect the Treaty rules on freedom of establishment and free provision of services. But it is also clear that such intermediaries are in fact often operating in contravention of the existing national laws. Problems of illegal activity and fraud are outside the Community's competence and can only be tackled by the national authorities and national courts. The Commission is, however, currently examining the question of unregulated credit intermediaries to assess what further action of a legislative or non-legislative nature is called for.

- **Difficulties in the enforcement of financial contracts**

A large number of complaints and petitions lodged with the Commission and the European Parliament refer to the enforcement of a contract (both national and cross-border) and the interpretation of the terms of the contract. Where the problem relates to the execution or the interpretation of a contract, neither the Commission nor the Parliament has the competence to determine the rights and duties of contracting parties. This remains the responsibility of the national courts.

- **Lack of harmonisation in taxation**

Consumers frequently complain that the advantages of "cross-border shopping" (price and contractual terms) can be offset by the fact that the taxation regime remains that of the country where they have their residence. For example, a consumer who, attracted by advantageous price and contractual conditions, subscribes to a life-assurance contract abroad will still be subject to the tax regime of his/her country of residence. The whole operation can therefore become far less attractive. Furthermore, in some countries, this consumer will not be allowed to deduct the premiums for income tax purposes, because the contract has been passed with a non-established company. Indeed the Court of Justice has stated⁹ that a Member State may refuse the deductibility of life insurance premiums paid to a non-established insurer in order to maintain the coherence of its tax system. However, a recent ruling appears to qualify the scope of that judgement by recognising the right of a borrower to obtain social advantages connected with bank loans even when the loan is contracted with a non-established credit institution¹⁰.

⁸ The consumer credit directive requires Member States to ensure either that persons offering credit or acting as an intermediary are officially authorised or controlled and supervised in their home country, or that there are appropriate channels for consumers to obtain information and make complaints.

⁹ Judgement of 28 January 1992 in Case No C-204/90 Bachman, ECR 92 p.249.

¹⁰ Judgement of 14 November 1995 in Case No C-484/93 Svensson-Gustavsson (not yet published).

Progress on the tax front has been limited. As long as unanimity is required in the Council on tax questions, there is little prospect of resolving these fiscal obstacles to the operation of the single market for financial services.

- **Specific problems in the field of compulsory civil liability motor insurance**

Some of the complaints which have been addressed to the Commission and the European Parliament deal with specific problems encountered by victims involved in a cross-border traffic accident. In addition to those cases referring to the interpretation of the terms of the contract. There are broadly two types of concern.

First, there are traffic accidents that fall within the scope of the green card system and the motor insurance directives, i.e. accidents caused by a car visiting another Member State. These arrangements are designed to help victims to obtain compensation and appear to work fairly well. Secondly, there are traffic accidents that are not covered by the green card system, i.e. those suffered by a car, its passengers or any other persons visiting another Member State, and caused by a local vehicle. The problems faced by such victims in obtaining adequate compensation within a reasonable time (distance, language problems, unfamiliar legal and court procedures) have prompted the European Parliament to adopt a resolution asking for specific measures. The Commission has already informed the European Parliament that it is considering appropriate action in order to tackle some of the problems encountered by victims in obtaining compensation.

In addition, the Commission is presently examining the compatibility with Community legislation of compulsory uniform "bonus-malus" tarification systems.

PART III - FUTURE CHALLENGES

The single market in financial services is still at a relatively early stage of development. For banking it has been in operation for three years, for insurance one and a half years and only a few months for investment services. It is therefore difficult to draw definitive conclusions at this stage. The 1996 Study currently underway to assess the early results and impact of the single market could reveal gaps to be filled or problems to be resolved. The results of this study will be available later this year. Where gaps or problems are encountered, the Commission will consider what response is called for including, where necessary, new legislation or changes to existing texts.

The distance selling of financial services is expanding rapidly. It is an area that merits special attention. A proposal for a directive on distance selling in general has been tabled with a view to laying down simple and clear rules which would apply to all new techniques for selling products and/or services at a distance. In order to deal with this rather specific situation, the Commission's original proposal contained a three-level mechanism: this set out a requirement for prior information before the conclusion of a contract, written confirmation of its content and a cooling-off period of 7 days. After several rounds of discussions within the Community institutions, the Commission decided to support the exclusion of financial services from this directive, as decided by the Council, and committed itself to a specific examination of this matter. A number of issues are to be considered. They include the following.

The distance selling of financial products to consumers implies a special need for information. In this context, special attention will be paid to the clarity and adequacy of information given to consumers before and after the conclusion of the contract. The need for written confirmation will be assessed in this context.

Another important issue will be the granting of cooling-off periods in financial services. In the field of life assurance, Community law already gives the consumer the right to withdraw from a contract within a specified number of days. It will have to be examined whether the concept of the cooling-off period should be extended to other financial services, such as non-life insurance and certain banking services. It is already accepted in the common position on the proposal for a directive on distance selling that the right of withdrawal cannot operate where the price of goods or services "is dependent on fluctuations in the financial market which cannot be controlled by the supplier" or if performance has begun, with the consumer's agreement, before the end of the seven-day period.

Furthermore, the issue of inertia selling (supply without the explicit consent of the customer) is currently not addressed in the existing financial services legislation. Nor is the question of the unsolicited use of certain means of communication at a distance (such as automatic calling machines and facsimile machines) at present covered by the existing financial services legislation. For this reason, it will have to be examined to what extent the offering of financial services to consumers without their prior consent gives rise to particular problems.

The scale and complexity of distance selling appear to be rapidly increasing. In the insurance field, distance selling and direct marketing are extending to all classes of non-life and life insurance. In remote banking, the trend is increasingly towards computer banking, with cyber-money and electronic purses already available. In the securities sector computerised trading, the creation of wholly electronic markets with electronic clearing and settlement and remote market access may ultimately revolutionise securities trading. The use of distance selling of financial services is currently offered and concluded primarily at domestic level. However, it is anticipated that cross-border business could expand rapidly, making use of the new opportunities offered by the Information Society.

The benefits of the single market for consumers should be enhanced with the advent of new electronic services, given the increased competitive environment and therefore improved choice and value for money that will result. However, such benefits can only come about if all clients - including consumers - and suppliers can place their trust in the underlying regulatory framework. Although the sector is still at an embryonic level of development, the future for European financial services with these new communications possibilities could be very promising and the benefits to consumers could be significant. In order to ensure that these benefits are indeed secured, the Commission, in discussion with interested parties, will continue to follow closely all regulatory and market developments affecting consumers as well as consumers' specific needs in this important field. The Commission wants to encourage innovations in distance selling methods that would benefit consumers, businesses and all other clients. The need for any regulatory action will have to be properly assessed.

Financial services, whether or not sold at a distance, are already covered by Community rules which provide consumer protection. In some cases (for example, most of the directives on life and non-life insurance, banking and UCITS), the legislation is already implemented by all Member States and its effects are beginning to be felt. In other cases, however, certain Member States are still implementing the legislation, with the result that its impact (notably in relation to the investment service directive) is still largely unknown.

The Commission therefore considers that it is opportune at present to examine the position of consumers with regard to the development of distance selling. This does not mean that action, including the possibility of binding legislation, is ruled out. The Commission is committed to ensuring that consumers of financial services enjoy, when buying at a distance, a level of protection which is equivalent to the one they receive when purchasing other goods and services. In order to assess clearly what problems might need to be addressed and how best to tackle them, the Commission invites comment on the present and anticipated development of distance selling of financial services. This should allow the Commission to assess new market possibilities for the industry concerned and potential risks for the consumer and to consider whether and if so what further initiatives, including legislative action, are called for.

CONCLUSION

This Green Paper demonstrates that the financial services directives already make some provision for consumer protection. However more may need to be done, given the problems already identified and the expected developments in the cross-border provision of financial services. The Commission also wishes to engage in a wide-ranging debate with all interested parties. It welcomes comment about the issues discussed in this Green Paper, in order to assess the need for further initiatives. Comment should focus on those issues which call for Community action:

- to what extent are consumer interests already adequately taken care of under Community and national law, for example as regards consumer information, transparency, legal protection and redress mechanisms?
- to what extent does existing legislation provide an adequate level of consumer protection in the specific case of the distance selling of financial services?
- are consumer interests or the operation of the single market prejudiced by differing national consumer protection standards?
- what are the obstacles preventing consumers from fully benefiting from the single market in financial services?
- what other major consumer concerns not dealt with in this Green Paper should the Commission be made aware of?
- does the introduction of new technologies and new marketing techniques call for additional consumer protection rules in the area of financial services?

Responses to this Green Paper should be made in writing no later than 15 October 1996 to:

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In addition, the Commission will be organising a hearing over the next few months to permit interested parties to discuss the issues raised.