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FINANCIAL SERVICES: ENHANCING CONSUMER CONFIDENCE

*Follow-up to the Green Paper on
"Financial Services: Meeting Consumers' Expectations"*

Introduction

This Communication sets out the results of the consultation on the Commission's Green Paper of May 1996 on "Financial services: meeting consumers' expectations"¹ and provides the Commission's response. The number and quality of responses to the Green Paper consultation, which ran until the end of October 1996, have been impressive. The results of the Study into the Impact and Effectiveness of the Single Market² became available after the presentation of the Green Paper. Two of the studies undertaken by independent consultants assessed the impact of the Single Market on banking and insurance. Since the results of the study are relevant to the consultation on the Green Paper, they are included in an Annex. In a number of cases, action has already been taken to tackle some of the problems that were identified (for example on cross-border payments³). In other cases, however, the Commission takes the view that further initiatives are needed to give full effect to the Single Market and to meet consumers' expectations.

Summary of the Green Paper

The Green Paper was published on 22 May 1996. Its main aim was to invite comments on the extent to which the existing framework of financial services legislation provides an adequate level of consumer protection or whether any further initiatives are appropriate.

The Green Paper was divided into three Parts. In Part I, the Commission indicated to what extent the interests of the consumer had been taken into account in Community legislation. In Part II, a number of concerns that had already become apparent were identified. In Part III, the Green Paper considered briefly future trends in the marketing of financial services, including distance trading.

In particular, the Green Paper drew attention to a number of problems encountered by consumers that it argued needed to be examined carefully to see what action should be taken to remedy them. These problems included the refusal to sell financial services to non-residents; the poor quality of service; the lack of information; and the activities of unregulated intermediaries. The Green Paper argued that the distance contracts of financial services merited special attention. It also invited comments on whether the introduction of new technology and new marketing techniques in the area of financial services required additional consumer protection rules.

¹ COM(96) 209 final of 22 May 1996.

² COM(96) 520 final of 30 October 1996.

³ O.J. N° L 43 of 14 February 1997, page 25.

Summary of the comments and main concerns

The Green Paper succeeded in its objective of triggering a wide-ranging debate involving the banking, insurance and securities sectors, consumer and user groups as well as national authorities. All in all, the Commission has received more than 140 contributions (representing over 1,500 pages). The Commission also organised a hearing at which more than 200 representatives from interested parties participated.

Not surprisingly, the response to the consultation identified differences of view between the main parties about the implications for consumers as well as on the way forward. The *financial services industry* generally emphasised the need to ensure the full functioning of the Single Market: existing directives need to be properly implemented and fair competition achieved. The importance of encouraging innovation in products and services and the development of new (electronic) delivery channels which will change conventional client-supplier relationships was underscored. Such innovation is in the interest of both the industry and the consumer. The Economic and Monetary Union and the Information Society bring major challenges for the industry. Prudence should be exercised before new (legislative) measures are to be proposed. If there is a need for action to strengthen consumer rights, priority should be given to voluntary initiatives.

Consumer and user groups generally acknowledged that the stability and trustworthiness of the financial and monetary system in the EU, established by the legislation on financial services, was beneficial to both consumers and service providers. But there was serious criticism of the specific consumer protection content of the current legislation. These groups also deplored the absence of an overriding approach to consumer protection in the Single Market for financial services. It was argued that, on the demand side, the market is characterised by disparity (individual consumers, weak consumer mobilisation on the one hand, and global players on the other) and that consumers often lack technical expertise on products of an increasingly complex nature. Furthermore, some legal provisions in use in other sectors are not applicable (e.g. distance contracts). The role of consumers therefore needed to be reinforced.

The views of *national authorities* were somewhere between these two approaches: in some cases, more weight was given to industry requirements (suggesting more flexible solutions and the complete functioning of the Single Market); in others, emphasising the requests made by the consumer side (for further measures to protect their interests, for example on distance contracts).

The *European Parliament* adopted its report on the Green Paper on 19 February 1997⁴. The Parliament argued for a balanced approach, emphasising the importance of open competition, whilst at the same time giving support to the consumer groups' position on the present legislation. The Parliament looked for a two-pronged approach: a framework regulation on issues common to all or most financial services (such as information and market transparency, protection of legal rights, competence and integrity of intermediaries, and the right of access to services) and specific directives on, notably, distance contracts of financial services.

⁴ Parliament Resolution of 17 February 1997 on the Commission Green Paper on financial services - meeting consumers' expectations, PE 220.154/fin.

The *Economic and Social Committee* (ESC) adopted its Opinion on 30 October 1996⁵. In its opinion, the Committee sought the adoption of a White Paper on consumer policy in the financial services sector, highlighting the main consumer needs (such as right to information, legal protection and redress) as well as the measures to be adopted. In particular, the ESC expressed support for directives on distance contracts of financial services, mortgage credit, insurance contracts and electronic payments.

The Commission's overall approach

The Commission has carefully analysed the contributions in the light of the results of the 1996 impact Study⁶. The contribution made by the Single Market in financial services has been generally beneficial: it has promoted competition and increased consumer choice. Stringent supervision of the activities of EU financial service providers by Member States' authorities has reinforced the financial strength of the sector. A stable and reliable financial services industry remains vital for the confidence of the consumer who entrusts his or her money to it. Yet, it is also clear that more remains to be done to ensure that consumers reap the full benefits and to tackle remaining problems.

The first task - and one that is not confined to financial services - is to ensure that existing legislation is implemented and enforced. The Single Market is based on confidence. Proper enforcement of common rules is the only way to achieve this goal. There are still delays in the implementation of crucial legislation in insurance and investment services, as confirmed in the Action Plan for the Single Market⁷. Enforcement of legislation and Treaty rules will remain a priority for the Commission. Second, the provision of cross-border financial services is still beset by too many obstacles. Different tax structures and differences in tax treatment across borders, in particular in the area of insurance and mortgage credit, can act as an impediment to the working of the Single Market. National rules adopted to protect the "general good" that disregard the principles established by the Court of Justice for the application of this concept can also create new hurdles to trade, stifling competition, restricting choice and raising costs for the consumer. Where genuine concerns are at stake, the integrity of the Single Market may require Community harmonisation to achieve the twin objectives of a high level of consumer protection in the EU and unrestricted access to the Single Market. In some cases, solutions can be found through voluntary co-operation between the interested parties: this should be encouraged as much as possible. However, voluntary action is sometimes not enough: action also needs to be taken either by the Member States or at the level of the Union.

⁵ O.J. N° C 56 of 24 February 1997, page 76.

⁶ See footnote n° 2.

⁷ CSE(97)1 final of 4 June 1997.

Furthermore, the Commission is committed to encourage intensively the development of Electronic Commerce, as announced in its Communication on A European Initiative in Electronic Commerce⁸. Electronic Commerce offers enormous opportunities for cross-border trading in Europe and for improving international competitiveness and all the more so in the context of the European monetary union. A clear regulatory framework will give consumers the confidence to use it and businesses the incentive to make the necessary investment.

Apart from the well-known benefits expected from the introduction of the Single Currency, the changeover to the euro will greatly contribute to the increase of transborder activity by ensuring price transparency and better competition between service providers. Indeed, to facilitate the transition from national currencies to the euro, the Commission has adopted two draft regulations on the legal statute of the euro, including the principle of continuity of contracts.

To respond to these issues and to the comments generally expressed by consumer groups, the Commission considers that it is as much a change of attitude which is called for as a targeted programme of legislation. This Communication therefore sets out a number of proposals for new or amended directives. Legislation is not, however, appropriate for all the problems identified. Other means, notably a dialogue between the industry and consumers, are more appropriate to improve information, market transparency and the potential for resolving consumer problems and complaints. Action must be undertaken quickly to agree such measures and to see that they work efficiently.

The detailed points raised

The consultation highlighted a number of issues which merit particular attention. In the case of each issue, the specific comments made by interested parties are summarised, and the Commission then gives its response.

a) Distance contracts for financial services

The use of distance contracts of financial services is growing rapidly. Direct marketing of car insurance products and investment, for example, is already well established in a number of European countries. Open computer networks such as the Internet are likely to prove the key medium for distance trading of financial products⁹. With the further spread of personal computers in Community households and the surge of additional communication facilities, the "virtual" bank is becoming a distribution channel that is highly attractive for both consumers and, given the expected efficiency gains, the providers of financial products.

⁸ COM(97) 157 of 16 April 1997.

⁹ This is also addressed in the Commission Communication on a European Initiative in Electronic Commerce (COM(97) 157 of 16 April 1997).

Such developments create new opportunities both for consumers and for the providers of financial services. But there are also risks. The main concerns raised in the consultation by consumer groups relate to the law applicable; the need for information for customers; the possibility of cooling-off periods (where appropriate); the threat of inertia selling; and unsolicited selling. Initiatives taken at national level to protect the consumer need to be consistent with one another, lest they differ substantially and thus fragment the Single Market and inhibit cross-border activity. The financial services industry has repeatedly expressed concern about such developments.

The Commission recognises that there is a need to provide for consumer protection in the case of distance contracts for financial services. It will help to raise the confidence of consumers whilst enabling providers of financial services to market their products without unnecessary obstacles across the EU as a whole. The general distance contracts Directive¹⁰ does not cover financial services, although they were included in the original and amended Commission proposals. Therefore, the Commission indicated that it would examine the need for and content of binding legislation specific to this area. It was considered that, given the increasing complexity and diversity of the European financial sector, the consumer protection aspect of financial services in general and the particular question of distance contracts merited specific consideration. **In the light of the above consultation, and having regard to the Parliament's Resolution of 17 February 1997, the Commission has decided to make a proposal for a specific Directive covering financial services by autumn 1997.** This proposal confirms the differences between distance contracts in financial services and other types of distance contracts covered in the general Directive. These differences include the right to withdraw a contract, which is not appropriate if the price of the financial product depends on market fluctuations or if the contract has already come into effect (such as in motor insurance). The proposal will also take account of measures that have already been proposed. These include, in particular, the Directive¹¹ concerning the processing of personal data and the protection of privacy in the telecommunications sector ("ISDN Directive"), where the objective is to remove barriers to the free movement of services, personal data and telecommunication equipment. This particularly concerns provisions on the protection of subscribers in relation to the use of certain telecommunications services for the purpose of direct marketing.

b) Lack of consumer information and means of redress

Competition cannot work effectively unless there is clear information for consumers, and there are adequate opportunities for redress. Although existing directives already provide for consumer information relating to some services (e.g. on consumer credit, cross-border credit transfers and life insurance), the consultation has shown that there is sometimes a lack of information or the information provided is not fully comprehensive or clear. In some cases, the legislation does not provide for adequate means for redress. Consumers must have confidence that rapid and reliable means of redress are available in the event of disputes, particularly where low amounts are involved.

¹⁰ Directive 97/7/EC on the protection of consumers in respect of distance contracts, O.J. N° L 144 of 4 June 1997, page 19.

¹¹ Council Common Position N° 57/96, O.J. N° C 315 of 24 October 1996, page 30.

The Commission takes the view that, before considering legal initiatives on the provision of information, interested parties should be given the opportunity to agree on improvements to the situation. Those most closely involved know best what information is useful to consumers whilst avoiding unnecessarily onerous requirements on financial institutions in terms of information provision (the costs of which will ultimately be passed on to the consumer). Rapid progress is called for through a constructive dialogue between European financial industry associations and consumer representatives, with a view to promoting solutions such as codes of conduct, wherever possible. Such dialogue has recently been launched for certain sectors, but now needs to be expanded. In arriving at any non-legislative agreement, however, the Commission would expect that full account be taken of the level of consumer protection that is already available and that particular emphasis be paid to the clarity and accuracy of the information to be provided.

The Commission therefore calls for a clear commitment from the industry and consumers to agree voluntarily improvements in the provision of information. Progress in implementing any agreements will be monitored over the next 18 months (i.e. before mid-1999). If sufficient progress is not voluntarily made during this period on all or any specific aspects, the Commission will propose further initiatives, including legislation, as it has done, for example, in the area of cross-border credit transfers.

To improve the access for consumers to redress, the Commission seeks a clear commitment from the industry to set up or complete schemes, in co-operation with consumers, that deal with consumer complaints. The first results of this dialogue will be presented to the Commission by end-1997. The Commission will also encourage more intensive co-operation between representatives of different ombudsman schemes with a view to exchanging experiences and best practice. The Commission will again monitor progress in the period to mid-1999, to assess whether problems can be adequately solved on a self-regulatory basis or whether further initiatives, including legislation, are necessary.

c) *Refusal to sell financial services*

The consultation identified two distinct problems: refusal to sell financial services to non-residents in some cases; and a lack of access to financial services, *inter alia* for low income people. On the first problem, in the vast majority of cases, providers offer financial services across borders because it is in their commercial interest to do so. However, there are genuine commercial reasons for financial service providers not to sell their services to non-residents. For example, there may be uncertainty about the level of risk involved in motor and life insurance. There may also be difficulty in assessing the financial standing of the buyer. Alternatively, there may be a disproportionate cost to the seller, such as the lack of a distribution network or the need to appoint a fiscal representative. The Commission recognises that private companies are free to decide with whom to do business, provided that the exercise of this freedom does not give rise to anti-competitive behaviour. **However, when Community legislation is infringed, the Commission will take appropriate action, in co-operation with the Member States, including infringement procedures.**

Access to a bank account is one of the primary needs of life like electricity or a telephone. But there are still many European citizens who are not able to obtain a bank account or any other financial services. Steps have already been taken in a number of Member States to improve the situation for social policy reasons. For example, in some Member States financial institutions have signed up to codes of conduct designed to solve the problem. **The Commission supports such efforts at national level, which is where any action required needs to be.**

d) Unregulated intermediaries

Both industry and consumer groups have reported cases of “aggressive selling” and of illegal activities by unregulated intermediaries. Cases of this kind cause considerable distress to consumers; they also harm the reputation of the financial institutions on behalf of whom these intermediaries act. A number of specific problems have been identified: it may not be clear for which company an intermediary acts; the information provided by the intermediary may not be clear or adequate; the cost of credit facilities offered by the intermediary may be much higher than the market average; the intermediary may lack the competence and integrity needed to provide sensible advice; there is also a risk that intermediaries could take advantage of consumers who are in a precarious financial position, and to whom alternative sources of credit are not available.

A basic distinction needs to be made between financial intermediaries and insurance intermediaries. With the exception of activities falling within the scope of the consumer credit directive, the activities of financial intermediaries are not at present covered by Community directives, nor subject to the supervisory regime, although they may be regulated at national level. On the other hand, insurance intermediaries, an important link in the distribution of insurance products, have been regulated to a limited extent at EU level.

Both the industry and consumer groups who responded to the Green Paper considered that an EU initiative is required to maintain the “good reputation” of the financial services sector, on the grounds that national regulations differ substantially and may not be fully effective, particularly when financial services are being sold across borders. Furthermore, existing national rules applying to these intermediaries, to the extent that they differ significantly, may constitute a barrier to the free provision of services cross-borders. **Therefore, for financial intermediaries, the Commission is currently considering regulation, also taking into account the results of a study carried out in 1996¹² in this field, to deal with: 1) access to the profession (for example, qualification requirements, compulsory licensing or registration); 2) the exercise of the activity (for example, rules enhancing the proper submission of information to the customer); and 3) the relationship between the credit institution and the intermediary.**

¹² “Etude sur le rôle et les activités des intermédiaires de crédit aux consommateurs”, by F. Domont-Naert and P. Dejemeppe, September 1996.

For insurance intermediaries, the Council adopted a Directive¹³ in 1976 allowing intermediaries to establish themselves in another Member State or to provide services on a cross-border basis. Member States which do have conditions in place for access and exercise of the profession must accept as equivalent the relevant practical experience and qualifications of a foreign intermediary or accept its statements of good repute and financial standing. The Commission has also adopted a Recommendation¹⁴ on the status and professionalism of the insurance intermediary. The Recommendation encourages Member States to lay down rules regulating the profession; to register persons meeting the professional requirements; and to make a distinction between dependent and independent intermediaries. The vast majority of Member States now have rules in place which wholly or partially meet the objectives of the Recommendation. Only two countries (Denmark and Germany) have no rules in this area. **The Commission will review the Directive and the extent of implementation of the principles set out in the Recommendation, and consider whether further steps are needed, including the possibility of widening the scope of the Directive in respect of the access and exercise of the profession.**

e) *Consumer credit*

The existing directives on consumer credit already provide a general framework on consumer protection. Taking account of developments in the market, the Commission published a report¹⁵ in May 1995 on the application of the 1987 consumer credit Directive¹⁶, indicating possible areas for improving the existing framework and bringing it up to date. Furthermore, the Commission published a report¹⁷ in April 1996 on the application of the 1990 Directive concerning the calculation of the Annual Percentage Rate of Charge (APR)¹⁸. In April 1996, the Commission proposed a Directive¹⁹ amending the 1987 Directive (as amended by the 1990 Directive) mainly involving the introduction of a single, Community mathematical formula calculating the APR, on which the Consumer Council of 10 April 1997 reached a Common Position²⁰. Furthermore, the Council decided that it is appropriate to study without delay to what extent a further degree of harmonisation of the cost elements of consumer credit is necessary and agreed on a declaration inviting the Commission to entrust a group of ad hoc experts with such a study. The Council is to be informed regularly on the progress made. The Commission has presented an amended proposal²¹, taking into account the European Parliament's Opinion at first reading of 20 February 1997²², the political agreement of the Council of 25 November 1996 and the ESC Opinion of 26

¹³ O.J. N° L 26 of 31 January 1977, page 14.

¹⁴ O.J. N° L 19 of 28 January 1992, page 32.

¹⁵ COM(95) 117 final of 11 May 1995.

¹⁶ O.J. N° L 42 of 12 February 1987, page 48.

¹⁷ COM (96) 79 final of 12 April 1996.

¹⁸ O.J. N° L 61 of 10 March 1990, page 14.

¹⁹ O.J. N° C 235 of 13 August 1996, page 8.

²⁰ Doc. 7313/97, CONSOM 33 of 14 April 1997.

²¹ O.J. N° C 137 of 3 May 1997, page 9.

²² Parliament Resolution of 20 February 1997, PE 257.006.

September 1996²³. During the consultation, consumer groups have argued that the 1987 Directive on consumer credit needs to cover all forms of credit, including innovative forms, and that it needs to deal with the problem of over-indebtedness. **In reviewing the 1987 Directive, the Commission will take account of the comments of the interested parties. Concerning the problem of over-indebtedness, certain pilot projects will be implemented as from 1998, some of which will aim at improving consumer information and education.**

f) Mortgage credit

The financial industry has recognised that the Single Market for mortgage credit is still at an embryonic stage of development. It believes that this is due to differences in the treatment of taxes, differences in subsidy arrangements and in national laws on property. Furthermore, it is generally recognised that any action to enhance consumer protection will not of itself remove such obstacles.

However, consumer groups have argued that in this sector, the potential offered by the Single Market is yet to be fully exploited: there is a lack of information; difficulties in making meaningful comparisons (especially on the cost of mortgage credit); and differences between national regulations on consumer protection. To allow the consumer to benefit from the Single Market, consumer groups argued that such barriers should be removed and a minimum set of harmonised rules should be introduced. The issues of information and its quality will be included in the dialogue between the industry and consumers.

Any further initiative in this area must take account of the wide diversity of mortgage credit in the EU. **Therefore, before taking any further initiative at the beginning of 1998, the Commission will consider the results of works launched.**

g) Victims of car accidents abroad

Consumer and industry groups have both called for the removal of the remaining barriers to the free movement of insurance products. In particular, they considered that there should be a Commission initiative to protect residents of one Member States who have suffered loss or injury caused by a vehicle registered and insured in a Member State other than that of their residence. The European Parliament has also passed a resolution requesting the Commission to improve the situation for such victims.

The Commission agrees that there is a need for action and will therefore propose a Directive (the Fourth Motor Insurance Directive) by autumn 1997. This will provide that a direct action of the victim to the insurer should be introduced throughout the EU and that claims representatives will be nominated. Information centres will also be established to deal with the business of motor vehicle insurers in general. The adoption of this Directive should make a significant contribution to solving the problem.

²³ O.J. N° C 30 of 30 January 1997, page 94.

h) Insurance contracts

The consumer and industry respondents to the Green Paper considered that further measures are necessary to set common minimum requirements for insurance contracts to consumers: such measures should make it easier for consumers to compare insurance contracts across borders without any harmonisation of contract law leading to an undesirable standardisation of products and to a stifling of innovation. **This issue will be included in the dialogue between the industry and consumers.**

i) Payment services

Acceptance by consumers and achieving total confidence are essential for the introduction and success of any new means of payment. Transparent and secure electronic payment mechanisms in turn will facilitate the changeover to the Single Currency, in particular throughout the transitional period. In November 1988, the Commission adopted a Recommendation²⁴ which set out minimum responsibility and liability standards for the relationship between issuers and holders of payment cards. In the case of traditional bank-access products (i.e. credit, debit and deferred debit payment cards), the responses to the Green Paper indicated that the Recommendation has, in general, been followed by the industry although in some Member States more efforts need to be made. However, consumer groups stressed problems arising with some provisions, particularly the extent of the parties' respective liabilities in the event of the loss or theft of a payment instrument, and the burden of proof in the event of disputes. In the case of innovative bank-access products, the consultation indicated that the Recommendation has not been as widely implemented. Moreover, the provisions on the parties' respective responsibilities need to be reinforced by requirements on adequate consumer information and on access to effective means of redress.

Furthermore, a completely new generation of products, i.e. electronic-money products, has emerged since the 1988 Recommendation was adopted. Indeed, electronic money products differ from remote access products in that they can normally be used without requiring access to an account.

²⁴ O.J. N° L 317 of 24 November 1988, page 55.

